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VIA E-FILING

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PUBLIC VERSION

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E. Street, S.W., Room 1034
Washington, D.C. 20024

ENTERED
Office of Proceedings
July 26, 2022
Part of
Public Record

Re: Docket No. FD 35743

**Application of the National Railroad Passenger Corporation Under 49
U.S.C. § 24308(a) – Canadian National Railway Company**

Dear Ms. Brown:

We represent National Railroad Passenger Corporation (“Amtrak”) in the above-captioned proceeding.

Enclosed for e-filing is a public version of the Reply Brief of National Railroad Passenger Corp. in Response to Opening Submission of Canadian National Railway Company and supporting Verified Statements and exhibits, with appropriate redactions that the Board can place on its docket. We are concurrently filing a CONFIDENTIAL version and HIGHLY CONFIDENTIAL version of the Reply Brief and supporting Verified Statements to be filed under seal.

Should you have any questions, please contact the undersigned. Thank you for your attention to this matter.

Respectfully submitted,

Jerry A. Cuomo

Jerry A. Cuomo

Enclosure.

cc: All Parties of Record

**[CONTAINS CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION
FILED UNDER SEAL]**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35743

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

**REPLY BRIEF OF NATIONAL RAILROAD PASSENGER CORP. IN RESPONSE TO
OPENING SUBMISSION OF CANADIAN NATIONAL RAILWAY COMPANY**

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Dated: July 26, 2022

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PRELIMINARY STATEMENT

The Board should reject Canadian National Railway Company's ("CN") proposal for a new Operating Agreement ("OA"). CN's proposal is contrary to: (1) Federal Railroad Administration's ("FRA") Final Rule entitled *Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72972 (Nov. 16, 2020) ("the Final Rule"); and (2) this Board's August 9, 2019 Decision ("the 2019 Decision"). CN's proposal also fails to comply with Section 207(c) of the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"), which mandates that the Final Rule's metrics be incorporated into the Parties' new OA to the extent practicable. By contrast, Amtrak's proposal satisfies the directions of Congress, FRA, and the Board, and is carefully tailored to the Parties' real-world operating conditions.

Amtrak addresses the numerous flaws in CN's proposal as follows: Part I - CN's terms measuring on-time performance ("OTP") of Amtrak's trains and calculating CN's performance payments (or "incentives") and penalties; Part II - CN's request that the Board require Amtrak to reimburse its alleged "freight delay costs" as "incremental costs"; and Part III - CN's miscellaneous terms.

PART I - CN's Proposed Terms as to OTP Measurements, Incentives and Penalties

The Final Rule established a straightforward "customer on-time performance" ("COTP") metric, which focuses on the quality of *all* Amtrak passengers' experiences at *every* station along an Amtrak route. Specifically, COTP measures: "[t]he total number of customers on [an Amtrak train] who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, divided by the total number of customers on the [Amtrak train]." (See 85 F.R. at 72974; 49 C.F.R. § 273.5(a)(1)). The Board's 2019 Decision previewed this result, noting that the Amtrak passenger experience at *all* Amtrak stations on a route should be the focus of an OTP

metric in a new OA. (2019 Decision, p. 11).

CN's proposal does not incorporate this passenger-focused approach. Instead, CN proposes a system that is nearly indistinguishable from the Parties' existing OA ("the 2011 OA"). Under that system, an Amtrak train is on time if it reaches its destination by the scheduled arrival time, plus certain "additional tolerances." FRA expressly rejected this approach in the Final Rule, concluding that it is disconnected from the true Amtrak passenger experience. Instead, CN's approach is based on the fiction that passengers are "on time" even though, in truth, their train has arrived *late* (perhaps significantly late). The Board should reject CN's attempt to re-litigate this metric, which has now been clearly established and codified. See 49 C.F.R. § 273.5. Indeed, adopting CN's position would lead to the absurd result that CN can earn incentives under the OA when Amtrak passengers are routinely *late* as a result of CN's actions.

CN also proposes to measure OTP only at stations on its own system. This approach ignores the experiences of Amtrak's passengers who happen to detrain at stations not on CN's system. On some Amtrak routes, this fails to account for approximately 90% of Amtrak's ridership. Not only is this contrary to the Final Rule and the 2019 Decision, it overlooks that delays caused by CN on its system then delay passengers arriving at stations on the systems of other Host Railroads.

Real-world experience highlights the deficiencies in CN's approach. The most recent COTP data published by FRA for the first quarter of 2022 shows that only one of Amtrak's routes on CN's system (Lincoln Service) is performing over 80% COTP¹—the minimum COTP standard

¹ See FRA Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations, Fiscal Year 2022, First Quarter, issued May 17, 2022 (Table 7 - Customer On-Time Performance by Route); Blair Reply Verified Statement ("Blair Reply VS"), Exhibit 1. FRA's report may be accessed at https://railroads.dot.gov/sites/fra.dot.gov/files/2022-05/DOT_FRA_M%26S_FY22Q1_051622_PDFa.pdf.

under the Final Rule. Several of the routes are performing well *below* 80% COTP:

<i>Amtrak Route</i>	<i>Route-Level COTP for FY22, Q1</i>
City of New Orleans	79.9%
Blue Water	66.5%
Illini/Saluki	60.4%
Lincoln Service	80.1%
Texas Eagle	66.1%
Wolverine	58.8%

(See Id., Table 7 - Customer On-Time Performance by Route). These deficiencies do not permit CN to craft and propose a system which omits the COTP metric, which is now the governing standard.

In addition, to protect the interests of Amtrak’s passengers, in its 2019 Decision, the Board urged the Parties to provide for “concrete action” in the event of sustained poor performance of Amtrak’s trains. (2019 Decision, p. 17). But, CN has proposed no “concrete action” at all. Rather, it proposes that—after six months of poor Amtrak performance—the Parties then embark on a time-consuming process of investigations, meetings and discussions about the causes of Amtrak’s delays. If the Parties cannot agree on remedial action, this arduous process drags on for months and potentially *years* more. All the while, under CN’s proposal, Amtrak’s passengers may continue to suffer through delay after delay, without CN being required to take any remedial action. CN’s proposal is the antitheses of the “concrete action” the Board had in mind.

Accordingly, for these and the reasons discussed here, the Board should reject CN’s proposed OA in its entirety.

PART II - CN’s Claims For Reimbursement of Certain Alleged Incremental Costs by Amtrak

By statute, CN must provide preference to Amtrak’s trains. CN now asks the Board to require Amtrak to reimburse CN for crew overtime, fuel, and equipment costs that it allegedly

incurs when its freight trains must make way to provide preference to Amtrak trains. CN claims that these are “incremental costs.” The Board must reject this contention because: (1) as a matter of law, CN is not entitled to reimbursement for discharging its statutory obligation to provide preference to Amtrak trains; and (2) these costs are not “incremental costs,” as the Board defined them in its 2019 Decision.

First, in exchange for being relieved of their common carrier obligation to provide unprofitable passenger service in the Public Bargain creating Amtrak, the freight railroads represented to Congress that they would continue to provide preference to passenger trains in the use of their lines and facilities, as had been their historical practice. The freight railroads did this with a clear understanding that providing preference could delay their own freight traffic. There is, however, not a hint in the legislative history or any statute enacted following the Public Bargain that Amtrak must compensate the freight railroads for Amtrak’s fundamental preference right. Yet, CN now seeks to renegotiate the Public Bargain to include just such a term in its OA with Amtrak. The Board should not impose terms which so dramatically undermine the Public Bargain.

Second, Congress provided Host Railroads with a very specific avenue of relief if they claimed to be aggrieved by providing preference to Amtrak. A Host Railroad may commence an action before the Board under 49 U.S.C. § 24308(c), and attempt to show that providing preference “materially will lessen” the quality of its freight service to its shippers. In creating such a specific remedy, Congress intended it to be exclusive. Instead of pursuing the remedy that Congress provided, CN instead seeks a remedy provided for nowhere by asking the Board to treat its costs in providing preference as “incremental costs.” Had Congress intended “incremental costs” to include the costs of providing preference, it simply would have said that. It did not, and the Board must deny CN’s proposed terms which seek to impose CN’s own self-help remedy. Accepting

CN's argument would severely undermine Amtrak's preference right, which was foundational to Amtrak's creation and remains critical to Amtrak's success.

Furthermore, in its 2019 Decision, the Board decided that "incremental costs" are only those expenses that CN: (1) would not have incurred "but for" Amtrak's presence; and (2) incurred due to delays *caused* by Amtrak. CN cannot satisfy its burden as to either of these criteria.

CN exclusively controls aspects of its system that lead to the delays impacting its own freight trains. However, CN now seeks recovery from Amtrak for the costs of those self-imposed delays. For example, CN controls: (1) its infrastructure, the expansion of which has not kept pace with the ever-increasing growth of freight traffic on its system; (2) its schedules, which are haphazard, ever-changing and unreliable as a measure of whether CN's freight trains have been delayed; and (3) its operational prioritization of velocity, which has resulted in CN running freight trains so long that they are unable to fit into sidings on its system (making it difficult, and more expensive, to make way for Amtrak trains). These choices by CN—not Amtrak's presence—are the cause of CN's "freight delay costs."

Additionally, the Board also decided that "incremental costs" are only those which are specific, verifiable and quantifiable. However, CN's methodology—which is only slightly modified from its prior submission to the Board—is patently unreliable and defective, and fails to meet any of these requirements.

As such, the Board should reject CN's proposed terms, and should deny CN's request to require Amtrak to reimburse its "freight delay costs" for December 2019 or any other timeframe.

PART III - Miscellaneous Contract Issues

Several other terms proposed by CN should also be rejected. For example:

CN asks the Board to impose terms allowing CN to participate in a joint "staggered

review” of Amtrak’s schedules. But this is unnecessary: the Parties have engaged in the Final Rule’s “schedule certification” process, and they both agree to retain a clause from the 2011 OA that allows either side to request a joint schedule review. Although CN seeks to further involve itself in Amtrak’s schedules, nothing further is required or appropriate.

CN also proposes a dispute resolution system which, it claims, will help to resolve the multitude of disputes that it anticipates under its proposed OA concerning Amtrak’s delay codes. This, too, is misguided. Disputes are likely to proliferate under CN’s proposal only because its complicated system of “tolerances” requires the Parties to navigate *forty* different delay codes² (Amtrak’s proposed OA involves only seven).³ CN’s system invites additional disputes—meaning its proposed OA will be unduly burdensome and overly complicated to administer. The Board should not impose such a system.

* * *

For these reasons (and those set forth herein and in the Reply Verified Statement of James A. Blair and Reply Verified Statement of Thomas D. Crowley and Robert D. Mulholland submitted herewith), the Board should reject CN’s proposed terms and adopt those proposed by Amtrak in its opening submission.

² See CN Redline, Appx XI.

³ See Amtrak Redline, Article I (defining “Host-Responsible Delays”).

PART I - CN'S PROPOSED TERMS RELATED TO ON-TIME PERFORMANCE MEASUREMENTS, INCENTIVE PAYMENTS AND PENALTIES

POINT I

THE BOARD SHOULD REJECT CN'S PROPOSED TERMS AS TO THE ON-TIME PERFORMANCE OF AMTRAK TRAINS AND CALCULATION OF INCENTIVES AND PENALTIES

In its opening submission, Amtrak proposed terms for measuring the performance of Amtrak trains and for calculating CN's incentives and penalties that are fully in accordance with the Final Rule and the 2019 Decision: (1) Amtrak considers its passenger train to be on time if it has arrived on or before its scheduled arrival time (plus the 15-minute buffer provided for in the Final Rule) (see 85 F.R. at 72974); (2) Amtrak's incentive and penalty system is based on the COTP for the entire Amtrak route, as calculated in the Final Rule (See 85 F.R. at 72974-78); and (3) Amtrak incorporates the "degree of lateness" of an Amtrak train by including a "Delay Adjustment Factor" in its incentive and penalty calculation based on the minutes of CN-responsible delays per 10,000 train miles on a route. (Id. at 72984; 2019 Dec., p. 14).

CN's proposal meets none of these objectives. For several reasons, the Board should reject CN's proposed contractual terms related to the calculation of OTP of Amtrak trains and the circumstances under which CN may earn an incentive or incur a penalty. Unlike Amtrak's proposal, CN diverges sharply from both the Final Rule and the 2019 Decision.

As part of its charge to establish the terms of a new OA between the Parties, the Board may not impose terms inconsistent with or contrary to the Final Rule. Indeed, in Section 207(c) of PRIIA, which empowered FRA to promulgate the metrics and standards in the Final Rule, Congress mandated that those metrics and standards be incorporated into the OAs between Amtrak and its Host Railroads "[t]o the extent practicable." 49 U.S.C. § 24101 note. CN's proposal, however, is contrary to and inconsistent with the Final Rule in several material respects.

Furthermore, CN's proposal is contrary to the Board's 2019 Decision, which FRA considered and relied upon in promulgating the Final Rule. (See 85 F.R. at 72976-77, 72982) (citing 2019 Decision).

First, CN's proposal is grounded in a principle that FRA explicitly *rejected* in the Final Rule, *i.e.*, measuring OTP of an Amtrak train by assessing whether it arrived at a station on or before its scheduled arrival time, *plus* minutes of delay allocated to certain enumerated "additional tolerances." (See 85 F.R. at 72976). FRA decided instead to adopt a customer-based measure of OTP (*i.e.*, COTP), as the Board endorsed in its 2019 Decision, and which forms the basis of Amtrak's proposal here. (Id. at 72974-78).

Second, CN proposes to exclude so-called "Do Not Count" ("DNC") trains from the OTP calculations altogether. But these are a hallmark of the same system included in the 2011 OA—a system the Board found had several material problems. As explained below, this kind of system for measuring OTP of Amtrak's passenger trains on a Host's system: (1) was proposed during the commentary period leading to the Final Rule, and was expressly rejected by FRA; and (2) is contrary to the 2019 Decision. In contrast, Amtrak's proposed system measures whether an Amtrak train was on time precisely as mandated in the Final Rule, accounting for the quality of the Amtrak passenger experience.

Third, CN proposes to calculate OTP only at stations on CN's own system. The Final Rule, however, requires the measurement of OTP at *every* station serviced by Amtrak on a route, regardless of the Host Railroad on whose system the station is located. In contrast, Amtrak's proposed system measures OTP at every station on each of Amtrak's routes in accord with the Final Rule.

Finally, CN proposes to incorporate a "degree of lateness" into its incentive and penalty

system by applying a multiplier in its calculations based on the “average CN minutes” above or below “tolerance.” In addition to being based solely on the concept of “tolerances”—which, standing alone, renders CN’s proposal fundamentally flawed—CN’s methodology is also inconsistent with the Final Rule. The Final Rule includes four different “Train Delays” metrics to measure the delays impacting Amtrak trains and the cause of those delays (including whether a Host Railroad, Amtrak or third-party is the cause). (*Id.* at 72980-84).⁴ CN, however, has not incorporated any of them into its proposal. Amtrak’s proposal, however, uses the “Train Delays per 10,000 Train Miles” metric to quantify delays specifically attributable to CN. This accounts for the “degree of lateness” of Amtrak’s trains by using CN-responsible minutes of delay per 10,000 train miles to determine a multiplier to be used in its incentives and penalty calculations.

In summary, CN’s proposal, which is based on additional tolerances, DNCs, and a tolerance-based “degree of lateness” multiplier, is designed to pad the schedule and obfuscates an accurate measurement of CN’s performance and whether Amtrak’s passengers have truly arrived on time. In contrast, Amtrak’s proposal is designed to measure the true Amtrak passenger experience through the verifiable process mandated by the Final Rule and by Congress in promulgating PRIIA § 207.

Each of these points is discussed in further detail below.

A. The Board Must Impose Terms that are Consistent with the Final Rule

In § 207(a) of PRIIA, Congress authorized FRA and Amtrak to “develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including . . . on-time performance and minutes of delay.” See

⁴ Those four “Train Delay” metrics are: train delays, train delays per 10,000 train miles, station performance, and host running time. (85 F.R. at 7298-84) (discussing metrics); see also 49 C.F.R. § 273.5(d-g) (codifying metrics).

Pub. L. No. 110–432, 122 Stat 4848 (2008). After extensive litigation,⁵ and then extensive public comment (which both CN and the Board participated in), FRA finalized those metrics and standards when it issued the Final Rule in November 2020. (See 85 F.R. at 72972).

In PRIIA §207(c), Congress mandated: “[t]o the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards developed under subsection (a) into their access and service agreements.” See also 85 F.R. at 72976-77 (quoting of PRIIA § 207(c), and confirming that the Final Rule’s metrics and standards must be incorporated into operating agreements between Amtrak and its Host Railroads to the extent practicable). CN has not suggested that incorporating the Final Rule’s metrics and standards into the Parties’ new OA is not practical, nor could it have credibly made such an assertion. As such, in setting terms and conditions for the Parties’ OA under 49 U.S.C. § 24308(a)(2)(A)(ii), the Board should give full effect to the Final Rule.

As discussed below, CN’s proposed terms are, in fact, inconsistent with the Final Rule. Amtrak’s proposed terms, however, closely track the Final Rule.

B. The Board Should Reject CN’s Proposed Terms for Determining whether an Amtrak Train has Arrived On Time

In the Final Rule, FRA established the COTP metric, which measures OTP as follows: “The total number of customers on [an Amtrak train] who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, divided by the total number of customers on the [Amtrak train].” (See 85 F.R. at 72974; 49 C.F.R. § 273.5(a)(1)). This is consistent with Amtrak’s Congressionally mandated goal that Amtrak operate its passenger trains

⁵ Amtrak respectfully refers the Board to Amtrak’s brief dated May 27, 2022 in support of its opening submission at pp. 52-53, n.39, which discussed the extensive litigation related to the constitutionality of certain subsections of PRIIA.

“to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables.” 49 U.S.C. § 24101(c)(4).

CN does not propose to use this simple, straightforward metric to determine whether an Amtrak train is on time. Rather, it attempts to construct an entirely new metric based on terms and calculations not found in the Final Rule. The Board should reject this attempt to relitigate the determinations made by FRA in the Final Rule.

1. CN’s Proposed Calculation of Arrival Times Using “Additional Tolerances”

CN proposes that an Amtrak train should be considered “on time” for purposes of its incentive and penalty system if it arrives “on or before the scheduled arrival time” at a station on its system,⁶ plus the sum of minutes attributable to certain enumerated delays (*i.e.*, “additional tolerances”). (See CN Redline, Appx V, §§ 1(a-l), 2)). These “additional tolerances” effectively move the goal line by adding time to the publicly scheduled arrival time of an Amtrak train, without *any* limitation on the number of minutes or hours by which that arrival time may be extended. CN admits that this proposal is “based on the essential system that has been used by the parties for many years” (CN Opening Br., p. 18).

The enumerated “additional tolerances” CN proposes include, for example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶ As the Board is aware, the 2011 OA measures OTP at certain checkpoints on CN’s system (nearly all of which were endpoints of Amtrak’s routes). (See 2019 Decision, p. 8). CN now proposes to designate all stations on its own system as checkpoints.

⁷ [REDACTED]

[REDACTED]

(a) CN's Proposal Contradicts the Final Rule

CN's proposal bears no resemblance to the Final Rule or how it mandates that an Amtrak train is determined to be on time. The Final Rule is clear and straightforward—an Amtrak passenger arrives on time if they are delivered to their destination station within 15-minutes of their published scheduled arrival time. (See 85 F.R. at 72972-74). This metric is easily verifiable, and Amtrak already reports COTP to FRA on this basis. (Blair Reply VS, ¶ 12).

CN's proposed approach to add "tolerances" artificially extends the scheduled arrival times published to Amtrak's passengers. However—despite being the centerpiece of CN's proposal—this concept is nowhere in the Final Rule. CN even goes so far as to suggest that "'tolerance' is a key aspect" of the definition of "on time" for purposes of determining whether Amtrak passengers have arrived timely. (CN Opp. Br., p. 30). There is no basis for this assertion (other than with respect to the 15-minute buffer provided for in 49 U.S.C. § 24101(c)(4) and the Final Rule).

Under CN's proposal, CN can add minutes to the scheduled arrival time of a delayed Amtrak train, and the delayed train will nonetheless be considered on time even though Amtrak's passengers have reached their destination late (perhaps, hours late). (Blair Reply VS, ¶ 13). This is true even where CN's own operational decisions directly *cause* the delay that makes Amtrak's passengers late. (*Id.*, ¶¶ 14-15). CN's proposal deviates so drastically from the Final Rule that it

8 [REDACTED]

9 Some additional tolerances only extend the scheduled arrival time if the delays exceed the applicable "Recovery Time Base" ("RTB"). (CN Redline, § A(1)(e)(1-6)). [REDACTED]

must be rejected out of hand.

Further consideration of how CN's system would work in practice confirms its inconsistency with the Final Rule. Under CN's proposal, if an Amtrak train is scheduled to arrive at a station at 2:00 p.m., [REDACTED]

[REDACTED] that train will nonetheless be considered "on time" under CN's proposed OA if it arrives at 3:00 p.m. (*Id.*, ¶ 14). From the perspective of Amtrak's passengers, however, they have arrived an hour late.

CN, therefore, is asking the Board to endorse the fiction that an Amtrak train is "on time" even if the passengers aboard that train are inconvenienced because they arrive *after* (possibly long after) the published scheduled arrival time for that train. Stated another way, CN's proposal purports to focus on and measure the arrival time of an Amtrak train, but—contrary to the Final Rule—it then disregards the experiences of the passengers on it. This ignores the quality (or lack thereof) of the passenger experience, which FRA found to be the paramount consideration in measuring OTP. *See* 85 F.R. at 72974 ("The [COTP] metric focuses on intercity passenger train performance ***as experienced by the customer.***"); 85 F.R. at 72976 ("FRA believes the OTP metric should measure train performance ***from the eyes of the customer.***") (emphasis added). The Board cannot endorse a system that is so detached from the interests of the travelling public and that would, in fact, allow CN to earn incentives when its own operational decisions have resulted in delays to Amtrak's passengers.

FRA rejected the use of contractual standards such as "additional tolerances" (historically included in Amtrak/Host Railroad OA's before the Final Rule)¹⁰ as a metric for measuring Amtrak

¹⁰ *See* 85 F.R. at 72984 ("FRA believes the most meaningful measurement of OTP is based

OTP for this very reason. In rejecting a comment suggesting that FRA endorse such contract-based metrics instead of COTP, FRA stated:

The [COTP] metric is meaningful, precisely because it is reflective of the passenger train's actual performance. The commenter's proposal would routinely produce *the anomalous result stated elsewhere in this final rule of a passenger train that arrives late at stations yet has good "OTP."*

(85 F.R. at 72976) (emphasis added). In other words, "actual performance" from the passengers' perspective is the most important consideration. But, as discussed, under CN's proposal, a train on which Amtrak passengers have been delayed by CN's actions could nonetheless be considered on time.

In addition to rejecting the concept of using contract-based approaches to measuring OTP, FRA expressly rejected some of the *very same* "additional tolerances" CN is asking the Board to impose in the Parties' new OA. [REDACTED]

[REDACTED]

(CN Redline, Appx. V, § A(1)(b)). However, FRA concluded:

A host railroad-specific measurement of OTP accounting for *late handoffs* . . . and other methods of relief, would result in a system that is *misaligned with the customer experience: passenger trains that arrive late at their destinations but are reported as "on time."*

(85 F.R. at 72975) (emphasis added). The Board should not sanction CN's attempt to effectively overturn FRA's decisions.

In light of the most recent COTP figures for Amtrak's routes for the first quarter of FY2022, it is understandable why CN does not wish to measure passenger arrival times as mandated by FRA's COTP metric. As noted, COTP is over 80% for only one of the routes

on the customer experience of actually arriving at their destination on time, *not obscured by other tolerance or relief.*" (85 F.R. at 72984) (emphasis added).

(Lincoln Service at only 80.1%), and COTP for some of them was significantly below that during the first quarter of FY2022. (See Blair Reply VS, Exh. 1, FRA Quarterly Report, FY2022, Q1, Table 7) (COTP for City of New Orleans route (79.9%); Blue Water (66.5%); Wolverine (58.8%); Texas Eagle (66.1%); and Illini/Saluki (60.4%)). This, of course, does not allow CN to disregard the Final Rule or measure passenger arrival times in a way that ignores the passenger experience.

(b) CN's Proposal Contradicts the 2019 Decision

The disconnect between CN's proposal and the Amtrak passenger experience is also contrary to express statements by the Board in the 2019 Decision. Like FRA, the Board indicated its disapproval of contractual systems which "do[] not measure performance in a way that captures whether a significant portion of Amtrak's passengers actually arrived at their selected destinations on time." (2019 Decision, p. 10). This is because, the Board concluded, "[s]uch a metric would be an unrepresentative measure of performance." (*Id.*). CN's proposed OTP measurement does precisely that—it ignores the actual performance of Amtrak's train and the experiences of the passengers on them. Under CN's system, an Amtrak train subjected to delays—perhaps hours of delay—might still be "on time." That train should, however, should be considered "late" because the passengers on that train have arrived after their scheduled arrival time.

(c) CN's Proposal has Absurd Practical Implications

The Board's adoption of CN's system would also lead to patently absurd results—a path that the Board strives to avoid.¹¹ Because CN's proposal unreasonably counts Amtrak trains as on

¹¹ In various contexts, the Board has indicated it will not issue decisions which may lead to absurd results in practice. See, e.g., New Eng. C. R.R., Inc. - Trackage Rights Order - Pan Am S. LLC, FD 35842, 2017 WL 5639660, at *6 (S.T.B., Oct. 30, 2017) (rejecting arguments in action to establish terms and conditions pertaining to trackage rights where party advanced arguments that would "lead[] to absurd results"); Pennsylvania R.R. Co. -- Merger -- New York Cent. R.R. Co., FD 21989, 2011 WL 64041, at *15 (S.T.B., Jan. 6, 2011) ("contract interpretations that lead to unreasonable or absurd results are not favored."); Complaints Filed Pursuant to the Sav.

time when, in truth, the passengers on that train are late under an appropriate COTP measurement, CN's system allows it to potentially earn incentives under circumstances where COTP (as measured by the Final Rule and reported to FRA) is poor for a given Amtrak route. (Blair Reply VS, ¶ 15). This could result in at least two absurd scenarios.

First, under CN's system, if there is poor COTP, CN could earn incentives even when CN has itself *caused* the poor OTP on an Amtrak route.¹² As noted, CN's proposed "additional tolerances" include extending an Amtrak train's scheduled arrival time for delays caused by CN's *own operational decisions*. (*Id.*, ¶ 16). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Certainly, the Board cannot endorse a system that will allow CN to cause chronic delays to Amtrak trains, but then receive incentive payments from Amtrak. This is not what Congress intended.

Second, if, in such a scenario, COTP drops below 80% for two consecutive quarters, the

Provisions of the Staggers Rail Act of 1980 (Section 229, Pub. L. 94-448), 367 I.C.C. 406, 411 (I.C.C., May 17, 1983) ("Statutes are to be construed to effectuate congressional intent and not in a manner that would lead to absurd or obviously unintended, irrational results.")

¹² In contrast, under Amtrak's proposed system, CN is very unlikely to earn any incentives if it has contributed to poor COTP. This is because Amtrak's system incorporates the "Train Delays per 10,000 train miles" metric of the Final Rule for measuring CN-responsible delays—a metric incorporated nowhere in CN's proposed system. Under Amtrak's system, if CN-responsible HRDs are above 924 minutes per 10,000 train miles—indicating that CN likely bears responsibility for the sub-80% COTP—CN will not earn any incentives. (Blair Reply VS, ¶ 16, n.5). This is sharply different from CN's system, which creates the anomalous situation discussed above under which CN's HRDs may be high, but CN nonetheless still receives incentive payments because those CN-caused delays are, by contract, "additional tolerances" which render a late-arriving Amtrak train as contractually "on time." (*Id.*).

Board could institute an investigation (or would be required to institute one upon complaint from Amtrak or others) under PRIIA § 213 (codified at 49 U.S.C. § 24308(f)(1); Blair Reply, VS, ¶ 17). The purpose of the Board’s investigation would be, *inter alia*, “to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by [CN, Amtrak] or other intercity passenger rail operators.” (*Id.*). And, if the Board were to conclude that “delays or failures to achieve minimum standards . . . are attributable to [CN’s] failure to provide preference to Amtrak over freight transportation . . . the Board may award damages against [CN]” See 49 U.S.C. § 24308(f)(2)).

Under CN’s proposal, therefore, an absurd scenario could transpire where Amtrak is paying CN incentives for a route, but the Board is concurrently investigating poor performance caused by CN on the same route pursuant to PRIIA § 213 (including into issues concerning CN’s potential violations of Amtrak’s statutory preference). (Blair Reply VS, ¶ 17). CN effectively would be receiving incentive payments for falling below the standard that FRA adopted, and that the Board has endorsed. This is precisely the “anomalous result” that FRA was concerned with when it rejected a contractually based OTP metric. (See 85 F.R. at 72976).

(d) CN’s Proposal Invites Administrative Complexity and Disputes between the Parties

Lastly, CN’s methodology for determining when an Amtrak train is on time invites recurring and time-consuming disputes over numerous issues, including: (i) the cause of each delay to an Amtrak train—which is determined in the first instance by Amtrak’s conductors; (ii) whether the delay falls within a specific enumerated “additional tolerance” proposed by CN; (iii) potential allocation of portions of the delay due to non-enumerated causes; and (iv) the length of the delay.

CN complains about problems it has supposedly experienced in the past in trying to resolve such disputes with Amtrak. (CN Opening Br., p. 64). Even assuming that CN’s complaints are

valid, CN has proposed a process that all but assures that such disputes will continue in the future. In contrast, the Final Rule mandates—and Amtrak has proposed—the simple, objectively verifiable expedient of determining whether Amtrak’s passengers are on time by comparing their actual arrival time to the published scheduled arrival time.

Another illustration of the unnecessary complexity and administrative burden created under CN’s proposal is its continued inclusion of Recovery Time Base (“RTB”). (CN Opening Br., pp. 56-58). According to CN, using three-years’ worth of data from 2017 to 2019, CN calculated the proposed RTB for each checkpoint based on “the percentage of delays that were caused by Amtrak and Third Parties in the immediately preceding segment, and then multiplying that percentage by the number of recovery minutes in the schedule for that segment, rounded to the nearest whole number.” (*Id.*, p. 56). And, as CN acknowledges, it is possible the Parties will need to recalculate RTB during the term of the OA. (*Id.*, p. 57, n.132).

In contrast, under the Final Rule and Amtrak’s straightforward proposal (which is not based on the concept of “tolerances”), RTB is not a factor that is considered. If the Board were to adopt Amtrak’s proposal, there is no need: (i) for the Board to vet CN’s convoluted RTB proposal; (ii) for the Parties to review—and potentially dispute RTB issues—during the term of the OA; or (iii) for the Parties to potentially reconsider and recalculate RTB during the term of the OA.

2. *CN’s Proposed Exclusion of DNC Trains from OTP Calculations*

CN also proposes to completely exclude trips of Amtrak trains impacted by certain delays from the Parties’ calculations of OTP. These trips are known as “Do Not Counts” (“DNCs”). According to CN, these DNC trips should be excluded because they are impacted by “unusual circumstances beyond CN’s control that can cause major operating disruptions that may not be

fully accounted for through ordinary relief items.” (CN Opening Br., p. 59, n.135).¹³ For example, CN proposes to exclude train trips as DNCs if:

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

(See CN Redline, Appx V, § A(5)(c)(2, 5, 6)). Exclusion of these train trips from an OTP calculation is, however, contrary to the Final Rule and the Board’s 2019 Decision, because it completely ignores the experiences of the Amtrak passengers on those trains who are arriving late (regardless of whether CN is responsible for the delay).

(a) CN Has Mischaracterized Its DNC Proposal

As a threshold matter, CN has mischaracterized its own DNC proposal.

First, CN’s claim that it is proposing to treat Amtrak trains as DNCs only if they are delayed by “unusual circumstances *beyond CN’s control*” is false. (Blair Reply VS, ¶¶ 21-22). [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

¹³ [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] None of these proposed bases for declaring an Amtrak train to be a DNC and excluding it from an OTP calculation are qualified in CN's proposal to apply only to events not caused by CN.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second, CN's contention that it proposes to treat train trips as DNCs if the trip was impacted by delays that "cause major operating disruptions" is likewise misleading. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] none of CN's proposed bases for excluding an Amtrak train from OTP calculations as a DNC specify how long an Amtrak train must be delayed. [REDACTED]

[REDACTED]. There is, of course, no reasonable rationale to exclude such a train trip from the OTP calculation.

(b) CN's Proposed Terms as to DNCs are Contrary to the Final Rule and the 2019 Decision

Like CN's proposed "additional tolerances", the Final Rule does not permit the exclusion of *any* train trip from the OTP calculation. To the contrary, as discussed above, both FRA and the Board have stated that a metric which does not consider the actual experiences of *all* Amtrak passengers is inappropriate. (See, e.g., 85 F.R. at 72976 ("The customer OTP metric is meaningful, precisely because it is reflective of the passenger train's actual performance."); 2019 Decision, p. 10). Excluding DNC trains intentionally ignores the experiences of the passengers aboard them. CN's proposed inclusion of terms related to DNCs should be rejected for this reason alone.

Further, CN is proposing to "not count" certain trains in direct contravention of specific requirements in the Final Rule that such trains be included in a COTP calculation. [REDACTED]

[REDACTED] (See CN Redline, Appx V, § A(5)(a, b)). However, FRA has already stated in the Final Rule that passengers holding tickets on cancelled trains *must* be counted in measuring COTP (provided the passenger receives less than 4 hours' notice of the cancellation). (See 85 F.R. at 72974, n.4 and 72978).

Lastly, even if CN is correct that DNCs reflect delays caused by events outside of their control, FRA has determined that such delays are to be tracked—not by the COTP metric—but rather, by the four "Train Delay" metrics established under the Final Rule.¹⁵ CN's proposed incentive and penalty system does not incorporate any of these "Train Delay" metrics. As noted, and discussed below further, Amtrak's proposal incorporates the Final Rule's Train Delays per 10,000 train miles metric for measuring and considering CN contribution to delivering Amtrak's

¹⁵ See n. 4, *supra* (discussing Final Rule's Train Delay metrics).

passengers to their destinations on time or late.

* * *

For these reasons, the Board should reject CN's proposed terms: (1) determining whether an Amtrak train has arrived "on time" by adding enumerated "additional tolerances" to the publicly scheduled arrival time; and (2) excluding any delayed Amtrak train from an OTP calculation on the basis that it meets enumerated criteria to qualify as a DNC. This approach is contrary to the Final Rule and the Board's 2019 Decision, primarily because it wholly ignores the Amtrak passenger experience.

C. The Board Should Reject CN's Proposed Terms to Measure OTP Only at All Stations on CN's Network

CN's proposal for calculating OTP is also flawed with regard to the "checkpoints" at which CN proposes to measure OTP. "CN's proposal for the OTP metric includes checkpoints at all stations *on CN's portion* of each route." (CN Opening Br., p. 19) (emphasis added). Under CN's proposal, OTP at stations not located on its system is not measured at all. CN's purported justification for excluding stations not on its system is that the OA "is focused on the performance of Amtrak trains over the portion of Amtrak's route that is hosted solely by CN." (*Id.*, p. 20).

CN is, however, overlooking several material issues which require the Board to reject CN's unduly narrow approach to measuring OTP.

First, CN is flatly incorrect that measuring OTP only at those stations on its system (as opposed to the entire route) is consistent with the Board's 2019 Decision. To the contrary, the Board found that an appropriate OTP metric in a new OA would measure "whether all passengers arrived on time" at *all stations* along the route in its entirety—not just on those stations on CN's system. (2019 Decision, p. 10).

Second, in the Final Rule, FRA considered, and rejected, the exact construct that CN is

proposing—i.e., an OTP metric that is specific to the performance of Amtrak trains on finite portions of a route operated by a particular Host Railroad. Instead, FRA determined that COTP should be measured based upon the entirety of Amtrak’s route.

Third, CN’s proposal fails to consider that its actions in hosting Amtrak have direct implications for Amtrak’s arrival times at stations on the systems of other Hosts Railroads. By not incorporating performance at those non-CN stations, CN ignores delays that it may have caused at non-CN stations when calculating whether it earns an incentive or incurs a penalty. CN is effectively disavowing its role in contributing to the on-time delivery of *all* Amtrak passengers on a route, not just those arriving at a station located on CN’s system.

1. CN’s Proposal Contradicts the 2019 Decision

In the 2019 Decision, the Board found that the 2011 OA’s system of measuring OTP at “checkpoints” at the endpoints of Amtrak’s routes only was inadequate because it did not account for the experiences of all of Amtrak’s passengers. The Board reasoned that:

In general, if an OTP metric only includes checkpoints at the final station and two to three select intermediate points, as CN proposes for some routes, the metric does not measure performance in a way that captures whether a significant portion of Amtrak’s passengers actually arrived at their selected destinations on time. Such a metric would be an unrepresentative measure of performance. *A metric measuring OTP at each station would measure whether all passengers arrived on time*, not just those who travel to the final station or two to three select intermediate stations along a route.

(2019 Decision, p. 10) (emphasis added). The Board also found:

the OTP metric would ideally include checkpoints at *all stations* along a *route*, and the Board encourages the parties to negotiate with this interim finding in mind.

(*Id.*, p. 11) (emphasis added).

Notably, when it issued its 2019 Decision, the Board was well aware that CN operated only certain portions of Amtrak’s routes (sometimes relatively small portions of a route). (See *id.*, p.

4) (stating mileage on CN’s system for each Amtrak route at issue). Nonetheless, the Board still concluded that OTP should be measured at “*all* stations along a route.” (*Id.*, p. 11) (emphasis added). The Board did not—as CN claims—indicate that it would be appropriate to calculate OTP only at stations located on CN’s portion of the route, while excluding those stations that were not.

CN’s proposal disregards the Board’s very clear directive by simply ignoring OTP at many stations along an Amtrak “route” and the experiences of Amtrak’s passengers disembarking at those stations—experiences that will be impacted by CN’s operational decisions. (Blair Reply VS, ¶¶ 25-28).¹⁶ Indeed, on some Amtrak routes, CN proposes to ignore OTP at the majority of the stations on the route:

- a. On Amtrak’s Texas Eagle trains (Trains 21 and 22) CN proposes to ignore OTP at *every* Amtrak station along the route. (CN Redline, Appx II, Sch. Skeleton for Trains 21, 22). It proposes only to measure OTP at a single control point located on its system.¹⁷ Based upon Amtrak’s ridership data, however, CN’s proposal effectively ignores 100% of Amtrak’s ridership on these trains, nearly all of whom disembark at stations not located on CN’s system.
- b. On Amtrak’s Lincoln Service trains, CN proposes to ignore OTP at all Amtrak stations from St. Louis, MO through Joliet, IL and at Chicago (for

¹⁶

This is inconsistent with the Final Rule and the Board’s 2019 Decision, both of which require that Amtrak’s performance be measured on a per-route basis. (*See* 85 F.R. at 72974; 2019 Decision, p. 11).

¹⁷ That control point is identified as “XUD - North UD Tower” on the Schedule Skeleton for Trains 20 and 21. (CN Redline, Appx II).

trains inbound to that station). (Id., Sch. Skeleton for Trains 300, 301, 302, 303, 304, 305, 306, 307). Based upon Amtrak's ridership data, CN's proposal ignores approximately 93% of Amtrak's ridership on these trains, who disembark at stations not located on CN's system.

- c. On Amtrak's Wolverine Trains 350, 352 and 354 (which operate from Chicago to Pontiac, MI), CN proposes to ignore OTP at all Amtrak stations from Chicago, IL through Kalamazoo, MI and from Albion, MI through Dearborn, MI. (Id., Sch. Skeleton for Trains 350, 352, 354). Based upon Amtrak's ridership data, CN's proposal ignores approximately 65% of riders on these trains.
- d. On Amtrak's Wolverine Trains 351, 353 and 355 (which operate from Pontiac, MI to Chicago), CN proposes to ignore OTP at all Amtrak stations from Dearborn, MI through Albion, MI and from Kalamazoo, MI through Chicago, IL. (Id., Sch. Skeleton for Trains 351, 353, 355). Based upon Amtrak's ridership data, CN's proposal ignores approximately 98% of riders on these trains.
- e. On Amtrak's Blue Water Train 364 (which operates from Chicago to Port Huron, MI), CN proposes to ignore OTP at all Amtrak stations from Hammond-Whiting, IN through Kalamazoo, MI. (Id., Sch. Skeleton for Train 364). Based upon Amtrak's ridership data, CN's proposal ignores 17% of riders on this train.
- f. On Amtrak's Blue Water Train 365 (which operates from Port Huron, MI to Chicago), CN proposes to ignore OTP at Kalamazoo, MI through

Chicago, IL. (*Id.*, Sch. Skeleton for Train 365). Based upon Amtrak's ridership data, CN's proposal ignores 97% of riders on this train.

(Blair Reply VS, ¶¶ 6, 25).

Indeed, CN's proposal does not account for OTP at stations with some of the highest volumes of passenger traffic on the routes, including Amtrak's stations in Chicago, St. Louis, Dallas and San Antonio. (*Id.*).¹⁸ No consideration is given to the experiences of each of the passengers traveling to these stations. This is inconsistent with the Board's 2019 Decision.

2. CN's Proposal Contradicts the Final Rule

CN's proposal is also inconsistent with the Final Rule. Several Host Railroads submitted comments to FRA urging it to establish an OTP metric that measured OTP "by host railroad in routes with multiple hosts railroads." (*See* 85 FR at 72975). FRA explicitly rejected that metric for several reasons.

First, FRA concluded that "PRIIA calls for measuring the intercity passenger train's OTP performance, *not the host railroad's performance in hosting the intercity passenger train.*" (*Id.*) (emphasis added).

Second, FRA found significant that "other sections of PRIIA require an OTP metric that measures a train's performance over an entire route, and *not just route segments by host railroad.*" (*Id.*) (*citing* 49 U.S.C §§ 24710(a), 24308(f)(1)) (emphasis added)).

Third, FRA disagreed with comments by Host Railroads who asserted that measuring OTP for an entire route would be prejudicial to Hosts on a multi-Host route because: (a) "a host railroad

¹⁸ For example, in 2019, the year before the Covid-19 pandemic, 734,575 passengers on trains that traveled on CN rails on the Blue Water, City of New Orleans, Illini/Saluki, Lincoln Service, Texas Eagle and Wolverine routes detrained at Chicago Union Station, the nation's 3rd busiest station which serves more than 3 million Amtrak passengers and 35 million Metra passengers annually. *See* <https://chicagounionstation.com/about>.

could be subject to an STB investigation . . . even if its own performance did not cause the train to operate below the standard”; and (b) a Host could be penalized for “delays for which [it] was not responsible” (Id.). Disagreeing, FRA reiterated that PRIIA mandated an OTP metric that “measures a train’s performance over an entire route (that can be compared to the other routes)” (Id.). FRA concluded by finding that a Host-specific measurement of OTP would be “misaligned with the customer experience” (Id.).

Lastly, FRA found that the COTP metric mandated by the Final Rule—which included measuring COTP at every station on a route as a whole—“do[es] not penalize host railroads for train delays for which they are not responsible,” because the Final Rule’s “Train Delays” metrics track data which would identify the cause of delays on multi-Host Amtrak routes. And, if a particular Host Railroad did not cause delays, that would be demonstrated in the data required under those delay metrics.

In sum, nothing in the Final Rule supports measuring OTP only on portions of an Amtrak route operated by CN. The Board should reject CN’s proposed approach.

3. CN’s Proposal Ignores the Impact of Delays it Causes on Parts of Multi-Host Routes that are not on CN’s System

Further, by excluding stations not on its system from an OTP calculation, CN implies that its operations in hosting Amtrak occur in a vacuum—that is, that CN’s operations do not have adverse implications for OTP beyond the stations on CN’s system. This is incorrect.

Of course, if CN causes a delay to an Amtrak train on its system, the impacts of that delay do not simply cease when Amtrak’s train leaves CN’s system and enters that of another Host Railroad.¹⁹ From the perspective of a passenger on a delayed Amtrak train, that transition from

¹⁹ CN is well-aware that delays to Amtrak trains caused by a Host Railroad can impact OTP on the systems of downstream Host Railroads. Indeed, it has included a term in its proposed OA granting it an “additional tolerance” [REDACTED]

CN's system to another Host's is irrelevant. That passenger is only concerned that they are arriving late to their destination. As FRA observed, to Amtrak's passengers "there may be no discernible difference as to whether they are on one host railroad's territory or another's while traveling on a route." (85 FR at 72981 n.29). As such, CN-responsible delays to an Amtrak train clearly can reduce COTP at stations on *systems of other Host Railroads*.

An example of a CN-responsible delay impacting Amtrak Train 351 (which operates from Pontiac, MI to Chicago, IL on Amtrak's Wolverine service) is illustrative. (Blair Reply VS, ¶ 29). Train 351 travels on CN's system from its origin point in Pontiac, MI for approximately 26.3 miles to a control point located after Amtrak's station at Detroit, MI. (*Id.*).²⁰ Train 351 then travels approximately 116 miles on a line owned by the Michigan Department of Transportation (dispatched by Amtrak), during which it stops at Amtrak stations in: Dearborn, MI; Ann Arbor, MI; Jackson, MI and Albion, MI. (*Id.*). Train 351 then reenters CN's system approximately 142.7 miles into the route,²¹ after which its next stop is at Amtrak's Battle Creek, MI station. (*Id.*; CN Redline, Appx II, Sch. Skeleton for Train 351). Train 351 then again leaves CN's system at a control point located 0.3 miles after the Battle Creek station. (*Id.*).²² The remainder of Train 351's

²⁰ That control point is identified as "X1W - CP- W. Detroit" on the Schedule Skeleton for Train 351. (CN Redline, Appx II).

²¹ Train 351 reenters CN's system at a control point identified as "XB0-Baron" on the Schedule Skeleton for Train 351. (CN Redline, Appx II).

²² That control point is identified as "XGO - Gord" on the Schedule Skeleton for Train 351. (CN Redline, Appx II).

trip through to Chicago is hosted by Amtrak and another Host Railroad (Norfolk Southern). (*Id.*).²³

If CN causes a significant delay to Train 351 on its system between Pontiac, MI and Detroit, MI, that delay can also result in poor OTP at downstream Amtrak stations after Detroit and which are located on another Host Railroad's system, such as Amtrak's stations at Dearborn, Ann Arbor, Jackson, Albion and, even later down the route at Union Station in Chicago. (*Id.*). There is no justification for simply excluding poor OTP at those stations from the determination of whether CN earns an incentive or should be penalized—but that is exactly what CN is proposing.

4. CN's Proposed "Weighting" of its Checkpoints is Inappropriate

Another aspect of CN's proposal—to "weight" OTP at the stations on its system based on "ridership"—is also untenable. (CN Opening Br., pp. 19-20).

First, CN's "weighting" approach considers a select subset of Amtrak's total "ridership" on a route—*i.e.*, only those passengers whose "checkpoint" destination station is on CN's system. (*Id.*, p. 19) ("*Checkpoint weights would be calculated by dividing the number of riders on a given train that disembark at a given station per year by the total number of riders that disembark at all checkpoints.*") (emphasis added)). Again, contrary to the Final Rule and the Board's 2019 Decision, CN is wholly ignoring a large group of Amtrak passengers simply because they are traveling to stations on Amtrak's route that are not located on CN's system.

CN's suggests that its proposal to "weight the checkpoint by the ridership of each station" is consistent with "the Board's recognition that such weighting would 'allow for greater host railroad operational flexibility and create an incentive structure more closely tied to the service delivery to the end consumer, the passenger.'" (*Id.*, pp. 19-20) (citing 2019 Decision, p. 11 n. 25)).

²³ Between Battle Creek, MI and Chicago, there are six intermediate Amtrak station stops at: Kalamazoo, MI; Dowagiac, MI; Niles, MI; New Buffalo, MI; Michigan City, IN; and Hammond-Whiting, IN. (CN Redline, Appx II, Sch. Skeleton for Train 351).

But, as discussed above, the Board did not hold that measuring OTP only at those stations on CN's system (weighted or unweighted) was appropriate. Rather, the Board indicated that an appropriate OTP measurement as part of an incentive and penalty system should assess whether "*all* passengers" arrived on time at "*all* stations along" an Amtrak route. (2019 Decision, pp. 10-11) (emphasis added).

CN is also incorrect that its proposal to "weight[] stations in accordance with the relative number of disembarking passengers is consistent with the weighting of stations under FRA's Customer OTP metric." (CN Opening Br., p. 20). That is simply wrong—the COTP metric promulgated by FRA measures whether *all* of Amtrak's passengers arrived on time at each and every Amtrak station on a route—not just a select subset of stations on CN's system upon which CN bases its ridership calculations.

Lastly, CN proposes to recalculate its proposed "checkpoint weights" for its stations every year effective January 1, and then to apply those newly calculated weights for the ensuing year. (*Id.*, p. 21). This is unnecessary, and the Final Rule does not contemplate measuring OTP using annually calculated (and recalculated) "weights" for any station on an Amtrak route. The Final Rule measures COTP for a route on a quarterly basis based upon *actual* numbers of passengers arriving at their detraining station on time divided by the *actual* total ridership on the route. (85 FR at 72974).²⁴ Indeed, FRA observed that: "the [COTP] metric resembles a key stations OTP metric because stations with many detraining passengers have greater influence on the train's customer OTP and serve as de facto key stations." (85 F.R. at 72976).²⁵ The COTP metric itself,

²⁴ That arrival and ridership data is calculated by Amtrak, reported by Amtrak to FRA, shared with Host Railroads, and published by FRA in its quarterly reports. (*See* 85 FR at 72984-85 (discussing "ridership data metric"); 85 FR at 72978 (discussing FRA's quarterly reporting)).

²⁵ Notably, FRA ultimately rejected a "key stations" metric because it "fails to recognize the

therefore, effectively “weighs” the stations for each Amtrak route when it is calculated based on actual ridership data and reported to FRA in real-time. There is simply no need to, on an annual basis, recalculate a new “weight” to assign to each station on CN’s system.²⁶

* * *

For these reasons, CN’s measurement of OTP only at stations located on its system (and control points which are endpoints on its system) constitutes yet another inappropriate aspect of its proposed penalty and incentive system, which is contrary to both the Board’s 2019 Decision and FRA’s Final Rule. Furthermore, the use of “weighted” stations, which CN proposes to have the Parties recalculate annually, adds a layer of unnecessary administrative complexity.

In contrast to CN’s proposal, Amtrak’s proposal measures OTP precisely as the Final Rule and PRIIA require—*i.e.*, based upon COTP at each and every Amtrak station along the entirety of Amtrak’s routes. Such a metric accounts for the experiences of all Amtrak passengers, regardless of their destination station. As discussed above, in imposing terms and conditions under 49 U.S.C. § 24308(a)(2)(A)(ii) in this matter, the Board must incorporate this approach to measuring COTP into the Parties’ OA.

Further, Amtrak’s proposal accounts for CN’s responsibility for delays (or lack thereof) on an underperforming multi-Host route precisely as the Final Rule contemplates—Amtrak’s proposal tracks CN-responsible HRD minutes per 10,000 train miles. This is intended to ensure that, in calculating incentives and penalties, CN is not penalized for poor COTP on a route where it is not the primary cause of the delays.

importance of customers who do not use a key station.” (85 FR at 72976).

²⁶ In any event, FRA also stated that: “while the actual number of detraining passengers may change at a station over time, *the percentage of passengers detraining at a station is generally stable.*” (85 F.R. at 72977) (emphasis added).

Accordingly, the Board should reject CN's proposed penalty and incentive system in its entirety and, instead, should adopt Amtrak's proposal.

D. The Board Should Reject CN's Proposed Terms for Incorporating a "Degree of Lateness" into its Incentive and Penalty System

CN contends that it has incorporated a "degree of lateness" into the calculations of the penalties that it must pay as urged by the Board and into the incentives it earns in a manner that "would increase the incentive payments for trains [sic] are regularly on time with low minutes of delay." (CN Opening Br., p. 23). But, CN's efforts to incorporate a "degree of lateness" into its already-flawed system does nothing to support its inclusion in a new OA.

1. *CN's Proposal is Based on its Inappropriate Use of "Additional Tolerances" to Determine Whether an Amtrak Train is On Time*

CN purports to factor a "degree of lateness" into its proposal in the form of an "incentive multiplier for timeliness" and a "penalty multiplier for lateness." (CN Redline, Appx V, §§ B(3) (as to incentives), C(3) (as to penalties)).²⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Like the rest of CN's proposed incentive and penalty system, CN's "degree of lateness" multiplier is flawed because it is based on the premise that an Amtrak train is "on time" if it arrives on or before its publicly scheduled arrival time, *plus* enumerated "additional tolerances." Indeed,

²⁷ Under CN's proposal, for an Amtrak train, the applicable incentive payment (if OTP as CN proposes to calculate it exceeds 80% for all checkpoints) or the applicable penalty (if OTP as CN proposes to calculate it is below 80% for all checkpoints) is determined by multiplying: (1) the applicable "Performance Rate"; by (2) the number of miles the train operated during the month; and by (3) the applicable incentive or penalty multiplier. (CN Redline, Appx V, §§ B, C)).

CN's applicable "degree of lateness" multiplier [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. *CN's Proposal is Contrary to the Final Rule, While Amtrak's Proposal is Based on the HRDs per 10,000 Train Miles Metric Established in the Final Rule*

CN tries to justify its proposal by claiming that it "appl[ies] and calculate[s] the lateness multiplier the same way Amtrak proposes" and "as suggested by the Board." (CN Opening Br., p. 23). CN's assertions are: (a) misleading; and (b) ignore the impact of the Final Rule on the appropriate metric for measuring a "degree of lateness" in a penalty and incentive system.

First, CN's claim that its proposal is in accord with a "suggestion" in the 2019 Decision is misleading. The Board agreed with Amtrak that "the parties should incorporate a degree of lateness into their penalty calculation in some manner" (2019 Decision, p. 14) ("there is merit to Amtrak's argument regarding impacts of the current system not incorporating a degree of lateness factor."). The Board then suggested that the Parties could do so "perhaps through a degree-of-lateness multiplier in the penalty provision." (*Id.*). But, the Board did not decide precisely how a multiplier could or should be determined or calculated. The Board certainly did not suggest that an appropriate multiplier could be based on the number of minutes above or below "tolerance" an Amtrak train arrives at a station, as CN has proposed.

Second, the "Amtrak proposal" with which CN is comparing its present "degree of lateness" proposal was submitted by Amtrak to the Board in *September 2017*. That earlier Amtrak proposal was, of course, submitted before FRA issued the Final Rule on November 16, 2020. CN's proposal has not given any consideration to the Final Rule's impact on how a "degree of lateness" should be incorporated into a penalty and incentive system.

Indeed, CN’s proposal is devoid of any discussion of how, if at all, its proposal is consistent with the Final Rule. (See CN Opening Br., pp. 23-24; Matteucci-Kuxmann May 27, 2022 VS, pp. 16-17). In fact, it is not—as discussed, the concept of “tolerances” is contrary to the Final Rule and measuring the “degree of lateness” based upon them is mentioned nowhere in the Final Rule.

In contrast to CN’s proposal, Amtrak proposes to incorporate a “degree of lateness” into its penalty and incentive systems using a metric expressly established by FRA in the Final Rule. Amtrak’s proposes to utilize the number of CN-responsible HRDs per 10,000 train miles to determine the applicable multiplier to be factored into its incentive and penalty calculation. (See Amtrak Opening Br., pp. 50-52; see 85 FR at 72984 (establishing Train Delays per 10,000 Train Miles metric)). Amtrak identifies this multiplier as the “Delay Adjustment Factor” incorporated into its calculations for the incentive earned by or the penalty incurred by CN. (Amtrak Opening Br., pp. 40-42; Amtrak Redline, Appx V, pp. V-1, V-8). As explained in detail in Amtrak’s opening submission, Amtrak’s use of CN-caused HRDs factors in a “degree of lateness” based on the number of minutes of delay to Amtrak trains directly caused by CN, and the extent to which those delays cause COTP to fall below 80% for a route. (See Amtrak Redline, Appx V, Table 2). In contrast, as noted above, CN’s proposal is devoid of any mention or incorporation of any of the Train Delay metrics established in the Final Rule.

* * *

For these reasons, CN’s method of incorporating a “degree of lateness” into its incentive and penalty system is as flawed as the rest of CN’s penalty and incentive proposal. Again, on this issue, Amtrak’s proposal is entirely consistent with the Final Rule and the Board’s 2019 Decision and should be imposed by the Board as part of the Parties’ new OA.

POINT II

THE BOARD SHOULD REJECT CN'S PROPOSED TERMS RELATED TO A "REOPENER" AND "CONCRETE ACTION" IN RESPONSE TO SUSTAINED POOR PERFORMANCE OF AMTRAK TRAINS ON CN'S SYSTEM

In its 2019 Decision, the Board provided the following guidance as to the inclusion of a "reopener" provision in a new OA to address periods of poor performance of Amtrak's trains on CN's system that are caused by CN:

[P]eriods of sustained poor performance must be acknowledged and addressed, as appropriate. The Board, therefore, encourages the parties to include an effective reopener provision in the new operating agreement *that will result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance.* For example, the parties could consider *including in the provision mandatory actions by CN to improve service.*

(2019 Decision, p. 17) (emphasis added).²⁸

In Amtrak's opening submission, it proposed a tiered system of concrete action, triggered after one quarter during which CN causes more than 924 minutes of delay per 10,000 train miles on an Amtrak route. (Amtrak Opening Br., pp. 68-71). At that point, Amtrak (and the Board at its discretion) will be entitled to visibility into CN's dispatching practices and, in circumstances involving prolonged poor performance by CN, to assume dispatching for the route. (*Id.*).

In contrast, although the Board called for the new OA to provide for "concrete action," CN's proposal simply has none. In fact, it does not implement any "concrete action" or "mandatory actions by CN" to "improve [Amtrak] service" *at all*. Rather, CN's proposal requires

²⁸ The Board suggested that the Parties could include a provision for submission of disputes arising from the poor performance of Amtrak trains on CN's system to the Board's Rail Customer and Public Assistance office and noted that, outside of the OA, Amtrak could seek relief for periods of sustained poor performance pursuant to PRIIA § 213 (codified at 49 U.S.C. § 24308(f)). (2019 Decision, p. 17).

the Parties to engage in prolonged investigations into and discussions about the possible causes of Amtrak's poor performance, without actually doing anything to address the underlying problems causing it. Indeed, under CN's proposal, action of any sort might not even be implemented until *far more than a year* after the poor performance of Amtrak's trains on CN's system began, and only after the Parties have completed a full-blown arbitration.

Furthermore, while the Parties are winding their way through the convoluted process of meetings, discussions and arbitrations proposed by CN, Amtrak's passengers will continue to suffer through poor performance of Amtrak's trains on CN's system.

In contrast to CN's proposal, Amtrak's proposal, set forth in its opening submission, implements concrete mandatory action:

- (1) when the poor performance of Amtrak's trains is specifically known to have been caused by CN—there is no mystery or need to independently investigate the actual causes of delay before deciding how to address them;
- (2) intended to address the primary CN-responsible cause of Amtrak train delays—deficiencies in CN's dispatching of traffic on its system (including Amtrak, commuter and freight traffic);²⁹ and
- (3) after only one-quarter of poor performance, before the underlying problem on Amtrak's route has continued to fester for six-months—the point at which an investigation by the Board could be instituted pursuant to PRIIA§ 213.

²⁹ Amtrak respectfully refers the Board to the authorities and sources cited in its brief in support of its opening submission, pp. 25-27, discussing the history of Host Railroads' use of its dispatching practices to frustrate Amtrak's preference on their systems. See, e.g., Union Pac. R.R. Co. v. Surface Transp. Bd., 863 F.3d 816, 820 (8th Cir. 2017) (discussing Department of Transportation's Inspector General's observation that "freight railroads could adjust their dispatching practices to give their own trains an advantage over Amtrak.").

CN's proposal fails to reasonably meet the Board's concerns as described in its 2019 Decision (2019 Decision, p. 17) and should be rejected in favor of Amtrak's proposal.

* * *

The unreasonableness of CN's proposal is readily apparent from the myriad of steps in the process, the time and resources those steps require, and the length of time it takes for any action to be implemented at the end of the process. As discussed below, each step in CN's process is ineffective, rendering the whole process unreasonable.

A. CN's Proposal to Delay Implementing Action Until After Six-Months of "Deficient Performance" is Unreasonable and Employs Inappropriate Metrics

The first step in CN's process underscores the utter lack of urgency in CN's "concrete action" proposal. CN proposes that the Parties not be required to do *anything* until *after* six-months of what CN calls "Deficient Performance" of Amtrak trains on CN's system. (CN Opening Br., pp. 27-28; CN Redline, Appx V, § G). There are numerous problems with this first step in CN's proposal.

1. CN's Definition of "Deficient Performance" is an Inappropriate Trigger for Remedial Action

CN considers sustained Amtrak poor performance—or "Deficient Performance," as CN labels it³⁰—to be "any six-month period in which *penalty payments exceed incentive payments.*" (CN Opening Br., p. 27) (emphasis added). But, as discussed in Point I, *supra*, for purposes of CN's proposal for calculating incentives and penalties, an Amtrak train is "on time" if it arrives on or before its scheduled arrival time, *plus* "additional tolerances." This does not measure

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whether the Amtrak's passengers are truly on time to their destinations at all. Rather, it is based on the fiction that an Amtrak train is somehow "on time" (allowing CN to potentially earn incentives) when, in truth, the train arrived significantly after its publicly scheduled arrival time.

As a result, CN's incentive payments *may exceed penalties* for a route even though Amtrak trains are frequently arriving *after* their scheduled arrival times (perhaps long after it). Thus, although Amtrak's passengers may be routinely inconvenienced by late arrivals on that route (when immediate remedial steps are most needed on a route), CN's proposal for "concrete action" may not even be triggered because CN is earning incentives for that route.³¹

The Board cannot impose a term which evinces such a profound disconnect between: (a) the lack of quality of the Amtrak passenger experience on a route due to late-arriving trains; and (b) the implementation of "concrete action." The Board clearly envisioned that "poor performance" (triggering "concrete action" and "mandatory actions by CN") would be precisely what Congress and FRA has said that it is: periods where COTP for a route is below 80%. (See 49 U.S.C. § 24308(f)(1) (setting 80% on time performance metric); 85 FR at 72974-78 (establishing COTP metric). CN's proposed benchmark of "Deficient Performance" (*i.e.*, whether its penalties exceed incentives) is entirely misaligned with the proper yardstick for "poor performance" that the Board envisioned triggering "concrete action" (*i.e.*, whether Amtrak's passengers have actually arrived at their destination stations by the scheduled arrival time).

In contrast, Amtrak's proposed system is aligned with the Board's concerns and the

³¹ Amtrak acknowledges that, if CN's penalties do exceed its incentives, that would trigger remedial action under CN's proposal. That is appropriate because, if CN is being penalized, Amtrak trains are obviously not arriving timely at stations along a route. The flaw in CN's system, however, is that Amtrak trains may be arriving late on a route but, under CN's incentive and penalty system, CN's can still earn incentives on the route even if CN is the party *causing* the delays impacting the route's COTP. In that scenario, CN's remedial process may mandate no action by the parties when it is needed most to address CN's delay-causing conduct.

appropriate metrics. Concrete remedial action under Amtrak’s proposal is triggered after one-quarter during which CN-responsible HRDs exceed 924 minutes per 10,000 train miles. (See Amtrak Redline, Appx V, § IV(1) (Tier 1 Remedies)). When CN’s HRDs exceed that threshold, COTP for a route is likely to be below 80%. (See Verified Statement of Yoel Weiss dated May 27, 2022 (“Weiss VS”), ¶¶ 82-85). Unlike CN’s method of triggering remedial action based on whether incentives are earned or penalties are incurred, Amtrak correlates its proposed remedial action directly to the impact CN has in causing sub-80% COTP of Amtrak passenger trains on CN’s system.

2. CN’s Proposal Unreasonably Postpones Implementing Any Action

Under CN’s system, after the conclusion of six-months of “Deficient Performance” (as CN inappropriately defines it), a Party then has sixty days to notify the other that they want to engage in the “Remedial Process.” (CN Opening Br., p. 27). The Parties then have ten days to name a representative to lead each Parties’ participation in that process. (Id.).

At this point, Amtrak’s passengers will have endured as much as *eight months* of late arrivals on a route hosted by CN. But, under CN’s proposal, the Parties will not yet have implemented any “concrete” or “mandatory actions by CN” in response. Instead, they will have done no more than appoint representatives to begin to talk about the underlying problems causing the delays.

This prolonged period of inaction in the face of recurring delays inconveniencing Amtrak’s passengers is unreasonable. Congress considered *six months* of sub-80% OTP of Amtrak trains to be so problematic that it warrants a full-blown investigation by this Board. See 49 U.S.C. § 24308(f); PRIIA § 213. CN’s proposal, therefore, fails “to prevent sustained poor performance,” as directed by the Board. (2019 Decision, p. 17).

Again, in contrast to CN’s proposal, Amtrak proposes that its Tier 1 remedial measures be available after one-quarter when CN’s HRDs per 10,000 train miles are above 924 minutes for an Amtrak route, indicating that COTP is likely below 80%. (See Amtrak Redline, Appx V, § IV(1); Weiss VS, ¶¶ 82-85). This is intended to implement at least *some* remedial action *before* sub-80% COTP for an Amtrak route has occurred for two consecutive quarters and reaches the threshold for a PRIIA § 213 investigation by the Board. This early-intervention approach proposed by Amtrak is eminently more reasonable than CN’s proposal—which effectively requires the Parties to talk and do nothing else for eight months.

3. *Taking Action before Six Months of Poor Performance is not “Unnecessary” or “Burdensome” on CN*

CN complains that implementing any remedial measures *before* six months of poor Amtrak train performance “would be burdensome and unnecessary.” (CN Opening Br., p. 27). CN has not, however, explained the basis for its resistance to at least *some* remedial action during this timeframe. In all events, the Tier 1 remedies Amtrak proposes to implement after one-quarter of poor Amtrak performance are not “unnecessary” or “burdensome,” as CN complains.

Amtrak’s Tier 1 remedies are implemented only if poor COTP is *caused by CN’s own HRDs* in excess of 924 minutes per 10,000 train miles. (See Amtrak Redline, Appx V, § IV(1)). Remedial action is *not* implemented if CN’s HRDs are *below* 924, indicating that CN is not the cause of the poor performance of the Amtrak route (even though COTP on the route may be below 80%). As such, Amtrak’s proposed Tier 1 remedial action is narrowly tailored to be available only when it becomes “necessary”—*i.e.*, when CN is causing significant delays on Amtrak’s route.

Amtrak’s Tier 1 remedies are also not “burdensome.” After one-quarter of CN-responsible HRDs in excess of 924 minutes, Amtrak’s proposal requires that CN: (a) provide Amtrak and the Board with certain data concerning HRDs in excess of five minutes; and (b) permit them to record

CN's dispatch screens for the subdivisions on which Amtrak's poor performing train is operating. (*Id.*). This is intended simply to give Amtrak visibility into CN's dispatching practices—and potential problems with it—on the route when such practices are causing Amtrak delays.

This cannot reasonably be considered burdensome to CN. And, even if these measures were “burdensome,” any burden or perceived inconvenience to CN is outweighed by: (a) the need for Amtrak and the Board (in its discretion) to review CN's dispatching practices on the subject route; and (b) the potential that implementation of Amtrak's Tier 1 remedies could alleviate the problems causing poor performance on Amtrak's routes. All of this is in the public interest, and outweighs any arguable “burden” imposed on CN.

B. CN's Proposal that the Parties Investigate Amtrak's “Deficient Performance” and then Propose Concrete Action Unreasonably Postpones and Complicates the Process

After the Parties appoint their representatives to spearhead CN's proposed “Remedial Process”—which occurs eight months after poor performance began—CN next proposes that each Party investigate the cause or causes of Amtrak's poor performance on CN's system. *Only after* this happens under CN's proposal do the Parties then exchange suggested *potential* “concrete steps” to address the poor performance. This continues to unreasonably postpone implementation of any action to provide relief to Amtrak's passengers.

Further, CN has overcomplicated this process by proposing that both parties launch into patently overbroad investigations of nearly every aspect of their respective operations to identify the cause of Amtrak's poor performance. This is far beyond what the Board contemplated and confirms that the Board should reject CN's proposal in favor of Amtrak's more reasonable and focused proposal.

1. *CN's Proposal Continues to Postpone Implementation of Any Action*

Under CN's proposal, after the Parties conduct their respective investigations into the

cause(s) of Amtrak’s poor performance (the overbroad scope of which is discussed below), “within 45 days of the initial notice, the parties would be required to meet to discuss the causes they had identified for unsatisfactory performance.” (CN Opening Br., p. 28; CN Redline, Appx V, § G(1)). Then, twenty days after that meeting, the Parties would “exchange a list of concrete steps intended to reasonably address the specific issues identified as causing Deficient Performance.” (*Id.*; CN Redline, Appx V, § G(2)).

By this point in CN’s proposed process—after the Parties have (a) notified each other in writing, (b) designated their representatives, (c) investigated the causes of Amtrak’s poor performance, (d) met to discuss their respective investigations, and (e) exchanged their lists of proposed “concrete steps”—as much as *ten months* will have passed since the poor Amtrak performance on the subject Amtrak route began. And still, under CN’s proposal, not a shred of concrete, remedial action has been implemented to provide (or to try to provide) any relief to Amtrak’s passengers.

2. CN’s Reopener Proposal is Overcomplicated, Unnecessary and Beyond the Scope of the Board’s 2019 Decision

According to CN, “the reopener provision must first allow the parties to jointly investigate the causes of and solutions to the problem causing the deficient performance” and “[t]here is no sense requiring one party or the other to take ‘concrete action’ before the scope of the problem has been identified.” (CN Opening Br., p. 27). As such, CN proposes that the Parties investigate a multitude of operational issues, including the following eight issues:

(i) CN’s dispatching; (ii) Amtrak’s operation of its trains; (iii) rail line infrastructure and capacity issues; (iv) Amtrak’s equipment; (v) Amtrak train schedules; (vi) freight schedules; (vii) structural issues with the incentive or penalty provisions of Appendix V [of the OA], [and] (viii) issues with the levels of performance payments and penalties provided under Appendix V; (CN Opening Br., p. 28; CN Redline, Appx V, § G(1)).

CN also adds two amorphous issues that the Parties may investigate, which encompass nearly every aspect of their respective operations: “(ix) other issues with the terms of the Operating Agreement; or (x) other causes.” (*Id.*).

This approach illustrates CN’s misunderstanding of the Board’s 2019 guidance urging the Parties to include concrete action. CN has proposed investigating issues that are far afield from anything contemplated by the Board.³²

The Board contemplated remedial “concrete action” only in the event that *CN’s conduct* was the cause of Amtrak’s poor performance on CN’s system. Indeed, that was CN’s own proposal in the first place, which the Board described as follows:

CN proposes a “reopener” provision that would provide that, if *CN’s performance* falls below a certain level, the parties will confer to determine how to improve service Under the proposal, if *CN’s performance* results in penalties for six consecutive months for a service, the parties will “use their best efforts to work together in good faith” to determine why the performance is resulting in penalties, to verify that the incentives and penalties payment system is being properly determined, to verify that *only delays within CN’s control are being attributed to CN*, and to develop remedial measures including, if appropriate, changes to the operating agreement.

(2019 Decision, p. 16) (emphasis added). This is why the Board suggested that, in a provision providing for “concrete action” in a new OA, the Parties “could consider including in the provision

³² CN is proposing that the Parties investigate issues that do not have any bearing on Amtrak’s performance. For example, “structural issues with the incentive or penalty provisions of Appendix V” or “the levels of performance payments and penalties” under Appendix V could not be the cause of poor Amtrak performance. (CN Opening Br., p. 28; CN Redline, Appx V, § G(1)). Incentive or penalties are paid based on how Amtrak’s trains are performing—the “structure” of the foregoing provisions or the amount of incentives or penalties paid do not themselves cause or impact Amtrak’s performance. Those considerations, therefore, have no place in an investigation into what is causing Amtrak’s poor performance on CN’s system. The same is true as to CN’s proposal for the Parties to investigate amorphous “other issues with the terms of the Operating Agreement.” (*Id.*).

mandatory actions *by CN* to improve service.” (*Id.*, p. 17) (emphasis added).

In sum, under the Board’s guidance, there is no need to require the Parties to conduct two independent and wide-ranging investigations of the causes of Amtrak’s poor performance before implementing “concrete action.” Rather, in its 2019 Decision, the Board called for “concrete action” only in one instance—when *CN’s culpable conduct* is known to be the cause of Amtrak’s poor performance.³³ And, if it is, the ensuing concrete remedial action should be focused where the Board urged it to be focused—*on remedying CN’s culpable conduct* that is causing those delays.

But, instead of focusing its proposal where it should have been directed—on triggering “concrete action” in response to CN’s own delay-causing conduct—CN is proposing that the Parties search high and low, reviewing nearly every aspect of their respective operations to identify a cause of delays to Amtrak trains (other than CN).³⁴ Launching an investigation into other potential causes, such as Amtrak’s schedules, equipment and operations, simply has no relevance to the concept of “concrete action” urged by the Board and is a misdirected waste of the Parties’ time and resources.

In contrast, Amtrak’s proposal employs remedial action when, based on CN’s HRDs for a route, *CN is causing* COTP on Amtrak’s system to fall below 80%. This is precisely aligned with

³³ The Board’s focus on advocating that the Parties agree in their OA to take “concrete action” in response to CN-caused delays of Amtrak’s trains is reasonable. If the cause of poor performance is not CN-caused delays, but rather delays caused by another Host Railroad or Amtrak itself, there is no need to require collaboration with CN before actions are taken to address the problem. Concerted concrete action, and remedial steps involving CN and Amtrak, are necessary only if CN is significantly involved in causing poor performance. (Blair Reply VS, ¶ 39).

³⁴ Indeed, CN even goes so far as to argue that the Parties’ investigations “would not start with the presumption that any such poor performance must necessarily be CN’s fault, or that solutions may simply take the form of punishing CN more effectively for neglect of its responsibilities.” (CN Opening Br., p. 28). But, as noted, “CN’s fault” is the only fault for which the Board contemplated implementing “concrete action.”

when the Board indicated “concrete action” would be appropriate—*i.e.*, when CN’s HRDs indicate that CN is causing sub-80% COTP on Amtrak’s route. No investigation is needed—CN’s HRDs are already known to be a significant cause based on data gathered during operations. And, Amtrak’s proposal defines “HRDs” as they are defined by the Final Rule, to include delays “recorded by Amtrak” caused by freight, commuter and passenger train interference, slow orders, signals and routing issues. (See 85 FR at 73000; 49 C.F.R. § 273.3 (defining “Host-Responsible delays”); see also Amtrak Redline, Article I, Amtrak Opening Br., pp. 47-48). Again, this aspect of Amtrak’s proposal—in contrast to CN’s—is perfectly aligned with the applicable metrics in the Final Rule.

C. CN’s Proposals for Mediation [REDACTED] only Further Delays Any Relief to Amtrak’s Passengers

Next, under CN’s proposal, after the parties have exchanged their lists of “concrete steps” and met to discuss those, if they have not aligned on “concrete action” to implement, they have thirty days to submit their dispute to the Board’s Rail Customer and Public Assistance (“RCPA”) program. (CN Opening Br., p. 29; CN Redline, Appx V, § G(3)).

By this point, as much as *eleven months* may have passed *without any* concrete action being implemented to address delays to Amtrak trains. And, if the poor OTP of Amtrak’s trains on the subject route has not resolved itself, Amtrak’s passengers will have undergone *nearly one-year of delays*. Additional time would be needed to resolve a disputed issue through the RCPA. Further, under CN’s proposal, the Parties will have already exchanged their proposed “concrete steps” and had meetings to discuss them. Bringing those same issues to the RCPA program appears to be duplicative.

[REDACTED]

[REDACTED]

[REDACTED]

Although CN's proposal should be summarily rejected for the reasons stated above, [REDACTED]

[REDACTED]

35

[REDACTED]

36

[REDACTED]

37

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

* * *

In sum, the Board should reject CN’s “concrete action” proposal in its entirety. CN’s proposal does nothing to actually implement “concrete action.” At no step in CN’s proposed process are the Parties bound to implement any action to try to relieve the delays being sustained

38

[REDACTED]

e”).

by Amtrak’s passengers—the Parties are only bound to investigate and discuss issues. The Board’s guidance in the 2019 Decision rightly contemplates prompt “concrete action” in response to Amtrak delays. [REDACTED]

[REDACTED]. Rather than spurring prompt action or relief, under CN’s proposed system, Amtrak’s passengers are direct casualties of delay, postponement and inaction.

POINT III

THE BOARD SHOULD REJECT CN’S PROPOSAL TO RETAIN THE LOOKBACK PROVISION OF THE 2011 OA IN ITS ENTIRETY

CN proposes to retain the “lookback” provision of the 2011 OA without modification. (CN Opening Br., pp. 24-25). That provision contains a twelve-month “lookback” period. As discussed in Amtrak’s opening submission, in light of the Board’s guidance in its 2019 Decision concerning that provision, Amtrak: (1) also proposed to retain the “lookback” provision in substance; but (2) to modify the length of the “lookback” to be the length of time the new OA has been in effect. (Amtrak Opening Br., pp. 62-66). After the new OA has been in effect for longer than one year, under Amtrak’s proposal, the length of the “lookback” will be longer than twelve months.

Other than baldly claiming that the Board “approved” of the lookback provision in the 2011 OA, CN offers no justification for maintaining the twelve-month lookback period. (See CN Opening Br. pp. 24-25). Notably, the Board did *not* “approve” of the lookback provision in its entirety. The Board simply expressed “concern” that eliminating a lookback provision entirely “might place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN’s own network.” (2019 Decision, p. 16). In particular, the Board did not express any view on the appropriate *length* of the “lookback.”

For the reasons set forth in Amtrak’s opening submission, the Board should adopt Amtrak’s proposal to retain the provision, but with a modified “lookback” over the life of the agreement (instead of retaining the twelve-month lookback as CN proposes). (See Amtrak Opening Br., pp. 62-66). As Amtrak has previously explained:

- Any “lookback” provision effectively circumvents Congress’s mandate that Amtrak’s OAs contain a penalty provision for “untimely performance.” Indeed, during longer periods of poor performance when incentives are not being paid to CN, a lookback provision *prevents* Amtrak from imposing penalties when it would be most appropriate to do so. Imposing a “lookback” that is longer than twelve months helps to ameliorate that impact.
- A lookback period of twelve months *disincentivizes* CN from improving performance once the penalty limit threshold (*i.e.*, the amount of incentives earned over the preceding twelve-months) has been reached. Extending the lookback period to the life of the OA increases that penalty limit threshold and further incentivizes CN to reduce delays within its control to enable strong COTP of Amtrak’s passenger trains on its system.
- Extending the lookback period does nothing to limit or curtail CN’s ability to immediately collect incentives that it properly earns.

(Id.). And, under Amtrak’s proposal, because the “lookback” still limits the amount of penalties that Amtrak can collect to the amount of incentives Amtrak has paid to CN over the life of the OA, CN is not at risk of receiving compensation that is less than its “incremental costs” (which was the Board’s expressed “concern”). (Id., pp. 65-66, n.47).

For these reasons, and the reasons stated in Amtrak’s opening submission, the Board should

adopt Amtrak’s “lookback” provision proposal.

PART II - CN’S CLAIMS FOR REIMBURSEMENT OF CERTAIN ALLEGED INCREMENTAL COSTS BY AMTRAK AND RETROACTIVITY OF THE BOARD’S RULINGS ON INCREMENTAL COSTS

In the face of the Board’s initial rejection of several of CN’s alleged “incremental costs,”³⁹ CN now says that it has “narrowed” its claims to those costs that “are most readily quantifiable,” and has abandoned those that “are currently difficult to prove.” (CN Opening Brief, p. 76). The alleged incremental costs that CN is still pursuing using revamped methodologies are certain crew overtime, fuel, and equipment costs, which it refers to as its “freight delay costs.” CN argues that it incurs these costs when CN’s freight trains are compelled to stop or to make way for Amtrak’s passenger trains in order to provide them with preference over CN’s freight traffic, as mandated by Congress. See 49 U.S.C. § 24308(c) (codifying Amtrak’s right of preference).⁴⁰

The Board should reject all of CN’s alleged crew overtime, fuel, and equipment costs. Even if such costs were recoverable—and they are not—CN has failed to meet its burden to prove that these costs are “specific, verifiable, and quantifiable” under the Board’s 2019 Decision, or that the delays which allegedly resulted in them were “caused” by Amtrak. As explained in more detail below:

³⁹ See 2019 Decision, p. 22 (rejecting CN’s proposed “non-quantified or otherwise amorphous costs CN proposes to include as incremental costs, such as freight rate suppression, capacity costs, foregone volume, lost opportunity costs, and other currently non-quantified costs CN might later identify.”).

⁴⁰ 49 U.S.C. § 24038(c) provides: “**Preference over freight transportation.**--Except 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 orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, 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.”

(1) As a matter of law, CN's claims for crew overtime, fuel, and equipment costs are not reimbursable as "incremental costs." The Board should reject CN's contrary arguments because:

- (a) Saddling Amtrak with these costs would be contrary to the "Public Bargain" leading to Amtrak's creation, in which the freight railroad industry, in exchange for being relieved of its non-profitable common carrier obligation to provide passenger service, agreed to allow Amtrak to use carrier facilities and to provide Amtrak's trains with preference over their freight traffic—even at the cost of delays to the carriers' own freight traffic.
- (b) The governing statute provides a specific remedy for a Host to seek relief from its obligation to provide preference to Amtrak trains. That remedy is for the Host to commence an action before the Board to establish that providing preference has "materially lessened" the freight railroad's provision of services to its shippers. (See 49 U.S.C. § 24308(c)). CN has not pursued that remedy, and may not sidestep the framework that Congress created simply by charging Amtrak for the costs attributable to the statutory preference right.
- (c) CN's alleged costs do not, in any event, qualify as compensable "incremental costs" under the governing statute.

(2) Further, CN's alleged costs are not "incremental costs" under the criteria established by the Board in its 2019 Decision because:

- (a) they have not been incurred "but for" Amtrak's presence on Amtrak's system. Rather, a myriad of CN's own operational decisions, exclusively within its control, have assured that there will be meets between Amtrak passenger and CN freight trains, and thus that the subject delays would have occurred anyway. These CN

decisions include: (i) CN's failure to expand its infrastructure to accommodate the exponential expansion of freight traffic on its system, and even its periodic *reduction* in capacity; (ii) CN's failure to arrange its schedules to avoid meets with Amtrak trains; and (iii) its decisions to prioritize train and car velocity by, *inter alia*, running longer freight trains that make it more difficult for CN to make way for Amtrak's trains.

- (b) for the same reasons, CN fails to satisfy its burden to establish that Amtrak was the "cause" of the alleged delays which resulted in it allegedly incurring its freight delay costs because Amtrak's operations—which represent a small portion of the traffic on CN's system—are not a "substantial factor" in causing the delays which allegedly resulted in CN's costs.

(3) Next, CN's methodology in calculating these costs is flawed in several material respects. As a result, CN cannot reliably establish that Amtrak caused any of the delays which resulted in CN's alleged costs or that they are specific, verifiable or quantifiable, as mandated by the Board.

(4) Lastly, even if the Board rejects all of the foregoing arguments, and finds that CN's costs are reimbursable as "incremental costs" and that its methodology is reliable—which it is not—the Board should reject CN's claim for a specific monetary award. In particular, the Board should deny CN's request for costs that it allegedly incurred in December 2019 [REDACTED] for which it has inundated the Board with thousands of pages of supporting materials. (See Baranowski VS, p. 20). It is not the Board's duty to wade into that morass of data, nor is it appropriate for CN to ask the Board to do so. Rather, under 2011 OA and the OAs being proposed by both Parties, Amtrak is entitled to audit each and every claimed cost, and any disputes over them are resolved through negotiation or arbitration, not through a proceeding before the Board.

As a threshold issue, CN mischaracterizes the Board’s 2019 Decision in several respects.

First, the Board did not—as CN claims—accept CN’s freight delay costs as “compensable in principle.” (CN Opening Br., p. 75). To the contrary, the Board unequivocally stated: “[w]ith the interim findings and guidance here, the Board is *not* accepting or rejecting the specific additional three elements of freight delay costs CN proposes.” (2019 Decision, p. 22) (emphasis added).

Second, CN makes the misleading assertion that the Board denied Amtrak’s argument that CN’s “freight delay costs ‘should be rejected as a matter of law.’” (CN Opening Br., p. 75). CN has selectively omitted the full quote from the Board’s decision, which shows the narrow scope of the ruling on this issue. The Board stated: “[w]ith regard to the data CN presents in support of its proposals, the Board disagrees with Amtrak that these data are so devoid of value that they should be rejected as a matter of law.” (2019 Decision, p. 23) (emphasis added). The Board, therefore, only disagreed with Amtrak that the first round of data CN previously submitted was so unreliable as to bar CN’s incremental costs claim altogether. Of course, CN has now submitted new round of data which, as discussed *infra*, also fails to establish causation or that CN’s costs are specific, verifiable, and quantifiable.

In its 2019 Decision, the Board did not address, much less reject, other arguments that Amtrak had made as to why CN’s alleged incremental costs were not recoverable as a matter of law. For example, the Board acknowledged Amtrak’s argument that CN could not recover costs related to providing Amtrak with preference, in part because doing so would render the preference relief provision in 49 U.S.C. § 24308(c) a legal nullity. (*Id.*, p. 20). The Board did not rule on these arguments, however. Indeed, the Board reserved judgment, and stated that if the Parties were

unable to reach a settlement, the Board’s Final Decision would “more fully address” the Parties’ arguments, including “statutory arguments.” (*Id.*, pp. 17-18, n.30).

These arguments are now squarely before the Board and ripe for decision.

POINT IV

CN’S CREW OVERTIME, FUEL AND EQUIPMENT COSTS ARE NOT “INCREMENTAL COSTS” SUBJECT TO REIMBURSEMENT FROM AMTRAK

A. CN’s Alleged Freight Delay Costs Are Incurred In Providing Preference to Amtrak

CN alleges that it has incurred its claimed overtime, fuel, and equipment costs in connection with actions it is required to take to provide Amtrak with preference over freight traffic, which CN must provide by statute. (*See* 49 U.S.C. § 24308(c)). In general, these costs arise when CN’s freight trains must move out of the way for an Amtrak passenger train operating on the same part of CN’s system.

As CN explains this issue in its opening brief, most CN lines that Amtrak uses in the United States are single-track mainline, and CN must make dispatching decisions accordingly when providing preference to Amtrak, typically by diverting one train into a siding. (*See* CN Opening Br., pp. 4-5). In some circumstances, where Amtrak trains are operating in opposite directions over a CN line, an Amtrak train may need to perform a reverse movement on CN’s main line track to enter siding for use as a passing track. (*Id.*)

Because of what CN characterizes as its “incremental freight delay cost reality,” it claims that it “must adjust its freight operations in the United States to accommodate Amtrak’s trains given CN’s network.” (*Id.*, p. 75). For example, in its scheduling practices, CN purports to take into consideration that “where CN has a mostly single-track mainline, . . . meets with Amtrak trains contribute disproportionately to such delays *to provide preference to Amtrak*. . . .” (*Id.*) (emphasis added).

CN's methodology confirms that its alleged "incremental costs" are the result of providing preference to Amtrak trains. [REDACTED]

[REDACTED] CN also purports to measure so-called "V-Time"—which CN defines as "the additional time attributable to the freight train slowing to a stop and then accelerating back to its regular speed as compared to the time that would have elapsed if the train had continued at its regular speed." (Baranowski VS, p. 2). Furthermore, CN seeks reimbursement of its alleged fuel costs when its freight trains must move aside to provide preference to Amtrak passenger trains. (Peterson VS, p. 13, ¶ 28).

The crux of CN's incremental cost argument, therefore, is that, whenever its freight trains are delayed because they must stop or move out of the way for Amtrak's trains in order to provide them with preference, CN's allegedly incurs reimbursable "incremental costs" in the form of: (1) overtime costs CN must pay the crews on those delayed freight trains; (2) any fuel consumed by CN's freight trains in starting, stopping or idling while an Amtrak train passes; and (3) "equipment costs" associated with CN's longer utilization of the locomotives and cars on the delayed freight trains.

As discussed below, this is plainly contrary to the Public Bargain that Congress struck with the freight railroads and the resulting statutory scheme implementing it.

B. The Public Bargain and the Resulting Statutory Scheme

As common carriers, freight and other private railroads were historically obligated to provide passenger rail services. See Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe

Ry. Co., 470 U.S. 451, 454 (1985). By the mid-20th century, “[a]s cars, buses, and airplanes displaced the passenger railroads, those railroads that continued to provide passenger carriage incurred heavy and continuing losses.” Id.

To ensure that passenger rail service continued in the United States, Congress enacted the Rail Passenger Service Act of 1970 (“RPSA”), creating Amtrak. Id. at 454-55. To “avert the threatened extinction of passenger trains in the United States,” the RPSA enabled freight railroads to relinquish their common carrier obligation to provide passenger service and transfer those obligations to Amtrak. Lebron v. Nat’l R.R. Passenger Corp., 513 U.S. 374, 383 (1995).

Once Amtrak took over passenger rail service, Congress recognized that to provide those services, “Amtrak, of necessity, must rely . . . on track systems owned by the freight railroads.” Dep’t of Transp. v. Ass’n of Am. R.Rs., 575 U.S. 43, 46 (2015). For this reason, in exchange for relieving the freight railroads of their common carrier obligation to provide passenger services nationwide, Congress required them “to allow Amtrak to use their tracks and facilities at rates agreed to by the parties—or in the event of disagreement to be set by the Interstate Commerce Commission,” and later by the Board (as the ICC’s successor). (Id., at 46-47). The ICC described this exchange as a “public bargain” struck with the freight railroads to relieve them of “any duty to provide passenger service in exchange for making their tracks available to Amtrak at incremental costs.” Interstate Commerce Commission, Study of Interstate Commerce Commission Regulatory Responsibilities, p. 62 (October 25, 1994).

Operating Amtrak’s passenger trains and freight trains on the same tracks “[n]aturally . . . can cause coordination problems.” Ass’n of Am. Railroads v. Dep’t of Transp., 721 F.3d 666, 669 (D.C. Cir. 2013). The Public Bargain, therefore, mandated that in exchange for being relieved of their obligation to provide passenger service, the freight railroads were required to provide

Amtrak's passenger trains with a preference over freight traffic in using any line, junction or crossing. (See id.).

Indeed, the freight railroads had assured Congress that they would continue to provide Amtrak passenger trains the "priority" they had traditionally provided to passenger service they had previously operated themselves.⁴¹ Further, the Association of American Railroads ("AAR")⁴² has acknowledged that the freight railroads "welcomed the opportunity to rid themselves of their hopelessly unprofitable passenger obligations," but that the trade-off was that they were obligated to "grant Amtrak trains preference over their own freight trains."⁴³ Given these assurances, Congress did not initially enact an express statutory provision mandating Amtrak's preference.

Almost immediately after passage of the RPSA, however, freight railroads began to prioritize freight traffic over passenger service, with predictable results: the average OTP of long-distance passenger trains plummeted from over 70% in 1972 to 35% in 1973.⁴⁴ In 1973, during

⁴¹ For example, John Reed (President of the Atchison, Topeka and Santa Fe Railway Company) testified to Congress: "[Santa Fe] traditionally has given passenger train operations preference over freight service and would continue to afford Amtrak trains such priority." He further stated that "regularly scheduled passenger trains shall continue to be designated as first-class trains and shall continue, except in cases of emergencies or exigencies beyond the reasonable control of the dispatcher, to be afforded preferential dispatch and handling over other classes of train operations." *Review and Refunding of Rail Passenger Service Act: Before the Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce*, 92nd Cong. 1, H.R. Rep. 92-54, pt. 2 at 670 (Dec. 7, 1971). Similarly, in his statement, Roger Lewis (then-President of Amtrak) stated: "I have assumed that the railroads in operating would follow a railroad tradition which was to give the passenger trains preference." *Id.* at 651, 692.

⁴² All seven Class I freight railroads, including CN, are members of the AAR. ([See https://www.aar.org/about-us/aar-members/](https://www.aar.org/about-us/aar-members/)).

⁴³ Statement of Edward R. Hamberger, President & CEO of the AAR, at *Hearing on Passenger Rail Financing, Subcommittee on Surface Transportation and Merchant Marine of the U.S. Senate Committee on Science, Commerce, and Transportation*, June 5, 2003, p. 5.

⁴⁴ *Hearings on H.R. 8351 before the Subcomm. on Transp. and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 93rd Cong., 1st Sess., at 29-32 (June 12, 1973).

hearings on the reauthorization of the RPSA, Congress investigated this issue. In a written statement during those hearings, the President of AAR reaffirmed that “it is the policy of all participating roads to give preference to Amtrak passenger trains, *even at the cost of delay to freight service.*”⁴⁵

Congress was not satisfied with that assurance from the freight rail industry, however. That same year (1973), Congress enacted what is now 49 U.S.C. § 24308(c) (formerly 45 U.S.C. § 563(e)), requiring freight railroads to do what they had earlier promised to do: provide preference to passenger service over freight traffic in using any line, crossing or junction. See Ass’n of Am. Railroads, 575 U.S. at 47 (“Since 1973, Amtrak has received a statutory preference over freight transportation in using rail lines, junctions, and crossings.”).

Nonetheless, even Congress’s codification of Amtrak’s preference right still did not assure that freight railroads would, in fact, preference Amtrak’s trains over their own freight trains. In 2008, “the Department of Transportation’s Inspector General reported that [Amtrak’s] preference right was weak.” Union Pac. R.R. Co. v. Surface Transp. Bd., 863 F.3d 816, 820 (8th Cir. 2017) (citing Office of Inspector Gen., Fed. R.R. Admin., CR-2008-076, *Root Causes of Amtrak Train Delays* at 4 (September 8, 2008)). Among other things, the Inspector General noted that, to avoid providing statutory preference, “freight railroads could adjust their dispatching practices to give their own trains an advantage over Amtrak.” (*Id.*).

To address freight railroads’ continued failure to honor Amtrak’s preference, and to reaffirm Congress’s interest in ensuring a strong passenger rail system, Congress enacted [PRIIA] in 2008. PRIIA § 213(a) (codified at 49 U.S.C. § 24308(f)) “authorizes, and sometimes requires,

⁴⁵ Statement of Stephen Ailes, President of the AAR, *Amtrak Oversight and Authorization: Hearing on S. 1763 before the Surface Transportation Subcommittee of the Senate Committee on Commerce*, 93rd Cong., May 16, 1973, p. 134 (emphasis added).

the Board to investigate when an Amtrak train fails to meet certain performance standards.” (Id.). If the Board determines that “the failure is attributable to the host railroad’s failure to honor Amtrak’s preference right, then the Board may award damages and other relief.” (Id.).

Despite years of promises, freight railroads failure to honor Amtrak’s preference continues to be a systemic problem. As Amtrak’s current CEO (Stephen J. Gardner) testified to Congress on November 2020:

Amtrak’s right to preference over freight transportation under the law is clear but often ignored, most likely because of a lack of enforcement The largest cause of delay to our customers is “freight train interference,” typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate on the tracks ahead. On the U.S. rail network, rail line owners control the dispatching of trains that operate on their lines, which means the freight railroads have substantial control over the on-time delivery of Amtrak customers traveling on freight-owned rail lines.⁴⁶

Amtrak’s statutory preference remains a critically important aspect of Amtrak’s operations over rail systems operated by Host Railroads and the Board’s enforcement of it remains a high-profile issue of public importance. See, e.g., Executive Order No. 14036, 86 F.R. 36987 (July 9, 2021) (directing that STB “ensure that passenger rail service is not subject to unwarranted delays and interruptions in service due to host railroads’ failure to comply with the required preference for passenger rail”).

⁴⁶ See, e.g., Testimony of Stephen J. Gardner (then Amtrak’s Senior Executive Vice President, Chief Operating and Commercial Officer, and current CEO) at *Hearing Examining the S.T.B.’s Role in Ensuring a Robust Passenger Rail System, Subcomm. on Railroads, Pipelines and Hazardous Materials of the House Comm. on Transp. & Infrastructure*, Nov. 18, 2020, p. 5 (www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/testimony/2020/Amtrak-SEVP-Gardner-House-Railroads-Subcomitte-Examining-STB-Role-Ensuring-Robust-Passenger-Rail-111820.pdf).

C. Permitting CN to Recover its Costs to Provide Amtrak with Preference Would Undermine and Be Inconsistent with the Public Bargain

Requiring Amtrak to reimburse CN for its costs of providing preference would undermine the Public Bargain by which Amtrak was created, and which gave rise to the statutes governing the relationship between Amtrak and CN—including the incremental cost and preference provisions. The Board should reject CN’s attempt here to undermine Congress’s intent. Instead, the Board should:

favor an interpretation which would render the statutory design effective in terms of the policies behind its enactment and to avoid an interpretation which would make such policies more difficult of fulfillment

Motor & Equip. Mfrs. Ass’n, Inc. v. Environmental Protection Agency, 627 F.2d 1095, 1108 (D.C. Cir. 1979); see also Kokoszka v. Belford, 417 U.S. 642, 650 (1974) (a reviewing court must consider “the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature.”); United States v. Fahnbulleh, 742 F. Supp. 2d 137, 146 (D.D.C. 2010), *aff’d*, 752 F.3d 470 (D.C. Cir. 2014) (“the Court must be mindful of the object and policy of the entire statutory scheme in interpreting a provision within that scheme.”).

In the Public Bargain, the freight railroads benefitted enormously when Congress created Amtrak in 1970 and immediately relieved the railroads from their longstanding common carrier obligation to provide passenger service. This saved the freight industry hundreds of millions of dollars annually.⁴⁷ But, as the freight railroads have consistently acknowledged, there was a *quid*

⁴⁷ The losses sustained by the freight railroads in 1969 alone totaled \$200 million (about \$1.6 billion in 2022 dollars), the equivalent of 40% of the net operating income of the entire railroad industry. See Statement of John A Volpe, Secretary of Transportation, *Supplemental Hearing on H.R. 17849 and S. 3706 before the House Subcommittee on Transp. and Aeronautics of the Committee on Interstate and Foreign Commerce*, 91st Cong., June 2, 1970, pp. 66-67; see also Nat’l R.R. Passenger Corp., 470 U.S. at 454 (noting that freight railroads were suffering

pro quo for obtaining that valuable benefit. They were required to “host” Amtrak by giving it access to their tracks and other facilities at “incremental cost,” and were obligated to provide Amtrak’s trains with preference over their own freight traffic.⁴⁸

It was because the freight railroads immediately failed to meet this obligation that Congress acted in 1973 to make the preference requirement explicit in the statute, requiring no more than what the freight railroads had initially promised, and what the framers of the Public Bargain had expected. There is nothing to show that Congress ever even considered, let alone intended, that Amtrak would have to pay the host freight railroads for this basic right. Had Congress intended that result, it could have said so in the statute, either at Amtrak’s creation or in the five decades since. It did not.

In exchange for providing Amtrak preference, Congress has *already* conferred on CN a considerable benefit—CN is no longer saddled with a common carrier obligation to provide passenger service, or the costs associated with that service. Nowhere in the Congressional record did any freight railroad or the AAR ever suggest that, to continue to provide preference as they claimed they would, the freights would be able to unload the encumbrance of providing passenger service and, in addition, that the freight would *also be reimbursed* for additional claimed costs to provide that preference. To the contrary, the freight railroads acknowledged that providing preference would, in fact, come with certain costs associated with delays to their own freight traffic.

The Board should also be vigilant that the Public Bargain is not just an element of the CN-Amtrak relationship. Amtrak’s relationship with *all* of its Host Railroads are a product of the

“tremendous operating losses” in providing passenger services).

⁴⁸ See Statement of Stephen Ailes, *supra*, n. 45.

Public Bargain. As such, CN's attempt to renegotiate the Public Bargain may have systemic, industry-wide implications for Amtrak's relationships across the country with its Host Railroads. If Amtrak is saddled with the costs supposedly incurred by each Host Railroad in providing statutory preference to Amtrak, the financial consequences to Amtrak would be dire.⁴⁹ Congress did not intend for Amtrak to finance the obligations of the entire freight railroad industry to provide preference. To the contrary, that industry represented to Congress that it would provide preference voluntarily, in exchange for relief from its common carrier obligation to provide passenger service and even at the expense of delays to its own freight traffic.

Accordingly, the Board should find that, as a matter of law, CN's freight delay costs are not subject to reimbursement by Amtrak, as incremental costs or otherwise.

D. Permitting CN to Recover its Freight Delay Costs would Render the Preference Remedy Provision a Nullity and Mere Surplusage

CN's contention that it may recover its freight delay costs as "incremental costs" is also contrary to any reasonable construction of 49 U.S.C. § 24308, which contains an express provision affording CN a remedy for relief from its obligation to provide preference. That remedy is available if CN believes its provision of freight services to its customers is suffering as a result of having to provide preference. CN has simply decided not to pursue that Congressionally mandated remedy, and instead is trying to pursue another one (*i.e.*, reimbursement from Amtrak). The Board should not permit CN to sidestep the remedial scheme that Congress established.

Section 24308(c) provides for the freight railroad to commence an action before the Board, in which it may establish that Amtrak's preference "materially will lessen the quality of freight

⁴⁹ If the freight railroad industry wishes to now change the Public Bargain, the proper avenue for it to do so is to request that Congress codify the changes it seeks, not for individual railroads (such as CN) to ask the Board to disregard the Public Bargain when establishing the terms of their OAs with Amtrak.

transportation provided to [CN's] shippers" (Id.). If it does, the Board can set the respective rights of the freight railroad and Amtrak. (Id.).

CN has *not* commenced an action pursuant to 49 U.S.C. § 24308(c), however, nor has it even argued that Amtrak's preference has materially lessened the quality of the freight services. Instead, CN simply wants to encumber Amtrak with the costs of CN's provision of preference. Of course, if a freight railroad were simply able to bill Amtrak for those costs in the form of "incremental costs," no freight railroad would ever need to commence an action under § 24308(c). This clearly renders § 24308(c), and the remedy provided to freight railroads in it, a nullity and surplusage in § 24308. Such an interpretation is therefore contrary to well-settled principles of law. See National Ass'n of Mfrs. v. Dep't of Defense, 138 S. Ct. 617, 632 (2018) (absent clear evidence that Congress intended surplusage, courts will reject "an interpretation of the statute that would render an entire subparagraph meaningless"); Marx v. Gen. Revenue Corp., 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

Further, the Supreme Court long ago established a "well settled" rule that "where a statute creates a right and provides a special remedy, that remedy is exclusive." Randolph-Sheppard Vendors of Am. v. Weinberger, 795 F.2d 90, 103 (D.C. Cir. 1986) (citing United States v. Babcock, 250 U.S. 328, 331 (1919)). Stated another way, "if the statute provides the way in which a remedy is to be obtained, *such a command negates the use of any other way.*" De Leon Cruz v. Loubriel, 539 F. Supp. 250, 251 (D.P.R. 1982) (emphasis added); see also Paxton v. Allstate Ins. Co., 663 F. Supp. 99, 101 (S.D. W.Va. 1987) ("Where a statute provides a remedy, persons claiming relief under such statute are bound to follow the remedy provided for in that statute.").

Here, § 24308(c) establishes a remedy for a host railroad that is allegedly aggrieved by

providing preference. The Board must presume that Congress intended that remedy to be the exclusive one available to freight railroads. Yet, CN's asks the Board to impose an entirely different remedy provided nowhere in § 24308 or elsewhere. CN is, however, bound to follow the clear roadmap Congress established for seeking relief from preference in § 24308(c)—it cannot simply ignore that remedy, and instead stretch the meaning of another section of the same statute to find a different remedy that it finds more appealing.

Lastly, a “specific statute controls over a general provision particularly when the two are interrelated and closely positioned.” Sierra Club v. Environmental Prot. Agency, 21 F.4th 815, 821 (D.C. Cir. 2021) (internal alterations omitted). “However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment.” Maiatico v. United States, 302 F.2d 880, 886 (D.C. Cir. 1962).

Here, § 24308(a)(2)(B) contains only a single reference to the undefined term “incremental costs” as an element of CN's compensation. There is no reference in that section (or elsewhere in § 24308 and its legislative history) indicating that “incremental costs” include a freight railroad's cost to provide Amtrak with preference. But, § 24308(c) specifically explains the remedy available to freight railroads' if they are aggrieved by providing preference to Amtrak. That more specific subsection of § 24308 controls the issue before the Board, and CN is bound to pursue the exclusive remedy provided for in that subsection.

E. CN's Costs to Provide Preference to Amtrak are not “Incremental Costs” under the Plain Language of the Applicable Statutes

Even if the Board were to reject the foregoing arguments and conclude that 49 U.S.C. § 24308(a)(2)(B) is potentially applicable, CN's alleged crew overtime, fuel and equipment costs are not “incremental costs” under that statutory subsection. Under the plain language of § 24308(a)(2)(B), recoverable “incremental costs” are those that CN incurs due to: (1) Amtrak

“using the facilities” of CN; and (2) CN “providing . . . services” to Amtrak.⁵⁰ Under any reasonable interpretation, CN’s “freight delay costs” are not within the plain meaning of either criteria.

At the outset, there is little dispute among the parties about various costs that CN may recover from Amtrak as “incremental costs.” [REDACTED]

[REDACTED]

⁵⁰ 49 U.S.C. § 24308(a)(2)(B) provides: “When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Board shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.”

⁵¹ [REDACTED]

⁵² [REDACTED]

⁵³ [REDACTED]

[REDACTED]

In contrast, the crew overtime, fuel, and equipment costs that CN is asking the Board to consider to be “incremental” in this case are of an entirely different character. None of those costs are incurred by CN because Amtrak is using CN’s “facilities”—for example, CN is seeking reimbursement from Amtrak of costs it allegedly incurs to move its own freight, including locomotives and fuel used to move CN trains. The costs that CN has put at issue are for fuel consumed *by CN’s own locomotives* when they are *in operation by CN*, and where CN’s trains are making a move to yield to an Amtrak train as part of CN’s obligation to give Amtrak preference. These are not costs for Amtrak’s use of CN’s “facilities.” Rather, these costs are associated with CN’s use of its own facilities and equipment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Rather, these costs are incurred in connection with CN’s provision of services to its customers. Here, the crews to whom CN is allegedly paying overtime, are operating *CN’s own trains* in service *of CN*. They are not rendering any “service” to Amtrak. They are merely doing the work of the railroad, part of which is to operate a CN train in a manner that affords Amtrak its statutory preference rights.

Accordingly, even if § 24308(a)(2)(B) was arguably applicable—which is it not—CN’s freight delay costs are not “incremental costs” under the plain wording of that statutory subsection.

POINT V

CN'S FREIGHT DELAY COSTS ARE NOT INCURRED "BUT FOR" AMTRAK'S PRESENCE ON CN'S SYSTEM AND AMTRAK HAS NOT CAUSED THE DELAYS WHICH RESULTED IN THOSE COSTS

In the 2019 Decision, the Board found that CN was burdened to establish several elements before its alleged "freight delay costs" would be considered "incremental costs." Among them, the Board found that "incremental costs" are those that CN would not have incurred "but for" Amtrak's presence on its system. (2019 Decision, p. 20). The Board also held that: "[f]urther, the Board agrees with Amtrak that CN would have to show that it has actually incurred delays, that those delays were caused by Amtrak, and that it incurred actual costs as a result of the delays caused by Amtrak." (*Id.*, p. 23).

As discussed above, CN allegedly incurred these "freight delay costs" because Amtrak's passenger trains allegedly delayed CN's freight trains.⁵⁴ For several reasons, CN has failed to show that it would not have incurred its crew overtime, fuel, and equipment costs "but for" Amtrak's presence. Nor can CN reasonably claim that Amtrak is the "cause" of the delays that allegedly led to those costs.

CN provides remarkably little explanation of how it supposedly satisfies the "but for" standard set by the Board. Similarly, CN has provided only the most superficial discussion of "causation" in its submission. For example, CN has not considered, much less addressed, issues which are traditionally part of a causation analysis, such as whether Amtrak's actions are a "substantial factor" in causing CN's alleged delays or whether they are too remote to be considered

⁵⁴ See, e.g., CN Opening Br., p. 78 (stating that its claim for overtime relates to instances where "specific crewmembers were on freight trains delayed by Amtrak before or while incurring overtime"); *Id.*, p. 80 (explaining that its alleged costs relate to "nearly 1,000 instances of delays to CN freight trains caused by Amtrak").

causative. In fact, in its proposed redline—although the Board expressly stated that CN could recover “freight delay costs” only if the “delays were caused by Amtrak” [REDACTED]

[REDACTED]

At bottom, CN’s argument appears to be that, if its freight trains are delayed in the process of providing preference to Amtrak’s trains, then: (1) CN would not have incurred those costs “but for” Amtrak’s presence on CN’s system;⁵⁶ and (2) Amtrak must be the “cause” of the delays that resulted in those costs. This analysis, however, overlooks numerous other causes of CN’s freight delays in providing preference, including CN’s own operational decisions. Congress did not intend for Host freight railroads to recover from Amtrak for business and operational decisions that are entirely within that Host Railroad’s control—particularly when the effect of those decisions is to impede the provision of Amtrak service and the on-time arrival of Amtrak passengers.

A. Standards for Assessing Whether CN’s Freight Delay Costs were Incurred “But For” Amtrak’s Presence and Whether Amtrak is the “Cause”

In general, establishing causation:

involves two elements: proof of cause in fact and proximate cause. Cause in fact or “but for” causation requires proof that the harmful result would not have come about but for the conduct of the defendant. Proximate cause, in addition, requires proof that the defendant’s conduct was a substantial contributing factor in bringing

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⁵⁶ See, e.g., CN Opening Br., p. 17 (referencing CN’s “proposals for quantifying delays to its freight trains that would not occur *but for its hosting Amtrak trains . . .*”) (emphasis added); *Id.*, p. 29 (discussing alleged “principle that CN is entitled to compensation for all expenses it would not incur *but for its hosting of Amtrak.*”) (emphasis added).

about the harm alleged.

Robertson v. Allied Signal, Inc., 914 F.2d 360, 366–67 (3d Cir. 1990); see also Kemper v. Deutsche Bank AG, 911 F.3d 383, 390 (7th Cir. 2018) (“Traditionally, the causation inquiry is broken down into two subparts: but-for or factual causation, *i.e.*, whether the harm could have occurred without the alleged tortious act; and proximate or legal cause, which attempts to determine the scope of liability for a defendant's actions.”).

1. The Board’s “But For” Standard

By defining “incremental costs” as those that CN would not have incurred “but for” Amtrak’s presence, the Board effectively incorporated the traditional “but for” causation standard in its 2019 Decision. CN appears to interpret this “but for” standard as effectively limitless. Indeed, if “but for” causation were interpreted as broadly as CN suggests, it could sweep within its scope many happenings that are “so insignificant that no ordinary mind would think of them as causes.” Stewart v. Federated Dep’t Stores, Inc., 662 A.2d 753, 758 (Conn. 1995). However, “limitless but for causation *is not*,” and “but for” causation is not present when the alleged cause “is too far removed, either factually or temporally, from the loss.” United States v. Vaknin, 112 F.3d 579, 589 (1st Cir. 1997) (emphasis added).

2. The Board’s “Causation” Standard

As noted, in addition to meeting the “but for” standard, the Board stated that, for CN’s freight delay costs to qualify as incremental costs, CN was required to establish that the delays “were *caused by Amtrak*” and that it “incurred actual costs as a result of the delays *caused by Amtrak*.” (2019 Decision, p. 23) (emphasis added). Although the Board did not specify that CN was required to show that the delays were “[proximately] caused by Amtrak,” any traditional notion of “causation” incorporates that concept. See Robertson, supra; Kemper, supra. Further, the Supreme Court has held that “for centuries, it has been a well-established principle of the

common law, that in all cases of loss, we are to attribute it to the proximate cause, and not to any remote cause.” Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 132 (2014) (citations and internal alterations omitted).⁵⁷ The Board’s requirement that CN establish that its freight train delays were caused by Amtrak, therefore, also incorporates the second element of a traditional causation analysis—“proximate causation.”

In assessing whether Amtrak’s actions were the proximate cause of CN’s freight delays, the Board must determine whether they are a “substantial factor” in causing those delays, or whether they are too remote to be considered a cause. And, the Board must consider this issue in light of the alternative causes—including CN’s own actions—that may have caused or contributed to CN’s freight trains delays and the alleged resulting freight delay costs. See, e.g., Lexmark, supra.⁵⁸

B. CN’s Own Operational Decisions Are the “Cause” of its Freight Train Delays

There are numerous matters (discussed below) over which CN has exclusive control that result directly in the freight trains delays for which is contends Amtrak is the cause. These operational decisions by CN often result in the allegedly delay-causing meet between Amtrak’s train and CN’s freight train.⁵⁹ And, because CN has exclusive control over these issues, it is wholly

⁵⁷ So, for example, the Supreme Court will “presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute.” Lexmark, 572 U.S. at 132.

⁵⁸ See also Zerega Ave. Realty Corp. v. Hornbeck Offshore Transp., LLC, 513 Fed. Appx 30, 32 (2d Cir. 2013) (in assessing “whether one cause among many constitutes proximate cause, courts have engaged in inquiries such as whether a cause is a substantial factor in bringing about the harm, or whether the cause is too remotely or insignificantly related to the harm to be a legal basis for liability.”); Daniels v. Hadley Mem’l Hosp., 566 F.2d 749, 757 (D.C. Cir. 1977) (“where the harm appears to have been brought about by two or more concurrent causes, . . . the plaintiff must show that the defendant’s deviation from the standard of care was a ‘substantial factor’ in bringing about the harm complained of”).

⁵⁹ Amtrak previously explained these issues in its prior brief submitted to the Board dated

within CN's ability to avoid the very delays which it now tries to ascribe to Amtrak. For this reason, it is unreasonable for Amtrak to be considered the "but for" or "proximate cause" of these delays and CN's resulting losses.

Further, the Board should strictly scrutinize CN's broad-brush assertions that Amtrak has caused delays to its freight trains across its system. Indeed, CN's own prior submissions in this case belie that Amtrak has such a far-reaching adverse impact on CN's freight traffic. [REDACTED]

[REDACTED]

[REDACTED]

CN's own operational decisions which have caused and contributed to delays to its own freight trains are discussed below.

1. CN's Infrastructure Decisions in the Face of Freight Traffic Growth on its System

Freight traffic on CN's system has grown dramatically over the years, while Amtrak's passenger traffic has remained relatively static. (Vilter/Maga RVS, pp. 8-9). Based on CN's own evidence submitted in this case, since 2009, total gross ton-miles of CN freight trains operating over its system have increased by one-third. (*Id.* (citing Verified Statement of Anne Morehouse, pp. 3-4)). That growth has continued through today.⁶⁰ (Blair Reply VS, ¶ 49). Amtrak's service

January 19, 2018 at pp. 83-87 and in the Rebuttal Joint Verified Statement of Paul Vilter and Jason Maga dated September 14, 2017 ("Vilter/Maga RVS") at pp. 8-21. The 2019 Decision did not address these issues. They are, however, relevant to whether Amtrak's presence can reasonably be considered the "but for" cause or whether Amtrak is the "proximate cause" of the delays for which CN allegedly incurred "freight delay costs."

⁶⁰ See CN Management Information Circular and Notice of Annual Meeting of Shareholders dated May 20, 2022, p. 42) (identifying growth in gross ton-miles on CN's system (available at <https://www.cn.ca/-/media/Files/Investors/Investor-Shareholder/information-circular-2022-en.pdf?la=en>)).

on CN's system has, however, grown modestly in comparison. (*Id.*).

CN is in exclusive control of the infrastructure on its system, including the infrastructure it builds and maintains to accommodate the ever-increasing growth of its freight traffic. (Vilter/Maga RVS, pp. 10-12). Over the years, this has included *removal* of infrastructure, which resulted in *reduction* of the capacity to accommodate traffic on its system. (*Id.*).

For example, CN converted its mostly double track main line between Chicago and Memphis to single track with passing sidings in the early 1990s (over Amtrak's objections) based on the CN's assessment of how the facility reduction would impact it financially and operationally. (*Id.*, p. 11). Also, CN previously had two parallel routes for approximately 220 miles between Memphis, TN and Jackson, MS. (*Id.*, p. 10). Amtrak's City of New Orleans service used the route via the Grenada Subdivision. (*Id.*). Then in the 1990s, IC downgraded the Grenada Subdivision and consolidated most traffic, including Amtrak, onto the *single-track* Yazoo Subdivision. (*Id.*). The elimination of double track lines, and replacing them with single-track lines, inevitably means increased meets between Amtrak and CN trains and more resulting delays.

Growth of CN's freight traffic obviously increases the burden on CN's system and inescapably results in delays to all traffic on CN's system—freight and passenger service alike. (Blair Reply VS, ¶ 51). CN has exclusive control on how to accommodate that increased traffic load through decisions related to its infrastructure. (*Id.*). If it does not do so successfully, the resulting delays (for example, in the form of increased or unplanned meets between Amtrak and CN trains) is directly attributable to CN's infrastructure decisions—not to Amtrak. (*Id.*). And, in particular, where CN decides for its own operational reasons to *reduce* the capacity of its system in the face of traffic growth, the resulting delays are caused by CN, not Amtrak. (*Id.*).

2. CN's Scheduling Practices

CN is also in exclusive control of scheduling when and where to run its freight trains.

(Vilter/Maga RVS, p. 13). CN's freight train schedules, and its adherence or lack of adherence to those schedules, directly impacts whether, where and to what extent CN's trains meet or pass Amtrak's trains. (Id.). Thus, CN's scheduling decisions have a direct impact on freight train delays which result when such meets occur. (Id.; Blair Reply VS, ¶ 52).

Because it has exclusive control over all scheduling and dispatching its freight trains—without any input from Amtrak (Vilter/Maga RVS, p. 16; Blair Reply VS, ¶ 52)—CN has the ability to schedule and dispatch its trains in a manner to *avoid* meets with Amtrak trains. (Vilter/Maga RVS, p. 17.; Blair Reply VS, ¶ 53). If it fails to do so, resulting in a meet with an Amtrak train, CN cannot reasonably argue that Amtrak somehow caused the resulting delay. (Vilter/Maga RVS, p. 17.). Rather, the cause of that delay is unquestionably CN's scheduling and dispatching practices. (See id.).

Additionally, as evidence Amtrak has previously submitted to the Board confirms—although CN purports to run a “scheduled railroad”—CN's freight train operations vary considerably from their schedules due to non-Amtrak causes. (Vilter/Maga RVS, pp. 16-21; Crowley/Mulholland Rebuttal Joint Verified Statement dated Sept. 14, 2017, pp. 34-35). In addition, CN constantly changes its schedules, often through an ad-hoc process. (Vilter/Maga RVS, pp. 16-20). Indeed, schedules are sometimes subject to change after CN's freight trains are *already moving*. (Id.). It would be unreasonable to allow CN to charge Amtrak for alleged freight train delays measured against schedules that are modified by CN in such an unpredictable manner.

3. Other CN Operational Priorities

CN also establishes its own performance priorities, some of which have the direct (and documented) result of causing freight train delays. For example, CN's witnesses explained in this proceeding that its operational priorities are maximizing train and freight car velocity (*i.e.*, the

speed at which a freight train or car moves between two points). (Vilter/Maga RVS, p. 14).⁶¹

Prioritizing greater velocity can result in an *increase* in delays to CN's freight trains. (*Id.*). For example, in order to increase velocity, CN has made the operational decision to operate longer freight trains. (*Id.*, pp. 15-16). Indeed, this has resulted in CN running trains that are actually longer than many sidings on CN's system. (*Id.*; Blair Reply VS, ¶ 55). This directly prohibits CN's freight train from utilizing those sidings to make way for Amtrak trains to pass them. (*Id.*).

Amtrak's previous submissions to the Board documented more than one hundred examples of freight train delays caused when a CN freight train was too long to fit into sidings on CN's system used by Amtrak.⁶² Instead of simply moving aside into a siding, CN's freight trains must instead take different (and often more time consuming and potentially more expensive) actions to make way for Amtrak's train (such as holding at a yard until after an Amtrak train passes).

These delays are directly attributable to CN's operational prioritization of train velocity and the operation of "no fitter" trains, rather than the mere presence of Amtrak trains on CN's system. (*Id.*, ¶ 56). Notably, CN could alternatively address this issue either by running shorter trains or by lengthening the sidings on its system—again, an operational or infrastructure choice for which CN is exclusively responsible. (*Id.*).

C. Further Implications of CN's Position on Amtrak's Relationship with its Host Railroads

The Board should also consider the further practical implications of CN's position on its relationship with Amtrak,⁶³ and upon Amtrak's relationships with all of its Host Railroads. If

⁶¹ See, e.g., Joint Verified Statement of John Summerfield, Gregg Girard and Anne Morehouse ("Summerfield/Girard/Morehouse VS"), p. 20 (Train and car velocity are "the two most important metrics by which [CN] measure[s] the success of [its] operations.").

⁶² See Crowley/Mulholland Rebuttal Joint Verified Statement dated Sept. 14, 2017, p. 33.

⁶³ Amtrak directs the Board to the Vilter/Maga RVS, pp. 21-23, wherein Amtrak addressed

Amtrak is required to reimburse a Host Railroad's freight delay costs, that would eliminate any incentive for the Host to address operational issues which are resulting in delays to its freight traffic (including the issues particular to CN discussed above). A Host Railroad could instead simply continue to operate its system under the *status quo*, and allow freight train delays to continue, knowing that it could simply recoup its losses as "incremental costs" from Amtrak. This would effectively result in Host Railroads being economically indifferent to providing preference to Amtrak.

For example, a Host Railroad could prioritize train and car velocity (as CN does), and operate longer freight trains in furtherance of that operational approach. To the extent that the Host could simply bill Amtrak for the resulting delay costs, it would be insulated from the costs generated by its own operational decisions to run longer trains—all at Amtrak's expense.

As a further example, in the face of increasing freight traffic, a Host Railroad could decide to avoid the capital costs of expanding its infrastructure (or it may even elect to reduce system capacity by removing infrastructure, as CN has) without regard to the additional freight delay costs that course of action creates. And, although the Host's failure to expand its infrastructure to keep pace with freight traffic growth is causing the delays, the Host may—as CN has done here—claim that Amtrak's presence on its system is causing the delays. The Host Railroad could then seek to transfer those costs to Amtrak as "incremental costs."

Congress never intended for "incremental costs" to serve as a backstop insulating Host Railroads from the consequences of their operational decisions, particularly where those operational choices impact its ability to provide Amtrak with preference. That is, however, precisely what CN is asking the Board to endorse.

these issues in connection its previous submission to the Board.

* * *

In sum, in contending that Amtrak is the cause of freight trains delays on its system simply because it is hosting Amtrak, CN is overlooking evidence in the record that its own operational decisions directly cause many of freight train delays. The mere fact that Amtrak trains have a “presence” on CN’s system does not meet the “but for” causation standard. Nor is that standard met simply because an Amtrak train happens to be at the same place as a CN freight train when a delay occurs. There are myriad other reasons that have nothing to do with Amtrak—such as the CN operational decisions discussed above—which may have resulted in the meet between Amtrak and CN trains. Likewise, the existence of these CN-controlled causes makes it unreasonable to consider Amtrak’s modest presence on CN’s system a “substantial factor” in the subject delays. The Board should, therefore, reject CN’s arguments and deny its claim for “freight delay costs.”

POINT VI

CN’S METHODOLOGIES FOR CALCULATING ITS ALLEGED “INCREMENTAL COSTS” ARE UNRELIABLE AND THOSE COSTS ARE NOT SPECIFIC, VERIFIABLE OR QUANTIFIABLE

Even if the Board concludes that CN’s “freight delay costs” are not precluded as a matter of law, they are not recoverable for the reasons below. CN’s alleged “freight delay costs” total [REDACTED] across three categories: crew expenses ([REDACTED]); fuel expenses ([REDACTED]); and equipment expenses ([REDACTED]). Each category of the claim must be rejected.

CN relies on the opinions of its expert (Michael Baranowski), who analyzed CN’s data for December 2019 (the “Testing Period”). Expert’s opinions must be based on reliable methodologies and not speculation. See Nease v. Ford Motor Co., 848 F.3d 219, 229 (4th Cir. 2017) (court must ensure that expert opinion “rests on a reliable foundation”). When an expert opines on damages, “excessively speculative claims must be rejected.” Leonard v. Stemtech

Health Sci., Inc., 2013 WL 5311295 at *4 (D. Del. 2013) (citations omitted).⁶⁴

The methodologies that CN uses to identify and quantify its costs are unreliable. As a result, CN's alleged costs are purely speculative, and are not specific, verifiable or quantifiable, as required by the Board for them to be reimbursable "incremental costs."

A. CN's Methodologies for Identifying and Quantifying Delays Allegedly Caused by Amtrak are Unreliable

Baranowski first identified delays to CN's freight trains allegedly "caused by" Amtrak, then calculated the length of those delays. (See Reply Verified Statement of Thomas Crowley and Robert Mulholland ("Crowley/Mulholland Reply VS"), ¶¶ 12, 30 and 35). Based on that calculation, Baranowski attempted to quantify each category of CN's alleged "incremental costs." (Id., ¶¶ 64 (crew costs), 81-82 (fuel), and 109 (equipment)).

1. *CN's SRS System, Including its FA Delay Code, Remains Unreliable*

The starting point of Baranowski's methodology is CN's SRS system, which he used to identify the number of delays allegedly "caused by" Amtrak. (Crowley/Mulholland Reply VS, ¶¶ 12, 35). Specifically, Baranowski relied on CN's "FA" delay code, which CN dispatchers allegedly use to identify delays to its freight trains *caused by* Amtrak. (Baranowski VS, p. 2; Crowley/Mulholland Reply VS, ¶ 12).

Baranowski claims his reliance on SRS actually "*understates*" the number of "Amtrak responsible delays" for two reasons. First, SRS does not generate a delay record in every instance of delay impacting a freight train. Second, the FA code is not used for "cascading delays that may occur to other freight trains down the line" that would not have occurred "but for that Amtrak-caused direct delay." (Baranowski VS, p. 3; Crowley/Mulholland Reply VS, ¶ 12).

⁶⁴ The Board also "has previously found in multiple contexts that speculation is not an appropriate basis for decision making." (2019 Decision, p. 22, n.41) (collecting cases).

In its prior submission to the Board, Amtrak previously explained why CN's SRS system is unreliable for determining either the amount of or the cause of delays. (See Amtrak's Brief dated January 19, 2018, pp. 61-63). Those arguments remain applicable. Specifically, Amtrak argued SRS was unreliable because: (a) it does not record all delay events; (b) dispatchers who are tasked with allocating responsibility for delays lack firsthand knowledge of what caused the delay; (c) dispatchers assign delay codes in SRS based on the perceived "root cause" of the delay; and (d) the system is rife with system and human errors, such as duplicative delay records. (Id.).

Nothing in CN's most recent submission addresses these shortcomings, and they continue to taint (and render unreliable) *any* analysis based on SRS data—including Baranowski's. In fact, Baranowski's renewed reliance on SRS is premised entirely on CN's assertion that it [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If an expert relies upon statements or data of others, he must confirm their validity, and cannot simply show "unblinking reliance" on them. In re TMI Litig. 193 F.3d 613, 716 (3d Cir. 1999). But Baranowski "unblinkingly relied" on CN's claim that its FA code made the SRS cause attribution process "more reliable." Absent such verification, Baranowski can only speculate that the FA code reliably allows CN to capture delays "caused by" Amtrak. (Crowley/Mulholland Reply VS, ¶ 19).

2. *Baranowski's Methodology for Determining the Number of Delay Events Caused by Amtrak is Unreliable*

Baranowski opines that the threshold for recording a delay event in SRS results in an understatement of "Amtrak-responsible" delays. (Baranowski VS, p. 3). This requires one to assume that Amtrak caused those unrecorded delays beneath the threshold. (Crowley/Mulholland

Reply VS, ¶ 16). But, those delays could just as likely have been caused by CN (signal-related problems) or third parties (police holds), not by Amtrak. (Id.). Because he did not assess what caused any of these sub-threshold delays, Baranowski’s argument that his analysis “understates” Amtrak delays is pure speculation. (Id.).

Indeed, Baranowski actually *overstates* the number of delay events he assigns to Amtrak. (Crowley/Mulholland Reply VS., ¶ 17). This is because he improperly concluded that Amtrak was the cause of delays to CN freight trains which involved: (a) out-of-slot CN trains; (b) out-of-slot Amtrak trains; and (c) CN freight trains that were longer than sidings. (Id.). Any train falling into these categories should have been excluded from his analysis.

(a) Amtrak is not the Cause of Delays Involving Out-of-Slot CN Trains

In opining that his methodology results in an “understatement” of delays assigned to Amtrak, Baranowski references “cascading” delays. (Baranowski VS, p. 3). Specifically, he implies that once a CN train is delayed by Amtrak, all other delays the CN train encounters (*i.e.*, “cascading” delays) are also Amtrak’s responsibility. (See id.). But, because those “cascading delays” were not assigned an FA code in SRS, Amtrak was not assigned fault for the purposes of his analysis. (Id.).

Baranowski, however, only applies this methodology for CN’s benefit (*i.e.*, to claim that he is “understanding” Amtrak-caused delays). If he had applied his methodology consistently, a delay to a CN freight train when it meets with an Amtrak train could not be attributed to Amtrak if the CN train was *already delayed*, and was not adhering to its schedule in the first instance (*i.e.*, the train was “out of slot”). (Crowley/Mulholland Reply VS, ¶ 18). In other words, “but for” the

CN freight train operating “out of slot,” it may *not* have met the Amtrak train at all.⁶⁵ (*Id.*).

As a result, it is improper for CN to assign an FA code to a delayed CN freight train if it met an Amtrak train at a time when the freight train was already late and not adhering to its schedule. This delay—although coded by CN as an FA delay—was in fact not “caused by” Amtrak. (Crowley/Mulholland Reply VS, ¶¶ 19-21). Rather, the delay was caused by the event that made the freight train “out of slot” in the first place—which could be CN or a third-party, and not Amtrak. (*Id.*). However, because Baranowski perfunctorily attributes delays to Amtrak when those delays happened after the CN train was already out-of-slot, Baranowski failed to abide by his own “conservative” methodology. (Crowley/Mulholland Reply VS, ¶ 21).

When an expert fails to follow his own methodology, or applies it inconsistently, courts routinely exclude the expert as unreliable. See e.g., United States v. Rudolph, 2022 WL 2390727 at *5 (D. Colo. 2022) (precluding testimony where expert “strayed from” stated methodology). Here, Baranowski inconsistently applied his approach to “cascading delays.”

And, Baranowski’s inconsistent methodology is significant. Based on CN’s own SRS data, 65% of CN trains were more than *thirty minutes* behind schedule when they first encountered an Amtrak train—a meet which a CN dispatcher coded as an FA delay. (Crowley/Mulholland Reply VS, ¶ 22, [REDACTED]). Moreover, 50% of those trains were operating more than *three hours* behind schedule at the time they first experienced the FA delay. (*Id.*). There is no evidence that any of the delays that caused the CN train to be out of slot in the first instance were due to Amtrak. If, Baranowski had adhered to a conservative methodology, he would not have considered Amtrak to be the cause of any delay to a CN train that

⁶⁵ Or, it may have met the Amtrak train at an optimal location to minimize the delay to CN. (Crowley/Mulholland Reply VS, ¶ 18).

was out-of-slot at the time it met Amtrak's train. (Crowley/Mulholland Reply VS, ¶ 21). He did not do so, and that renders his methodology for assigning delays to Amtrak wholly unreliable.

(b) Amtrak is not the Cause of Delays Involving Out-of-Slot Amtrak trains

Similarly, CN should not have coded delays to its freight trains as Amtrak-responsible FA delays if the Amtrak train which met and allegedly delayed the CN freight train was *itself previously delayed*. For example, the Amtrak train may have been delayed earlier in its route by CN (e.g., freight train interference) or a third party (e.g., a police hold due to an auto accident on a crossing). In either scenario, the downstream meet that delayed CN's freight train was not caused by Amtrak, but rather by the prior delay to Amtrak—a delay for which Amtrak may have no responsibility. (Crowley/Mulholland Reply VS, ¶ 23).

But, Baranowski did not analyze any of Amtrak's delay data for the Amtrak trains that allegedly caused a delay to a CN train. (Crowley/Mulholland Reply VS, ¶ 25). Without that analysis, Baranowski can only speculate about why Amtrak's train met with CN's train. As a result, his assumption that Amtrak is the cause of the meet is pure guesswork. (See id.). And, to the contrary, because CN controls all dispatching decisions on its system, the starting point of his analysis should be to assume that CN is responsible for the meet. (Id.).

Baranowski's failure to investigate whether the Amtrak train in question was out-of-slot (and why) again renders his methodology for assigning delays to Amtrak unreliable. (Crowley/Mulholland Reply VS, ¶ 26).

(c) Amtrak is not the Cause of Delays Involving Long CN Trains

Amtrak is also not the cause of delays where CN's freight train was delayed because it was longer than the sidings on the route segment where it met an Amtrak train. (Crowley/Mulholland Reply VS, ¶ 27). If a CN freight train encounters an Amtrak train the absence of a siding of

sufficient size could result in further delays to the CN train in moving aside to give the Amtrak train preference. These delays are not caused by Amtrak, but rather by CN's operational and infrastructure decisions. (See, Point V(B)(1), *supra*; see also Crowley/Mulholland Reply VS, ¶ 27).⁶⁶ If CN's trains could be sided in more places, CN would have more flexibility to accommodate train meets. (*Id.*, ¶ 36).

3. CN Overstates Amtrak's Contribution to Delays on its System and Unreliably Quantifies the Length of Alleged "Amtrak-Caused" Delays

In addition to inflating the number of delay events caused by Amtrak, CN also inflates the *length* of the delays supposedly caused by Amtrak and overstates the extent to which Amtrak causes delays on CN's system.

(a) Amtrak Does Not "Contribute Disproportionately" to Delays on CN's System

CN claims that its schedules allow for a "baseline level of delay to CN's trains due to 'meets' with other trains" and that "meets with Amtrak *contribute disproportionately* to such delays to provide preference to Amtrak . . ." (Matteucci/Kuxmann May 27, 2022 VS, p. 75) (emphasis added). CN has provided no support for this bald statement. (Crowley/Mulholland Reply VS, ¶ 32). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁶ Notably, although Amtrak's experts raised the issue of CN's undersized sidings in prior submission in this case (see Crowley/Mulholland, RVS, p. 33), Baranowski has not provided any response to this in or considered this issue in his current analysis.

[REDACTED]

Amtrak is, therefore, not contributing disproportionately to CN's freight train delays. Furthermore, this suggests that: (1) the baseline level of delay CN allegedly developed is inadequate; and/or (2) CN has not apportioned *any* part of the baseline to Amtrak delays. (Crowley/Mulholland Reply VS, ¶ 34). But, because CN has not provided any documentation on how it develops this alleged baseline or how that baseline is incorporated into its schedules, it is impossible to tell which conclusion to reach. (Id.).

(b) Baranowski Overstates the Idle Time "Caused by" Amtrak

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

(c) Baranowski's Methodology for Calculating V-Time is Unreliable

[REDACTED]

[REDACTED]

(i) *CN Freight Trains Using Wi-Tronix Data*

[REDACTED]

(ii) *CN Freight Trains without Wi-Tronix Data*

[REDACTED]

CN claims that: “in consultation with Mr. Baranowski,” it “identif[ied] and analyz[ed] 51 distinct scenarios [that were] selected to be representative of the approximately 761 observations” of specific freight trains that were delayed during December 2019. (Robinson VS, p. 3; Crowley/Mulholland Reply VS, ¶ 57). But, disregarding the real world context within which CN’s freight trains operate, CN “cap[ped] the number of locomotives assumed to be operating and consuming fuel while a train was moving at two for intermodal, manifest and unit trains”

⁶⁹ CN’s TPC is detailed in the Verified Statement of Timothy Robinson.

⁷⁰ Many of the flaws in the modeling relate to erroneous assumptions regarding fuel consumption, and are discussed in the respective section below.

(Lizotte VS, p. 7; Crowley/Mulholland Reply VS, ¶ 57). Many of the CN trains that were delayed *operated with more than two locomotives*. (Crowley/Mulholland Reply VS, ¶ 58). In other words, the scenarios crafted by CN in its TPC *do not* reflect CN’s real-world operations. (Id.). CN is well aware of this. (Id.). Indeed, CN eliminated roughly half of the observed train consists from its simulations due to the presence of more than two locomotives. (Id.).

This undermines CN’s calculations of V-Time for trains without Wi-Tronix data. First, it means the fifty-one scenarios in CN’s TPC are *not representative* of the 761 specific freight trains that were allegedly delayed in December 2019. (Crowley/Mulholland Reply VS, ¶ 59). Second, it results in an *overstatement* of V-time because the modeled trains have fewer locomotives than the CN trains that actually operated. (Id.). These underpowered and hypothetical trains take longer to accelerate (if they could even run or “make [the] requested speed”), resulting in an inflated V-Time versus the CN train that actually operated. (Id.).

* * *

For these reasons, CN’s methodology for identifying and quantifying the freight train delays that Amtrak allegedly caused is unreliable. Among other things, that methodology has yielded an overstatement of: (1) the number of delays Amtrak actually caused to CN’s freight trains; and (2) the length of the delays allegedly sustained by CN (in the form of idle time and V-Time).

Because these basic building blocks of CN’s “freight delay costs” are unreliable, so too are the alleged losses that CN has calculated based on these defective methodologies. For these reasons alone, these costs are not specific, verified or quantified and, under the Board’s 2019 Decision, are not recoverable from Amtrak as “incremental costs.”

* * *

As discussed below, the methodologies employed by CN in an effort to quantify its specific proposed categories of “freight delay costs” have additional flaws.

B. CN’s Methodology for Calculating its Crew Overtime Expenses is Unreliable and Those Expenses are Not Specific, Verified or Quantified

To calculate CN’s alleged crew overtime expenses, Baranowski purported to identify CN employees on delayed Amtrak trains who earned overtime pay on the date of the delay. (Baranowski VS, pp. 10-11; Crowley/Mulholland Reply VS, ¶ 64). He then “quantified the overtime attributable to Amtrak by using the lesser of (1) the minutes of delay attributable to Amtrak . . . and (2) the minutes of overtime reflected in the payroll records.” (Baranowski VS, pp. 11-12; Crowley/Mulholland Reply VS, ¶ 64). He opines that CN incurred [REDACTED] for overtime costs during the Testing Period. (Crowley/Mulholland Reply VS, ¶ 63).

Baranowski’s methodology is unreliable, however, and the Board should reject it. (See Crowley/Mulholland Reply VS, ¶ 65). First, as noted, it is based on his overstated delay time measurements. (*Id.*) Second, Baranowski applies *the full length of the Amtrak delay to the end of the crewmember’s shift*.⁷¹ (*Id.*; Baranowski V, p. 12). In other words, Baranowski does not treat any non-Amtrak delays to the freight train as having contributed to that crewmember working beyond his or her assigned shift (and earning overtime pay). (Crowley/Mulholland Reply VS, ¶ 65). This renders his methodology patently unreliable.

⁷¹ Baranowski’s illustrates the process as follows:

[I]f the crewmember was delayed for 60 minutes due to Amtrak, and thereafter earned 30 minutes of overtime pay, I attributed to Amtrak his full 30 minutes of overtime pay . . . If, however, the crew member was delayed for 30 minutes due to Amtrak and thereafter earned 60 minutes of overtime pay, I attributed only 30 minutes of overtime pay to Amtrak.

(Baranowski VS, p. 12).

First, as discussed, SRS does not capture all delays because of the thresholds required to trigger an SRS delay event. Those delay events—although unrecorded in SRS and perhaps having nothing to do with Amtrak—*do contribute* to a crewmember working overtime. (Crowley/Mulholland Reply VS, ¶ 68). Baranowski ignores this in his methodology. (*Id.*).

Second, Baranowski ignores that, according to CN, its schedules account for *some* baseline level of delays. (Crowley/Mulholland Reply VS, ¶ 69). If true, it makes no logical sense to assign minute-for-minute responsibility to Amtrak-caused delays for a CN crewmember’s overtime payment, [REDACTED]

[REDACTED] (*See id.*; *see also* Point VI(A)(3)(a), *supra*). After all, CN incurred overtime expenses because of *all* delays that happened during the shift, not just the delays CN attributes to Amtrak. (Crowley/Mulholland Reply VS, ¶ 70).

Third, Baranowski’s methodology again conflicts with Peterson’s approach to conservatively use a lower bound of a possible range to estimate costs.⁷² (Crowley/Mulholland Reply VS, ¶ 69). A “conservative” approach would allocate responsibility for overtime evenly *based on all delays encountered by a given crew*, not just to Amtrak-caused delays first. (*Id.*, ¶ 71).⁷³

Baranowski’s crew overtime methodology is flawed for additional reasons. He failed to

⁷² Peterson himself is inconsistent in applying a “conservative” and “reasonable” methodology. (Crowley/Mulholland Reply VS, ¶ 70). Indeed, Peterson advises that if an FA delay is two hours long, and the crew working that shift was paid one hour of overtime, that the “one hour of overtime for each train crew member is unambiguously an incremental expenditure due to the Amtrak-related delay.” (Peterson VS, ¶ 26). This is nonsensical, as all delays incurred by the crew led to the crewmember earning overtime. (Crowley/Mulholland Reply VS, ¶ 70).

⁷³ In fact, CN did not provide the data necessary to perform the calculations (Wi-Tronix data/playbacks). (Crowley/Mulholland Reply VS, ¶ 72). Therefore, the correct application—assigning responsibility for overtime based on the proportion of total delay minutes—cannot be made with the data CN provided. (*See id.*).

establish a control group based on crews and trains that did *not* encounter Amtrak-caused delays. The purpose of this control group would be to see whether those crews incurred overtime payments at a different rate than the crews that *did* encounter FA delays. (Crowley/Mulholland Reply VS, ¶ 74). Notably, CN has not provided the documentation necessary to perform this analysis; without it, there is no basis for CN’s claim that Amtrak delays disproportionately affect CN’s overtime expenses. (See id.).

Amtrak has also identified instances where Baranowski “double counted” crew expenses. (Id., at ¶ 75).

Baranowski also did not link the overtime payment to the actual crewmember(s) operating the train at the time of the delay. (Id., at ¶ 76). There are instances where: (1) an Amtrak-caused delay encountered by one crew couplet was applied to overtime earned by a *different* crew couplet; and (2) crewmembers who earned overtime payments were *not even working* on the train that experienced an FA delay. (Crowley/Mulholland Reply VS, ¶ 77).

In sum, Baranowski’s methodologies for calculating CN’s crew overtime costs is unreliable. These expenses, therefore, are speculative, and not specific, verified or quantified, as required by the Board.

C. CN’s Methodology for Calculating its Fuel Expenses is Unreliable and Those Expenses are Not Specific, Verified or Quantified

CN seeks reimbursement for fuel expenses totaling [REDACTED] Baranowski’s methodology in calculating these costs is unreliable and inconsistent with real-world observations.⁷⁴

⁷⁴ Amtrak previously criticized Baranowski’s analysis reliance on modeling in this case. (See, e.g., Crowley/Mulholland RVS, p. 24). Again, CN fails to explain why it relied on a fuel simulation study, rather than analyzing actual fuel consumption data from CN locomotives. (Crowley/Mulholland Reply VS, ¶ 85). Data collected in the field is generally more reliable than model outputs, because data collected in the field reflects real world operations. (Id.). CN

1. *Wi-Tronix Data is More Reliable than Modeling*

CN used TPC modeling to quantify V-Time fuel consumption for all trains, *including* trains equipped with Wi-Tronix.⁷⁵ (Baranowski VS, p. 13). In the normal course of business, CN “uses the Wi-Tronix data system to monitor the efficacy of [its] fuel optimization efforts” because “the data provided by [Wi-Tronix] is detailed, specific and reliable.” (Lizotte VS, pp. 1, 4). But, CN has not provided the fuel level data from Wi-Tronix. Without that data, it is impossible to verify Baranowski’s fuel expense calculations. (Crowley/Mulholland Reply VS, ¶ 87).

CN argues that modeling is “more accurate and reliable” than Wi-Tronix because the latter only reports fuel levels in 10-gallon estimates. (Lizotte VS, p. 5, n. 4.). But, Wi-Tronix data is from the *actual* locomotives in operation at the time of the alleged delay. (Crowley/Mulholland Reply VS, ¶ 90). Modeling uses *surrogate* trains, which are often grossly underpowered and pulling different consists over hypothetical rail segments with different physical characteristics than that in the real world. (*Id.*). Clearly, the data from the actual locomotives is more reliable than the surrogate trains. (*Id.*).

2. *CN’s TPC Modeling is Further Flawed*

Further flaws in Baranowski’s methodology concerning consumption of fuel by CN’s freight trains are set forth in detail in the Crowley/Mulholland Reply Verified Statement (¶¶ 92-107). They include the following, which—standing alone—render CN’s quantification of its fuel costs unreliable.

CN’s TPC modeling is supposedly based on “basic principles,” including: “when a train is

nonetheless, continues to rely on modeling to quantify the alleged fuel consumption of CN’s locomotives. (Baranowski VS, pp 7-8).

⁷⁵ As discussed *supra*, CN does, uses Wi-Tronix, where available, to calculate the length of delays.

stopped and then re-accelerates back to its regular speed, its locomotives consume more fuel than if the train had maintained steady speed . . . if additional locomotives are operating, or if they are pulling a greater load, or if the train is traveling at higher speed, Stop-Start Fuel Burn will tend to be higher.” (Robinson VS, p. 2). Although a heavier or faster train will burn more fuel than a lighter or slower train (holding all else equal), *it is not necessarily true* that more locomotives will consume more fuel than fewer locomotives. (Crowley/Mulholland Reply VS, ¶ 93). Fuel burn depends on the train weight and consist (and terrain and speed). (*Id.*).

Further, as noted, the number of locomotives in CN model were artificially capped at two per train. (Crowley/Mulholland Reply VS, ¶ 98, see also Point VI(A)(3)(c)(ii), *supra*). CN implemented this cap despite the fact that it routinely operates trains with more than two locomotives. (Crowley/Mulholland Reply VS, ¶ 99). This results in the modeled trains being underpowered when in the real world they are not. (*Id.*). Underpowered trains are inefficient, and generally burn more fuel than adequately powered trains, even if the underpowered train has fewer locomotives operating. (Crowley/Mulholland Reply VS, ¶ 95). As a result, CN’s modeling overstates the amount of fuel consumption assigned to Amtrak. (*Id.*).

For these reasons, and those set forth in detail in the Crowley and Mulholland Reply Verified Statement (¶¶ 81-107), CN’s fuel costs have not been reliably quantified, nor are the specific and verifiable.

D. CN’s Methodology for Calculating its Locomotive Expenses is Unreliable and Those Expenses are Not Specific, Verified or Quantified

CN seeks reimbursement for “locomotive expenses” based on HPH locomotive equalization rates. These “expenses” total [REDACTED] during the Testing Period and are comprised of two elements: (1) CN owned locomotive expenses; and (2) foreign owned locomotive expenses. (Crowley/Mulholland Reply VS, ¶ 109).

1. CN Owned Locomotive Expenses

CN's claim relating to its own locomotives is entirely speculative. (Crowley/Mulholland Reply VS, ¶ 110). Indeed, the documentation provided by CN demonstrates that CN incurred *no actual expenses* relating to this equipment. (*Id.*). Nevertheless, CN assigns "value" to its equipment in lieu of an actual expense. (*See id.*; *see also* Peterson VS, ¶ 35). This, of course, fails entirely to meet the Board's requirement that incremental costs be "specific, verifiable, and quantifiable." Moreover, the Board already decided that such "opportunity costs" were not recoverable as incremental costs. (2019 Decision, p. 22). That is, however, precisely what these costs are.

Further, the "value" CN claims is based on "the terms railroads have negotiated on a bilateral basis for the use of each other's equipment [and] is plainly a direct incremental cost incurred by CN." (Peterson VS, ¶ 34). But, assertions that this is an incremental cost notwithstanding, this does not provide any basis to impose these costs on Amtrak.

For example, Amtrak and CN *have not* entered into a bilateral locomotive ownership agreement. (Crowley/Mulholland Reply VS, ¶ 111). As such, there is no basis for CN to unilaterally impose the terms of one on Amtrak. (*Id.*). Furthermore, CN's own locomotive operating expenses are covered by the fuel component in its contracts with its shippers—as such, CN has *already been reimbursed* for its alleged locomotive expenses. (*Id.*, ¶ 112).

Finally, even if these equipment costs were valid, the alleged expenses are overstated because they are based on the flawed assumption that CN's locomotive utilization rate is 100%. (Crowley/Mulholland Reply VS, ¶¶ 114-116). But, *no* Class I railroad operates near 100 percent locomotive utilization. (*Id.*, ¶ 116). And, CN has not provided evidence regarding its utilization rate. (*Id.*, ¶ 117).

2. *Foreign Locomotive Expenses*

The second portion of CN's locomotive expenses relates to HPH agreements between CN and foreign railroads. But, these expenses are also speculative.

Indeed, Baranowski simply speculates that CN made HPH payments to foreign railroads. (Crowley/Mulholland Reply VS, ¶ 120). While CN has provided agreements with other Class-I railroads, it has not provided any evidence that any HPH payments *were actually made*. (*Id.*). If no HPH payment was made by CN to the foreign railroad for the period in which the delay occurred (i.e., week, month, etc.) then no expense was incurred by CN.⁷⁶ (*Id.*). On the record before the Board, therefore, these expenses are not specific, verified or quantified.

To the extent CN actually incurred foreign locomotive expenses—which it did not—the amount CN seeks from Amtrak is overstated. (Crowley/Mulholland Reply VS, ¶ 122). Indeed, Baranowski applied the same flawed methodology he used for calculating crew overtime expenses—by assigning Amtrak-delays minute-for-minute responsibility. (*See* Point VI(D)(1), *supra*; *see also* Crowley/Mulholland Reply VS at ¶ 123). Of course, the inability of CN to return a locomotive, in kind, would be based on all delays the locomotive experienced on its route, including delays caused by CN and third-parties. (Crowley/Mulholland Reply VS, ¶ 123). Even under a theoretical methodology utilizing this approach, Amtrak would only be responsible for the portion of delays it “caused” compared to the overall delays the locomotive experienced. (*Id.*).

For the foregoing reasons, CN's claim for CN-owned and foreign locomotive expenses should be rejected as they are speculative and cannot be verified, quantified or specified.

⁷⁶ For example, the net amount of equipment use may well have led to CN being paid by the foreign carrier. (Crowley/Mulholland Reply VS, ¶ 120, n. 103). The provided data does not allow analysis to determine net payments between CN and foreign carriers. (*Id.*).

E. CN’s Methodology for Calculating its Car Expenses is Unreliable and Those Expenses are Not Specific, Verified or Quantified

Baranowski claims that CN incurred [REDACTED] of “incremental costs” for car expenses during the Testing Period. But, many of the same flaws in CN’s locomotive methodologies are present in the car cost analysis, including that CN incurs no expenses when its own cars are delayed and it assumes 100% utilization of those cars. (See Crowley/Mulholland Reply VS, ¶¶ 125-129). Furthermore, Baranowski overstates the “value” of CN owned freight cars: without explanation, he valued CN freight cars at a rate *three times higher* than the one used for foreign cars. (Id., ¶ 128).

For foreign owned cars, CN’s methodology is flawed for many of the same reasons as its foreign locomotive approach. (Crowley/Mulholland Reply VS, ¶¶ 130-131).

* * *

F. Other Issues Related to CN’s “Incremental Costs”

1. *The Board Should Not Make Any Monetary Award to CN for its Alleged Costs*

Even if the Board finds that CN’s methodology is reliable and that its “freight delay costs” are specific, verifiable and quantifiable—which they are not—the Board should not make any specific monetary award to CN, including for the December 2019 “Testing Period” for which CN seeks [REDACTED]. To determine whether CN was entitled to an award for December 2019, the Board would have to assess the thousands of pages of support that CN has provided for the alleged Amtrak-caused delays that comprise its claim. That is not the Board’s burden to undertake. And, there is no evidence before the Board of CN’s specific costs for any other timeframe.

CN acknowledges that, if the Board finds CN’s methodology reliable, Amtrak should have “a reasonable opportunity to audit” CN’s costs and “raise specific objections.” (CN Opening Br., p. 81). The Board should allow that process to occur for CN’s December 2019 costs, and any other

period for which the Board allows CN to recover costs. If Amtrak disputes any specific costs, that issue will be subject to dispute resolution and arbitration under the OA.

2. *The Board Should not Amend Items 4(a) and 4(b) of Appendix IV*

CN asks the Board to impose two changes to Appendix IV of a new OA with respect to certain cost reimbursable by Amtrak. [REDACTED]

[REDACTED]

[REDACTED]

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POINT VII

**THE BOARD SHOULD REJECT CN'S PROPOSAL TO
RETROACTIVELY IMPOSE INCREMENTAL COSTS UPON AMTRAK**

With one exception proposed by CN, the Parties agree that, given the passage of nearly ten years since their prior OA expired on August 11, 2013, the terms of a new OA should apply prospectively from the date of the Board's Final Decision in this matter. For example, the Parties both agree that it would be unreasonable to apply the terms of a new penalty and incentive system retroactively. (See CN Opening Br., pp. 66-67; Amtrak Opening Br., p. 63, n.44, pp. 72-73).

Taking a position irreconcilable with the foregoing, CN argues that it would be reasonable for the Board to require Amtrak to reimburse CN retroactively to September 1, 2019 for any costs sought by CN which the Board ultimately concludes meet the definition of “incremental costs” as set forth in the 2019 Decision. (See CN Redline, § 8.8(B)). CN claims this is appropriate because September 1, 2019 “was the beginning of the first calendar month following issuance of the Board’s [2019 Decision], which put the parties on notice of the agency’s interpretation of ‘incremental costs.’” (CN Opening Br., p. 94-95). For several reasons, The Board should reject CN’s argument.

A. Awarding CN Incremental Costs Retroactively is Contrary to the Board’s Precedents

There is no authority supporting CN’s claim that the Board could or should retroactively award any incremental costs to CN. CN goes so far as to claim that “the Board would be fully authorized and *it would be consistent with past precedent* for its prescription of compensation for incremental costs incurred since August 12, 2013”—even though CN has limited its claim of retroactivity to September 1, 2019. (CN Opening Br., p. 94) (emphasis added). Despite its reference to “past precedent,” CN cites absolutely no authority—including none of the Board’s prior decisions—for the proposition that compensation for incremental costs may be ordered retroactively. Nor is Amtrak aware of any such authority.

To the contrary, the Board has repeatedly held that terms imposed by the Board related to compensation will *not* be applied retroactively, absent consent of all parties. See National Railroad Passenger Corp. Appl. Under Section 402(a) of the Rail Passenger Service Act, FD 30426, 1 I.C.C.2d 243, 248 (I.C.C., October 25, 1984) (“In the absence of consent by the parties, this Commission is without jurisdiction to fix compensation retroactively.”); New Eng. C. R.R., Inc. - Trackage Rights Order - Pan Am. S. LLC, FD 35842, 2017 WL 5639660, at *24-25 (S.T.B., Oct.

30, 2017) (applying terms of new trackage rights fees prospectively because the party responsible for the fees did not consent to retroactivity). Indeed, in arguing that a new penalty and incentive system should apply prospectively only, CN cited other decisions by the Board to the very same effect. (See CN Opening Br., p. 66, n.151).

For this reason alone, the Board should reject CN’s proposal to require Amtrak pay “incremental costs”—to the extent the Board awards any to CN—retroactively to September 1 2019 or otherwise.

B. Amtrak Was Not On Notice That it Was Required to Reimburse CN’s Alleged Incremental Costs

CN argues that it is fair to retroactively require Amtrak to reimburse its incremental costs because, once the Board issued its 2019 Decision, Amtrak was on notice that the Board interpreted “incremental costs” as including expenses CN “would not incur but for the presence of Amtrak,” provided they were “specific, verifiable and quantifiable.” (CN Opening Br., p. 95). Apparently, CN believes that this put Amtrak on notice that the alleged crew overtime, fuel and equipment costs CN is seeking were, in fact, reimbursable “incremental costs” for which Amtrak would be responsible. CN’s argument is, however, factually incorrect.

Although Amtrak was obviously aware of the 2019 Decision, the Board *did not* decide that any of the costs CN was seeking (and still is seeking) actually met the definition of “incremental costs” the Board articulated.⁷⁷ Amtrak has consistently denied—and still does—that CN’s alleged

⁷⁷ The Board should also reject CN’s contention that: “[t]here is no a basis for excusing Amtrak’s payment of such costs” because the costs CN is still seeking in this case supposedly “do not even fully cover the full incremental costs of freight delays due to Amtrak (*e.g.*, regular crew wages), much less the many other incremental costs outlined previously by CN that are not quantified (*e.g.*, costs due to Amtrak’s general consumption of line capacity).” (CN Opening Br., p. 94). Of course, the Board has made no determination that any of the costs comprising CN’s alleged “full incremental costs” do, in fact, qualify as such.

costs are unreimbursed “incremental costs.” (See Point IV, *supra*). If anything, the Board indicated that CN did *not* establish that its claimed costs met the Board’s definition of “incremental costs.” Indeed, the Board held that, in the future, “if the issue comes back before the Board, the burden would be on CN to show that those specific costs could be included in a reasonable manner, consistent with the ‘but for’ standard and the need for specificity, verifiability, and quantifiability” articulated by the Board. (2019 Decision, p. 23). Of course, the Board has not yet determined that CN met its burden as to any of CN’s alleged incremental costs.

C. Requiring Amtrak to Retroactively Reimburse CN’s Incremental Costs Would Be Unfair and Prejudicial

In its opening submission, Amtrak explained why requiring Amtrak to retroactively reimburse CN’s “incremental costs” would be unfair and prejudicial. (Amtrak Opening Br., p. 73). Among other things, Amtrak argued that, during the period for which CN is seeking retroactivity (back to September 1, 2019):

Amtrak may have been able to take operational steps to control or reduce those costs. Simply allowing CN to retroactively collect these costs now would deny Amtrak any chance to implement any sort of operational cost-control measures as to those costs.

(*Id.*). This remains true as to the crew overtime, fuel and equipment costs CN is still asking the Board to find are incremental.

Indeed, CN claims that the purpose of “incremental costs” is supposedly to “ensure that Amtrak internalizes the social costs created by its service demands and any inefficiencies result[ing] from its operations” (CN Opening Br., pp. 73-74).⁷⁸ Even assuming that is correct,

⁷⁸ CN’s “cost internalization” argument is based on the faulty premise that the Amtrak-CN relationship is the product of negotiations in the free market. The Amtrak-CN relationship was created by Congress and is subject to great regulation and the terms of the Public Bargain. (See Point IV(B), *supra*). The Public Bargain and the applicable statutes do not require Amtrak to “internalize” the costs associated with CN (or any of its other Hosts) providing preference to Amtrak, as they must by Congressional mandate. Amtrak respectfully directs the Board to its prior

the alleged incremental costs for which CN is seeking reimbursement were incurred months and years ago, back to September 2019. Retroactively imposing those costs on Amtrak would deny it any opportunity to remedy or modify the supposed Amtrak “service demands” and operational “inefficiencies” that allegedly gave rise to those costs in the first place.

The Board has previously held that it is inappropriate to retroactively impose costs on a party because doing so deprives that party of the opportunity to implement measures to control, contain or avoid those costs. In New Eng. C. R.R., Inc., the parties applied to the Board to establish the terms of Pan Am Southern’s (“PAS”) trackage rights over the lines of New England Central R.R. (“NECR”). 2017 WL 5639660, at * 1. Because PAS believed the matter would be resolved expeditiously, it initially did not oppose the retroactive application of any trackage fee set by the Board. Id. at * 24. The matter, however, was prolonged during discovery and litigation. Id. After later refusing to consent to retroactivity in light of those delays, PAS argued that it:

made business decisions, moved traffic, priced shipments, and collected revenues *based upon the belief that the existing trackage rights fee would govern. PAS states that if the Board now increases the fee retroactively, PAS will not be able to go back and collect the higher fee from its shippers.*

(Id.) (emphasis added and internal citation omitted).

The Board agreed with PAS and refused to retroactively apply the newly established trackage fee:

Applying the new fee retroactively over PAS’s objection, under the circumstances of this case, would unfairly penalize PAS for the length of the proceeding, including mediation and discovery. *Denying NECR’s request would also be consistent with the cases cited by PAS, which made new terms effective prospectively unless the parties consented to retroactivity—and here, at this stage, the parties do not.* Accordingly, the new trackage rights fee will be

submissions in this case addressing this issue in further detail. (See Amtrak Brief, Jan. 19, 2018, pp. 77-82; Verified Statement of Alan S. Frankel, dated Sept. 14, 2017).

effective on the effective date of this decision, together with the rest of the modified [trackage rights order].

(Id. at * 25) (emphasis added).

Here, Amtrak is in a nearly identical position to PAS in New Eng. C. R.R., Inc. Just as PAS was entitled to rely upon the existing trackage rights fee governing its operations pending resolution of that case, so too was Amtrak entitled to rely on the terms of the 2011 OA and the *status quo* over the ten-year period since expiration of the 2011 OA. Indeed, the Board *ordered* that the 2011 OA govern CN's provision of facilities and services to Amtrak pending final resolution of this case. (S.T.B. Decision served 8/9/13, p. 3, ¶ 1). Neither the 2011 OA nor 2019 Decision—or the Parties in their prior dealings—treated the crew overtime, fuel and equipment costs that CN is presently seeking as reimbursable “incremental costs.” As in New Eng. C. R.R., Inc., it would unfairly penalize Amtrak to retroactively charge it for these costs when it had no opportunity to amend its operations to avoid or reduce them.

D. CN's Position on Incremental Costs is Irreconcilable with its Position that the Remainder of the New OA Should Apply Prospectively

The Board should also reject CN's request for retroactive reimbursement of “incremental costs” because it is irreconcilable with CN's position that the remainder of the new OA—in particular, a new incentive and penalty system—should only apply prospectively. Indeed, many of the reasons why CN has objected to the retroactive application of an incentive and penalty system also weigh against requiring Amtrak to retroactively reimburse CN's incremental costs.

For example, in opposing retroactive application of a new incentive and penalty system, CN argues that: “[a] host railroad cannot respond to an ‘incentive’ scheme if it does not know in advance how its performance will be judged and rewarded, and it should not be penalized (or rewarded retroactively) on the basis of rules that were not in place (and for much of this proceeding not even proposed) at the time of the conduct at issue.” (CN Opening Br., p. 66). The same applies

to the retroactive application of “incremental costs”—as discussed above, Amtrak cannot fairly be expected to retroactively reimburse CN for supposed costs for which it had no notice in advance that it would bear responsibility. And, the absence of such notice deprived Amtrak of any opportunity to contemplate or implement any measures that may have controlled or eliminated these alleged costs. See New Eng. C. R.R., Inc., supra.⁷⁹

Likewise, in arguing against retroactivity of a new incentive and penalty system, CN contends that it “would be illogical to penalize a host retroactively for performance to stations where such performance was previously not even measured for purposes of the Agreement.” (CN Opening Br., p. 67). Again, the same reasoning holds true as to retroactive reimbursement of incremental costs—it would be “illogical” to penalize Amtrak by requiring it to pay “incremental costs” where such costs were never considered reimbursable during the Parties’ past course of conduct under the 2011 OA.

Lastly, CN argued that retroactively applying a new incentive and penalty system:

would impose a major additional cost. Significant resources would need to be expended to attempt to apply those provisions retroactively for a period that may approach 10 years. Further, that complex undertaking would likely result in extensive disputes between the parties requiring expenditure by them of substantial additional resources, invocation of dispute resolution under the Agreement, and possible Board intervention.

The very same problems are presented if the Board mandates retroactive reimbursement of CN’s claimed expenses. As CN itself points out, if the Board approves of its methodology for calculating its alleged incremental costs, Amtrak would “be given a reasonable opportunity to audit” CN’s costs (Id., p. 81).

⁷⁹ Moreover, there is no assurance (retroactively or prospectively) that CN would cooperate in reducing or mitigating these alleged incremental costs, despite the fact that CN controls the activities associated with their occurrence. (See Point V(B), supra.).

If the thousands of pages of documents (including work papers) CN has submitted to the Board to substantiate only *one-month* of its alleged incremental costs is any indication, an audit of many more months of such costs back to September 1, 2019 obviously would be much more complex, involve a substantial amount of Amtrak resources, and potentially result in resort to a dispute resolution mechanism.

* * *

In sum, retroactive reimbursement of incremental costs is just as unfair, prejudicial and unreasonable to Amtrak as retroactive application of an incentive and penalty system would be to CN. The Board should reject CN's arguments and, as Amtrak has proposed, apply *all* of terms and conditions of a new OA prospectively only.

PART III - MISCELLANEOUS CONTRACT ISSUES

POINT VIII

THE BOARD SHOULD REJECT CN'S PROPOSAL TO ADD DUPLICATIVE TERMS RELATED TO REVIEW OF AMTRAK'S SCHEDULES

CN has asked the Board to impose several clauses in a new OA which allow it to participate in a joint review of Amtrak's schedules. (See CN Opening Br., p. 71; CN Redline, § 3.2(G)). The 2019 Decision did not, however, identify processes for reviewing Amtrak's schedules as an open issue to be addressed by the Board in its Final Decision. The Board, therefore, should not consider these issues or impose the clauses proposed by CN. In the event the Board does address CN's new arguments, they are without merit.

In the Final Rule, FRA provided for a comprehensive process by which Amtrak and its Host Railroads would seek to "align schedules with the [COTP] metric." (85 F.R. at 72978; see also 49 C.F.R. §§ 273.3, 273.5(c)(2)). Section 3.2 of the 2011 OA—which Amtrak and CN both propose to include in a new OA—provides a process by which "[e]ither Party may request changes to an existing schedule," after which the Parties will jointly review the request. (CN Redline, § 3.2(D)(1); Amtrak Redline, § 3.2(C)(1)).

Not satisfied with these processes, CN proposes that the Board add yet another group of clauses to a new OA allowing it to further participate in reviewing Amtrak's schedules on a "staggered basis at least one every five years." (CN Opening Br., p. 71). More specifically, CN proposes to require the Parties to jointly review the schedules: for the Illini/Saluki route, two years after the effective date of a new OA; for the City of New Orleans route, three years after the effective date; and for all other routes, four years after the effective date. (CN Redline, § 3.2(G)(1)(a-c)). Then, the Parties would conduct another joint review for each route three (3) years

after the initial review. (*Id.*). CN also proposes terms that may require that these joint reviews happen even sooner or more frequently.⁸⁰

[REDACTED]

[REDACTED]

[REDACTED]

The Board should reject these proposed terms in their entirety because, *inter alia*, they are inconsistent with the Final Rule and are duplicative and unnecessary.

A. CN's Proposal is Contrary to the Final Rule

Like many of its other proposed terms, CN's proposed "staggered schedule review" is contrary to and inconsistent with the Final Rule's detailed process for Amtrak and its Host Railroads to review and certify Amtrak's schedules. (85 F.R. at 72979-80). The purpose of that certification process is to allow the Parties to jointly review Amtrak's schedules to assure that they are in "alignment with the [COTP] metric and standard." (*Id.* at 72979). This includes a review of the allocation of existing recovery time throughout the schedule. (*Id.* at 72980) ("a host railroad and Amtrak can arrive at an efficient use of recovery time, which is an inherent element in any schedule."). FRA also established a timeframe during which the Parties could review and certify Amtrak's schedules.⁸¹

⁸⁰ CN proposes that, if the Parties have not agreed pursuant to the Final Rule to certify schedules for the Illini/Saluki and CNO routes within three (3) months, they will immediately initiate a joint review process. (CN Redline, § 3.2(G)(2)(a)). CN also proposes that either Party could initiate a review if certain criteria are met, including, for example, if CN has not earned incentive payments on a route for two (2) consecutive quarters. (*Id.*, § 3.2(G)(2)(b)).

⁸¹ FRA provided time for the Parties "to negotiate schedules by delaying application of the [COTP] standard until the first calendar quarter six months after publication of the Final Rule." (85 F.R. at 72979). If a schedule remained disputed after that period and the Parties engaged in non-binding dispute resolution, "then the [COTP] standard does not apply until the second full calendar quarter" If a schedule remained uncertified after six months, the Final Rule: (1) mandates that the COTP metric would apply to the route, notwithstanding that the schedule had

To the extent that CN is entitled to a “joint review” of Amtrak’s schedules, the timing and scope of that review is comprehensively provided for in the Final Rule. CN’s proposal, however, seeks significantly *more* extensive and frequent involvement in Amtrak’s scheduling decisions than is provided for by the Final Rule. CN’s request that the Board impose such terms is inconsistent with the Final Rule and seeks to expand CN’s rights beyond those afforded to it as a Host Railroad thereunder.⁸² As discussed in Point I(A), *supra*, the Board cannot and should not impose such terms.

Notably, nothing in the Board’s 2019 Decision calls for imposing the terms that CN is seeking, as CN seems to suggest. The Board did observe that the Parties should “work together to develop new contract schedules” including the redistribution of recovery time “to give CN a meaningful opportunity to meet its performance obligations.” (2019 Decision, p. 11). After the Board’s 2019 Decision, the Final Rule established the processes for the Parties to do just that. Pursuant to those processes, the Parties successfully certified twenty of twenty-six schedules (CN Opening Br., p. 68). And, as discussed in Amtrak’s opening submission, the schedules that CN continues to refuse to certify afford CN a “meaningful opportunity” to meet the Final Rule’s COTP metric and earn incentives. (Amtrak Opening Br. pp. 56-60; Weiss VS, ¶¶ 34, 40-79). The Final Rule’s certification process, therefore, addresses the Board’s concerns identified in the 2019

not been certified; and (2) requires Amtrak and its Host Railroad to notify, *inter alia*, Congress, the Secretary of Transportation and the Board that the schedule remains uncertified. (*Id.*, n.23, n.26; see also 49 C.F.R. § 273.5(c)(2)).

⁸² CN downplays the importance and comprehensive nature of the Final Rule’s certification process, claiming it “*only* called upon Amtrak and hosts to update Amtrak schedules in light of the new standard” (CN Opening Br., p. 68) (emphasis added). But, the new COTP standard, and the need to align Amtrak’s schedules with it, was the only reason FRA allowed CN any participation in a “joint review” of Amtrak’s schedules. Absent that, there would be no justification for CN’s involvement in Amtrak’s scheduling process, absent Amtrak’s agreement.

Decision.

Except to the extent the Parties agree to retaining terms from § 3.2(D) of the 2011 OA concerning schedule review (discussed *infra*), the Board need not impose CN's additional terms to afford CN even further involvement in reviewing Amtrak's schedules.

B. CN's Proposed Terms are Unnecessary and Duplicative of Other Provisions the Parties are Both Proposing

CN also acknowledges that the 2011 OA includes § 3.2(D), which is entitled "Changes to Existing Schedules Not Requiring Changes in FRA Track Class." Both Parties are proposing that section remain in a new OA.⁸³ Section 3.2(D)(1) expressly states that "[e]ither party may request changes to an existing schedule" at any time.⁸⁴ Section 3.2(D)(2) provides that the Party requesting the change must provide a proposed Schedule Skeleton, the proposed effective date of the change and "also supply such other information necessary to permit the Reviewing Party to analyze the proposed schedule change." Section 3.2(D)(4) provides that Amtrak's schedules will not be changed "absent agreement of the Parties or any order by the STB, a court of competent jurisdiction, or an arbitrator pursuant to Article VI requiring such schedule change."

Section 3.2(D) already provides a clear mechanism for the Parties to propose and jointly review amendments to existing schedules. And, if there is a continuing dispute, the clause directs the Parties to arbitration under Article VI of the OA. There is no reason for the Board to impose a duplicative schedule review clause, as proposed by CN in its new § 3.2(G).

⁸³ The Final Rule provides that "the certified schedule metric recognizes that ongoing coordination between Amtrak and the host railroad is needed as certified schedules are impacted by future events." (85 F.R. at 72979). Section 3.2(D) provides for just such coordination if future events warrant a review and potential revision of an Amtrak schedule.

⁸⁴ Note that, due to certain non-substantive revisions proposed by Amtrak moving defined terms from § 3.2(A) to Article I of the OA, former § 3.2(D) appears as § 3.2(C) in Amtrak's redline. As such, the terms in CN's Redline in § 3.2(D), appear in § 3.2(C) of Amtrak's Redline.

CN suggests that its proposed “new review process” adds some value because it “is intended to be cooperative and would require that the parties work together to examine, validate, or as necessary modify existing schedules so they are up to date and reflect existing equipment and operating conditions.” (CN Opening Br., p. 70). But, existing § 3.2(D) provides for exactly such a process—CN can make any schedule change request it believes is required by existing “equipment and operating conditions.”⁸⁵ And, under § 3.2(D)(2), CN is free to present Amtrak with “any other information necessary to permit” Amtrak to analyze the proposed change.

There is simply no need, or benefit to, the duplicative terms proposed by CN, and the Board should reject them for this reason alone.

C.

⁸⁵ For example, § 3.2(D) expressly applies to “schedule modifications that require changes in Base Timetable Speed, additions, deletions, or modifications of station stops, and material changes in consist or type of equipment operated for a sustained period.” Section 3.2(D)(1) further states that schedule changes “shall be compatible with CN’s physical capabilities and resource limitations, giving due regard to . . . CN’s speed, weight, and similar operating restrictions and rules and safety standards and to the avoidance of unreasonable impairment of the adequacy, safety, and efficiency of all railroad operations over the Rail Lines”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

* * *

For these reasons, the Board should reject CN’s terms and conditions with respect to its proposed staggered review of Amtrak’s schedules.

POINT IX

**THE BOARD SHOULD REJECT CN’S PROPOSED
TERMS GOVERNING DISPUTE RESOLUTION**

CN contends that it has proposed a “more robust process for resolving billing disputes, including delay coding and trips not counted.” (CN Opening Br., p. 63). In particular, CN claims that its proposal more expeditiously resolves disputes concerning the delay codes assigned by an

Amtrak conductor to a particular Amtrak train delay. (*Id.*). CN also contends that Amtrak frequently “misapplies those codes” and that CN’s “efforts to persuade Amtrak to correct delay attributions has been beset with lengthy delays in Amtrak response time” (*Id.*, pp. 63-64). CN then concludes that because its proposed “new Operating Agreement is to make greater reliance on Amtrak coding, it is essential that CN be provided a robust procedure for challenging and correcting incorrect codes.” (*Id.*).⁸⁷ These arguments are without merit.

A. CN’s Focus on Resolving Disputes about Amtrak Delay Codes Further Undermines its Proposed Incentive and Penalty System

CN’s concern with resolving disputes with Amtrak concerning the delay code assigned by Amtrak’s conductors further undermines proposals for determining when an Amtrak train is “on time” or counted at all for purposes of calculating OTP on a route. Amtrak’s delay codes are central to CN’s proposed system because they are the initial criteria by which the Parties determine whether a particular additional tolerance or DNC designation is applicable to a delayed Amtrak train.

As noted, CN contends that disputes between the Parties concerning the appropriate delay code have been frequent and recurring. But, despite this, CN admits that its proposed system for determining when an Amtrak train is “on time” will have “greater reliance” on those delay codes. This appears to be true—CN’s proposed system involves so many delay codes that it adds a three-page appendix to the OA (Appendix XI) just to catalogue them. (CN Redline, Appx XI).⁸⁸ By

⁸⁷ See also Point I(B)(1)(d), *supra* (discussing how CN’s extensive reliance on delays codes as part of its proposed incentive and penalty system could produce recurring disputes between the parties as to the causes of delays impacting Amtrak’s trains).

⁸⁸ Because its proposal calls into use so many delay codes, CN’s proposal also appears to invite disputes over the “root cause” of the delays to Amtrak’s trains. But, when CN proposed this concept previously in this case, the Board found: “on the record presented here, CN has neither adequately explained how a ‘root cause’ approach would work in practice nor shown that such an approach would not be too burdensome and time-consuming to apply.” (2019 Decision, p. 24).

CN's own admission, therefore, it is proposing a system that will continue to proliferate monthly and quarterly disputes between the Parties, and perhaps may cause them to be more frequent. It is unreasonable for CN to propose such a system, and this provides even more reason for the Board to reject CN's entire proposal.⁸⁹

B. CN's Proposal Does not Seek to Resolve Disputes in Real Time

The Parties' proposals as to dispute resolution are not vastly different, particularly with respect to disputes that may impact incentives or penalties under Appendix V (including disputes related to the appropriate delay code). (Compare CN Redline, § 5.2(A) (as to monthly billing disputes) and Appx V, § A(4) (as to delay data disputes) with Amtrak Redline, Appx V, § II (providing for Daily and Quarterly Processes for dispute resolution).

As explained in Amtrak's opening submission, however, Amtrak proposes real-time, early-stage collaboration between Amtrak and CN to resolve disputes over delay data that might impact the calculation of incentives and penalties under Appendix V. (Amtrak Opening Br., pp. 49-50; Amtrak Redline, Appx V, § II(1)). Amtrak has included these terms in Appendix V, under a section entitled "Daily Process," and requires CN and Amtrak to confer almost immediately after the trip of the delayed Amtrak train has occurred. (Id.). Under Amtrak's proposal, CN reviews

In its current submission, CN has not even tried to address the Board's prior concerns about how "root cause" would be determined, but its proposal appears likely to result in disputes over this very subject.

⁸⁹ Amtrak's penalty and incentive system requires the tracking of CN-responsible HRD's per 10,000 train miles. This involves tracking Amtrak conductors' use of the seven delay codes which correlate to HRDs, as defined in the Final Rule: DCS - Signal delays; DMW - Maintenance of way work; DSR - Temporary speed restrictions; FTI - Freight train interference; CTI - Commuter train interference; PTI - Passenger train interference; and RTE - Routing. (See Amtrak Redline, Article I; Appx V, § I). This is consistent with the Final Rule, which identifies these Host-responsible delays and instructs them to be "recorded by Amtrak in accordance with Amtrak procedures" (See 49 C.F.R. § 273.3). Of course, this involves the use of far fewer codes than CN's system, and concurrently reduces the number of potential disputes related to them that are likely to occur.

Amtrak’s daily delay data and must notify Amtrak of any disputed delay determinations “within four (4) calendar days after the Origin date of the Amtrak Train” (*Id.*). The Parties then “shall endeavor to reach agreement on any such corrections to the delay data within five (5) calendar days after the Origin date of the Amtrak Train.” (*Id.*). If agreement is not reached, the Parties may escalate the dispute through a “quarterly process.” (*Id.*). If the dispute is not resolved through the quarterly process, the Parties may then seek arbitration. (*Id.*).

By contrast, CN’s proposal provides for a review of “delay data,” but does not require that CN notify Amtrak about any potential disputes until “no later than the 5th day following *the end of the calendar month in which the disputed delay occurred.*” (CN Redline, Appx V, § A(4) (emphasis added)). And, CN’s proposal then affords the Parties until the end of *the following month* to resolve their dispute (*Id.*).

Amtrak’s proposal, therefore, more expediently—and in real time, while data and events are fresh—requires the Parties to try to resolve their disputes. Between the proposals submitted by CN and Amtrak, this makes Amtrak proposal far more reasonable because it places a premium on early resolution of disputes.⁹⁰

C. The Board Should Reject CN’s Proposed Term Making Resolutions of Disputes Precedential

CN asks the Board to impose a term which provides:

For disputes in which the cause of delay to an Amtrak train is at issue, any agreement of the Parties, determination by an arbitrator, or other binding determination regarding the cause of that delay may be cited as precedent for any future dispute involving the same or similar circumstances.

⁹⁰ Under both Parties’ proposals, if their initial efforts at dispute resolution fail, the dispute is subject to escalation and, if not resolved, is ultimately eligible for arbitration under Article VI of the OA. (See CN Redline, § 5.2(A); Amtrak Redline, Appx V, § II(2)).

(CN Redline, § 5.2(A)). The Board should reject this proposal for several reasons.

First, if Amtrak and CN successfully resolve a dispute as to the cause of a delay to an Amtrak train, it constitutes a “settlement.” It is well-established that settlements are not precedential and have no binding effect on later disputes between the Parties.⁹¹ For this reason alone, the Board should reject CN’s proposed term.

Second, and more practically, deeming a resolution reached by Amtrak and CN to be “precedential” and binding in subsequent disputes involving “similar circumstances,” would potentially discourage both Parties from expediently resolving disputes over matters involving relatively small issues. This would include, for example, the cause of delays impacting a single train trip, which may have little, if any, material impact on the amount of incentives or penalties to be paid. Settlements, of course, are often matters of compromise, and not a reflection of the merits of the positions taken by either side. If that settlement is “precedential” and binding on Amtrak or CN in a later dispute, they might be discouraged from entering into the settlement in the first place, or of working amicably and efficiently to resolve disagreements. Discouraging business-to-business resolution of disputes between Amtrak and CN is not in the interest of either Party. See, e.g., Ocasio v. Ollson, 596 F. Supp. 2d 890, 901 (E.D. Pa. 2009) (refusing to apply collateral estoppel where it “could potentially have the effect of discouraging settlements”). But, that is precisely what CN’s proposal may accomplish

Because CN’s proposal potentially makes settlement of routine disputes less appealing, the

⁹¹ See, e.g., Arizona v. California, 530 U.S. 392, 414 (2000) (“settlements ordinarily occasion no issue preclusion (sometimes called collateral estoppel)”); Anderson v. AT&T Corp., 2001 WL 1681154, at *1 (S.D. Ohio 2001) (“This Order is entered solely to effectuate settlement between the parties and shall have no preclusive effect (either through collateral estoppel or res judicata) or precedential value on any other pending or anticipated dispute.”); Schlang v. Key Airlines, Inc., 158 F.R.D. 666, 671 (D. Nev. 1994) (“issue preclusion under the collateral estoppel doctrine is also not a concern between the parties due to the settlement.”).

Parties may find themselves in arbitration more frequently—a process which CN calls “too unwieldy and costly a tool to be effective for correction of routine coding errors.” (CN Opening Br., p. 64). The Board should not impose terms which makes arbitration the norm for resolving disputes about the cause of delays to Amtrak trains, rather than collaborative joint resolution of those disputes by the Parties.

With respect to arbitration, the courts are split on whether an award constitutes binding precedent, even as between the same parties.⁹² If the Parties wish to cite a prior arbitration award concerning the cause of a delay to an Amtrak train as precedent, they are free to do so. But, the Board should not impose a term which effectively *pre-determines* that the prior arbitral award constitutes binding precedent.

D. The Board Should Reject CN’s Proposed Term Requiring Amtrak to Provide GPS and Wi-Tronix Data

If the Board is inclined to adopt some or all of CN’s proposed dispute resolution procedures—which it should not—it should reject CN’s proposed term that Amtrak be required to provide CN with “locomotive data (including data from GPS, Wi-Tronix, or other sources) showing the speed, braking and location of each Amtrak train operating” on CN’s system. (CN Redline, Appx V, § A(4)).

Wi-Tronix continuously monitors vital locomotive systems and reports same periodically. (Blair Reply VS, ¶ 58; see also Lizotte VS, pp. 1-2 (discussing Wi-Tronix data)). This data concerning Amtrak’s locomotives is proprietary to Amtrak. (Blair Reply VS, ¶ 58). As a result,

⁹² See, e.g., Union International UAW, Loc. 2415 v. Bacardi Corp., 8 F.4th 44, 54 (1st Cir. 2021) (“arbitration awards are not accorded the weight of ‘judicial authority’ in determining future controversies, even between the same parties or over the same issues.”) (quotations omitted); Hill v. Wackenhut Servs. Int’l, 971 F. Supp. 2d 5, 14–15 (D.D.C. 2013) (“past arbitration awards can have preclusive effect in later disputes”).

Amtrak does not share its Wi-Tronix data in the normal course of business, including with its Host Railroads, absent an exceptional circumstance (such as in connection with a reported rules violation or accident investigation). (Id.). This is generally the approach taken by other railroads with respect to their Wi-Tronix data. (Id., ¶ 59). For example, CN does not, in the normal course of business, share its Wi-Tronix data concerning its freight trains with Amtrak. (Id.).

Because Amtrak does not share its Wi-Tronix data in the normal course of business, it does not maintain processes to collect and share it. (Id., ¶ 60). Rather, on those occasions where it is appropriate to produce Wi-Tronix data, it does so on an “as-needed” and per-train basis. (Id.).

CN has not proffered any reasonable basis for the Board to impose this term as part of a new OA. It certainly has not articulated any cognizable legal basis as to why or how it is entitled to compel Amtrak to disclose its proprietary Wi-Tronix data—data which CN itself guards and protects as proprietary and does not generally provide to Amtrak. Moreover, CN appears to be requesting that Amtrak provide it with Wi-Tronix data for each and every train trip on every route operating over its system. Because Amtrak does not have a process in place for such *en masse* productions of Wi-Tronix data, it would be complicated and burdensome task which CN would presumably demand that Amtrak replicate month-after-month. (Id., ¶ 62). There is no basis for this overbroad and burdensome demand.

The Board should also reject CN’s proposed term that requires Amtrak to provide CN with “GPS” data for each and every Amtrak train that operates on its system. CN already is—or should be—aware of the location of Amtrak’s trains at any given time on its system from its own sources. (Id., ¶ 63). For example, CN dispatches Amtrak’s trains and, as a result, its dispatchers know the location of every Amtrak on its system at any given time. (Id., ¶ 64). Moreover, at all times, Amtrak’s website displays the location (based on GPS data) and other information related to its

trains (including whether the trains are late or on time).⁹³ (Id., ¶ 65).

Additionally, Amtrak provides CN with on-line access to and daily reports from its Electronic Delay Reporting (“EDR”) data. (Id., ¶ 66). This is to provide CN with, *inter alia*, all of the delay codes recorded by Amtrak’s conductors for the trains operating on its system. (Id.). This data also enables CN to determine: where a train was at a given time; its arrival and departure times at stations and control points; whether that train was delayed; the cause of the delay; and the length of the delay. (Id.).

For these reasons, CN has not articulated any basis why it should be entitled to have Amtrak compile and provide it with Wi-Tronix and GPS data for each and every Amtrak train operating on its system. In fact, data related to, among other things, the location of Amtrak’s trains, and delays impacting them, is either already known to CN or is publicly available. The Board should not require any more of Amtrak.

* * *

For these reasons, the Board should reject CN’s proposed terms with respect to dispute resolution. Alternatively, if the Board is inclined to impose those terms, it should not under any circumstance impose CN’s proposed terms: (1) making prior negotiated resolutions or arbitration awards precedential; or (2) requiring that Amtrak provide CN with “locomotive data” such as GPS or Wi-Tronix data.

⁹³ See <https://www.amtrak.com/track-your-train.html>.

POINT X

CN'S PROPOSAL WITH RESPECT TO THE CONFIDENTIALITY OF THE NEW OA IS TOO NARROW

CN's proposed confidentiality provision is similar to Amtrak's. (See CN and Amtrak Redlines, § 8.14). Both Parties agree that the new OA *should* contain a confidentiality provision protecting costs and pricing terms. (See CN Opening Br. p. 96; Amtrak Opening Br. p. 74). Cost and pricing terms appear in the following appendices to a new OA: Appendix IV (Current Costs and Price Level Adjustments; Appendix V (Performance Payments and Penalties); and Appendix IX (Payment for Amtrak Operations over the St. Charles Air Line Route). (See Amtrak Opening Br., p. 74, n. 51; CN Opening Br. pp. 97-98; see also CN and Amtrak Redlines, § 8.14).⁹⁴ Both Parties propose confidentiality clauses which include these Appendices. Amtrak proposes, however, that Parties maintain additional information as confidential.

A. The Parties' May 1, 2011 Side Letter Agreements are Confidential

The Parties have already expressly agreed in both May 1, 2011 Side Letter Agreements that they are confidential. (See Side Letter Agreements, Exh A. to Amtrak Redline). Accordingly, Amtrak has proposed simply attaching these Letters to the new OA as Exhibits and incorporating them by reference. (Amtrak Opening Br., pp. 76-78). Amtrak has not referenced the Side Letters in its proposed confidentiality clause (Amtrak Redline, § 8.14), but because those Side Letters are confidential under their own terms, the Parties are already obligated to maintain them as such. No express, duplicative mention is needed in § 8.14 of a new OA.

⁹⁴ Amtrak believes Appendix VI also contains confidential information, although Amtrak's proposed confidentiality clause does not reference it. Amtrak's proposed redline, however, combines the terms of Appendices V and VI under a single new proposed Appendix V (which is included under Amtrak's proposed confidentiality clause). (Amtrak Redline, § 8.14).

Although CN has not expressly addressed the Side Letter Agreements in its confidentiality discussion or proposed clause, it has proposed to restate some of the Side Letters' substantive terms in its proposed Appendix IV.⁹⁵ CN has included Appendix IV within the scope of its proposed confidentiality clause. (See CN Opening Br. p. 98; see also CN Redline, § 8.14 and Appx IV, Tables I & III, items 26 & 27). As such, CN presumably will agree to maintain the Side Letters in confidence.

B. The Parties' Indemnification Clauses in Section 7.2 Should be Confidential

Amtrak also proposes that the confidentiality provision of a new OA cover the indemnification clauses in §§ 7.2(A-K). (See Amtrak Opening Br. p. 75). As argued in Amtrak's opening submission: (1) the OA's indemnity provisions reveal sensitive business information as to how specific damages and losses arising from railroad operations are apportioned between Amtrak and CN; and (2) courts often shield indemnity provisions from disclosure by issuing protective orders. (Id.).

Although CN has not mentioned these indemnity clauses in its submission, there does not appear to be any reason why CN would object to keeping them confidential. Further, because both Parties have proposed retaining the indemnity provisions without amendment, there does not appear to be a need for the Board to disclose or reference the indemnification clauses in its Final Decision setting new terms.

For the foregoing reasons, the Board should adopt the confidentiality clause proposed by Amtrak. (Amtrak Redline, § 8.14).

⁹⁵ As discussed in Point XI, *infra*, Amtrak submits that its method of incorporating the Side Letter Agreements by simply attaching them as Exhibits to the new OA is a more reasonable approach than the one proposed by CN.

POINT XI

THE BOARD SHOULD REJECT CN'S METHOD OF INCORPORATING THE MAY 1, 2011 SIDE LETTER AGREEMENTS INTO THE OA

On May 1, 2011, the Parties entered into two Side Letter Agreements, one concerning Amtrak reimbursement of certain PTC-related costs paid by CN and the other for reimbursement of certain Safety Appliance costs paid by CN. (Amtrak Redline, Exh. A; Blair VS, Exhs. 5, 6). CN and Amtrak agree that the Side Letters should be incorporated into the Parties' OA, but have proposed different approaches for doing so. (See Amtrak Opening Br. p. 77; CN Opening Br. p; 98).

Amtrak proposed to simply incorporate the Side Letters by attaching them as Exhibit A to the new OA. CN, however, has overcomplicated the issue by cherry-picking certain language from the Side Letters, which it then cut-and-pasted into its proposed Redline. But, CN then omitted important language, the result of which is to materially alter the substantive agreements struck in the Side Letters or, at minimum, to unnecessarily create a potential ambiguity.

This is identical to CN's defective approach in the briefing leading to the Board's 2019 Decision, to which Amtrak objected. (See CN Surrebuttal Evidence Redline (submitted on October 30, 2017 at Appx IV, Items 26 and 27). CN included some language from the Side Letter Agreements, while ignoring other important, limiting language. (Id.). For example, CN omitted that Amtrak's obligations to reimburse CN applied only to specific timeframes, after which *only* maintenance costs would be reimbursable. (Compare Blair VS, Exh. 5, p. 2; Exh. 6, p. 2, with CN Surrebuttal Evidence Redline at Appendix IV, Items 26 and 27). CN also omitted language mandating Amtrak's right to review CN's plans for implementation and maintenance of PTC equipment and Safety Appliances "prior to any expenditure by CN." (Id.). Amtrak previously

raised these concerns about CN's proposal. (See Amtrak's Brief dated January 19, 2018, pp. 103-104).

Again, CN has engaged in the very same cherry-picking. For example, CN continues to ignore that only maintenance costs are reimbursable after a certain time frame. (See CN Redline, Appx IV, Items 26 and 27).⁹⁶ In short, CN overcomplicates what should be a straightforward process. And, it attempts to renegotiate the terms of the Side Letters, not merely incorporate them, as was the Parties' agreement in the Letters themselves. Indeed, CN omits from its proposed OA terms that are clearly included in the Side Letters. This will only create confusion and ambiguity concerning the Parties' agreement. In contrast, attaching the Side Letters as Exhibits to the new OA—as Amtrak has proposed—simplifies matters and avoids creating any ambiguities. Because the Board appropriately avoids issuing decisions which create such uncertainty in the relations of Parties before it,⁹⁷ it should reject CN's proposed terms allegedly incorporating the Side Letters into the new OA (including in its line items contained in Appendix IV of its Redline).

CONCLUSION

For the reasons explained in this brief, and in the Reply Verified Statement of Thomas D. Crowley and Robert D. Mulholland and Reply Verified Statement of James A. Blair, Amtrak requests that the Board:

1. deny CN's requests to impose its proposed terms and conditions of a new Operating Agreement between CN and Amtrak that are set forth in CN's opening submission dated

⁹⁶ CN's current proposal does add language reflecting Amtrak's right to review.

⁹⁷ See Union Pac. R.R. Company - Petition for Declaratory Order, FD 35504, 2013 WL 1812204, at *3 (S.T.B., Apr. 25, 2013) ("leaving such an ambiguity in place would not adequately inform [the] shippers what service terms they are accepting under the tariff."); North Am. Freight Car Ass'n v. Union Pacific RR. Co., NOR 42119, 2015 WL 1119742, at *7 (S.T.B., Mar. 11, 2015) (same).

May 27, 2022; and

2. grant Amtrak's requests to impose its proposed terms and conditions of a new Operating Agreement between CN and Amtrak that are set forth in Amtrak's opening submission dated May 27, 2022.

Respectfully submitted,

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[CONTAINS CONFIDENTIAL INFORMATION FILED UNDER SEAL]

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

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

**REPLY VERIFIED STATEMENT OF JAMES A. BLAIR
ON BEHALF OF NATIONAL RAILROAD PASSENGER CORP.**

1. I submit this Reply Verified Statement in response to the opening submission of the Canadian National Railway Company (“CN”) in this matter dated May 27, 2022. In CN’s submission, it proposes terms and conditions for a new Operating Agreement (“OA”) between CN and the National Railroad Passenger Corp. (“Amtrak”).

2. This Reply Verified Statement will provide support for certain assertions made by Amtrak in its brief opposing CN’s opening submission.

3. I am employed by Amtrak as Assistant Vice President - Host Railroads. My background and qualifications have been presented to the Board in my prior Verified Statement dated May 26, 2022, submitted in this matter.

A. Recent Customer On-Time Performance Data and Amtrak’s Passenger Deboarding Data

4. On May 17, 2022, the Federal Railroad Administration (“FRA”) issued its *Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations* for the first quarter of fiscal year 2022. **(Exhibit 1)**. The report publishes data on the metrics and standards established by the FRA in its Final Rule entitled *Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72972 (Nov. 16, 2020) (codified at 49 C.F.R. 273.1 *et seq.*) (“the Final Rule”), including the customer on-time performance (“COTP”) of Amtrak trains (as that metric was described and established in the Final Rule).

5. The following Amtrak routes, which operate over CN's system, are at issue in this case: City of New Orleans, Blue Water, Illini/Saluki, Lincoln Service, Texas Eagle and Wolverine. The data published in the FRA's FY2022, Q1 report shows that Amtrak trains on only one of those routes has COTP over the minimum standard of 80%¹ (the Lincoln Service). COTP on the remainder of the routes is below 80%, with most well-below 80%. The COTP for each route is below:

<i>Amtrak Route</i>	<i>Route-Level COTP for FY 2022, Q1</i>
City of New Orleans	79.9%
Blue Water	66.5%
Illini/Saluki	60.4%
Lincoln Service	80.1%
Texas Eagle	66.1%
Wolverine	58.8%

(Id., Table 7 - Customer On-Time Performance by Route).

6. Amtrak has reviewed its ridership data to identify the percentage of Amtrak passengers on the routes shown above that deboarded at stations located on CN's system versus stations not located on CN's system in 2022. Nearly all of the Amtrak's passengers deboard at stations on CN's system for the City of New Orleans and Illini/Saluki routes.² Amtrak's data showed the following with respect to the Amtrak trains operating on the other routes:

¹ While the standard contemplates measurement over two quarters, the failure to meet the performance standard in one quarter is relevant to a train or route's performance over both quarters.

² As the Board observed in its August 9, 2019 Decision: (1) 306.7 of the 308.9 miles on the Illini/Saluki route are on CN's system; and (2) 927.9 of the 933.8 miles on the City of New Orleans route are on CN's system. (2019 Decision, p. 4).

<i>Route</i>	<i>Train</i>	<i>Passengers Deboarding on CN Territory - 2022 YTD</i>	<i>Passenger Deboarding on Non CN Territory 2022 YTD</i>
Texas Eagle	21	0%	100%
Texas Eagle	22	3%	97%
Blue Water	364	83%	17%
Blue Water	365	3%	97%
Lincoln Service	300	7%	93%
Lincoln Service	301	1%	99%
Lincoln Service	302	8%	92%
Lincoln Service	303	1%	99%
Lincoln Service	304	17%	83%
Lincoln Service	305	2%	98%
Lincoln Service	306	18%	82%
Lincoln Service	307	1%	99%
Wolverine	350	43%	57%
Wolverine	351	1%	99%
Wolverine	352	33%	67%
Wolverine	353	1%	99%
Wolverine	354	28%	72%
Wolverine	355	2%	98%

7. As the data above demonstrates, the majority of Amtrak's passenger do not disembark at stations located on CN's system on the Texas Eagle, Blue Water, Lincoln Service and Wolverine routes.

B. CN's Proposal Related to On-Time Performance and a New Incentive and Penalty System

8. As explained in detail in Amtrak's brief opposing CN's opening submission, CN's proposed terms related to the on-time performance ("OTP") of Amtrak's trains and the calculation of CN's performance payments (or "incentive payments" or "incentives") and penalties, are contrary to this Board's August 9, 2019 Decision in this matter ("the 2019 Decision") and the Final Rule.

9. CN proposes to count an Amtrak train "on time" for purposes of its incentive and penalty system if the train arrives "on or before the scheduled arrival time" at a station on its system, plus the sum of minutes attributable to certain enumerated delays (*i.e.*, "additional tolerances"). (See CN Redline,³ Appx V, §§ 1(a-l), 2)).

10. CN's enumerated "additional tolerances" include, for example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³ "CN Redline" refers to CN's redline of its proposed OA between Amtrak and CN.

⁴ [REDACTED]

12. Use of these tolerances is not how the Final Rule mandates that an Amtrak train is determined to be on time. In the Final Rule, the FRA established the COTP metric, which measures OTP as follows: “[t]he total number of customers on [an Amtrak train] who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, divided by the total number of customers on the [Amtrak train].” (See 85 F.R. at 72974; 49 C.F.R. 273.5(a)(1)). This metric is easily verifiable, and Amtrak already reports COTP to the FRA and CN on this basis. This data serves as the basis for the FRA’s quarterly reports, which publish COTP for each Amtrak route, among other data.

13. Also, under CN’s proposal, CN can effectively add minutes to the scheduled arrival time of a delayed Amtrak train if the delay was caused by one of CN’s enumerated additional tolerances. The delayed train may nonetheless be considered on time, and thus CN could collect an incentive payment, even though Amtrak’s passengers have reached their destination late (perhaps, hours late).

14. This is true even when CN’s own operational decisions have directly caused the delay that makes Amtrak’s passengers late. Under CN’s proposal, if an Amtrak train is scheduled to arrive at a station at 2:00 p.m., but the train is delayed for one hour because [REDACTED]
[REDACTED]
[REDACTED], that train will nonetheless be considered “on time” under CN’s proposed OA if it arrives at 3:00 p.m. From the perspective of Amtrak’s passengers, however, the train has arrived an hour late.

15. Because CN’s proposal counts Amtrak trains as “on time” when, in truth, the passengers on that train are late under an appropriate COTP measurement, CN’s system allows it to potentially earn incentives under circumstances where COTP (as measured by the Final Rule

and reported to the FRA) is poor for a given Amtrak route.

16. This could result in at least two irrational scenarios. First, under CN's system, if there is poor COTP, CN could earn incentives even when CN has itself *caused* the poor COTP on an Amtrak route.⁵ As noted, CN's proposed additional tolerances include extending an Amtrak train's scheduled arrival time for delays caused by CN's *own operational decisions*. For example, CN is asking the Board to approve additional tolerances (and often by extension, incentive payments to CN) when [REDACTED]

[REDACTED] These delays are within CN's operational control to eliminate or mitigate by, for example, [REDACTED]

17. Second, if, in such a scenario, COTP drops below 80% for two consecutive quarters, the Board could institute an investigation (or would be required to institute one upon complaint from Amtrak) under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") (codified at 49 U.S.C. 24308(f)(1)), even while CN reports the train as "on-time." Under CN's proposal, therefore, an absurd scenario could transpire where Amtrak is paying CN incentives for a route, but the Board is concurrently investigating poor performance on the same route pursuant to PRIIA § 213, including into issues concerning CN's potential violations of

⁵ In contrast, under Amtrak's proposed system, CN is very unlikely to earn any incentives if it has contributed to that poor COTP. This is because Amtrak's system incorporates the "Train Delays per 10,000 train miles" metric of the Final Rule for measuring CN-responsible delays – a metric incorporated nowhere in CN's proposed system. Under Amtrak's system, if CN-responsible HRDs are above 924 minutes per 10,000 train miles for a route – indicating that CN likely bears responsibility for the sub-80% COTP – CN will not earn any incentives. This is sharply different from CN's system, which creates the anomalous situation discussed above under which CN's HRDs may be high, but CN nonetheless still receives incentive payments because those CN-caused delays are, by contract, "additional tolerances" which render a late-arriving Amtrak train as contractually "on time."

Amtrak's statutory preference.

18. As explained in Amtrak's opposing brief, CN also proposes to completely exclude trips of Amtrak trains impacted by certain delays from the calculations of OTP. These trips are known as "Do Not Counts" ("DNCs").

19. For example, CN proposes to exclude train trips as DNCs if:

a.

[REDACTED]

b.

[REDACTED] and

c.

[REDACTED]

[REDACTED].

20. As explained further in Amtrak's opposing brief, exclusion of these Amtrak train trips from an OTP calculation is contrary to the Final Rule and the Board's 2019 Decision, because it completely ignores the experience of the Amtrak passengers on those trains who are arriving late.

21. Notably, CN's claim that it is proposing to treat Amtrak trains as DNCs only if they are delayed by "unusual circumstances *beyond CN's control*" is false. (CN Opening Br., p. 59).

22. For example,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. CN's inclusion of DNCs in a proposed OA between Amtrak and CN is contrary to the Final Rule and the 2019 Decision.

24. As further explained in Amtrak's opposing brief, CN's proposal to measure OTP only at stations or endpoints on CN's system is also contrary to the Final Rule and the 2019 Decision, both of which require consideration of the quality of the experiences of all passengers on an Amtrak route, regardless of whether their destination is on CN's system or that of another Host Railroad⁶ along the route.

25. On some Amtrak routes, CN proposes to ignore OTP at the majority of the stations on the route:

- a. On Amtrak's Texas Eagle trains (Trains 21 and 22) CN proposes to ignore OTP at *every* Amtrak station along the route. (CN Redline, Appx II, Sch. Skeleton for Trains 21, 22). It proposes only to measure OTP at a single control point located on its system.⁷ Based upon Amtrak's ridership data, CN's proposal effectively ignores 100% of Amtrak's ridership on these trains, all of whom disembark at stations not located on CN's system. (See

⁶ In this Reply Verified Statement, "Host Railroad" has the same meaning as defined in the FRA's Final Rule - - *i.e.*, "a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment." See 49 C.F.R. § 273.3. For purposes of this Verified Statement, use of the term "Host Railroad" does not include Amtrak, unless expressly indicated.

⁷ That control point is identified as "XUD - North UD Tower" on the Schedule Skeleton for Trains 20 and 21. (CN Redline, Appx II).

¶ 6, *supra*).

- b. On Amtrak's Lincoln Service trains, CN proposes to ignore OTP at all Amtrak stations from St. Louis, MO through Joliet, IL and at Chicago (for trains inbound to that station). (*Id.*, Sch. Skeleton for Trains 300, 301, 302, 303, 304, 305, 306, 307). Based upon Amtrak's ridership data, CN's proposal ignores approximately 93% of Amtrak's ridership on these trains, who disembark at stations not located on CN's system. (*See* ¶ 6, *supra*).
- c. On Amtrak's Wolverine Trains 350, 352 and 354 (which operate from Chicago to Pontiac, MI), CN proposes to ignore OTP at all Amtrak stations from Chicago, IL through Kalamazoo, MI and from Albion, MI through Dearborn, MI. (*Id.*, Sch. Skeleton for Trains 350, 352, 354). Based upon Amtrak's ridership data, CN's proposal ignores approximately 65% of riders on these trains. (*See* ¶ 6, *supra*).
- d. On Amtrak's Wolverine Trains 351, 353 and 355 (which operate from Pontiac, MI to Chicago), CN proposes to ignore OTP at all Amtrak stations from Dearborn, MI through Albion, MI and from Kalamazoo, MI through Chicago, IL. (*Id.*, Sch. Skeleton for Trains 351, 353, 355). Based upon Amtrak's ridership data, CN's proposal ignores approximately 98% of riders on these trains. (*See* ¶ 6, *supra*).
- e. On Amtrak's Blue Water Train 364 (which operates from Chicago to Port Huron, MI), CN proposes to ignore OTP at all Amtrak stations from Hammond-Whiting, IN through Kalamazoo, MI. (*Id.*, Sch. Skeleton for Train 364). Based upon Amtrak's ridership data, CN's proposal ignores

17% of riders on this train. (See ¶ 6, *supra*).

- f. On Amtrak's Blue Water Train 365 (which operates from Port Huron, MI to Chicago), CN proposes to ignore OTP at Kalamazoo, MI through Chicago, IL. (Id., Sch. Skeleton for Train 365). Based upon Amtrak's ridership data, CN's proposal ignores 97% of riders on this train. (See ¶ 6, *supra*).

26. Indeed, CN's proposal does not account for OTP at stations with some of the highest volumes of passenger traffic on the routes, including Amtrak's stations in Chicago, St. Louis, Dallas and San Antonio.

27. Further, by excluding stations not on its system from an OTP calculation, CN implies that its operations in hosting Amtrak occur in a vacuum – that is, that CN's operations do not have adverse implications for OTP beyond the stations on CN's system. This is incorrect.

28. If CN causes a delay to an Amtrak train while it is travelling on its system, the impacts of that delay do not simply cease when Amtrak's train leaves CN's system and enters that of another Host Railroad.

29. An example of a CN-responsible delay impacting Amtrak Train 351 (which operates from Pontiac, MI to Chicago, IL on Amtrak's Wolverine service) is illustrative.

- a. Train 351 travels on CN's system from its origin point in Pontiac, MI for approximately 26.3 miles to a control point located after Amtrak's station at Detroit, MI. (See CN Redline, Appx II, Sch. Skeleton for Train 351).⁸
- b. Train 351 then travels approximately 116 miles on a line owned by the

⁸ That control point is identified as "X1W - CP- W. Detroit" on the Schedule Skeleton for Train 351. (CN Redline, Appx II).

Michigan Department of Transportation (dispatched by Amtrak), during which it stops at Amtrak stations in: Dearborn, MI; Ann Arbor, MI; Jackson, MI and Albion, MI. (Id.).

- c. Train 351 then reenters CN's system approximately 142.7 miles into the route,⁹ after which its next stop is at Amtrak's Battle Creek, MI station. (Id.).
- d. Train 351 then again leaves CN's system at a control point located 0.3 miles after the Battle Creek station. (Id.).¹⁰
- e. The remainder of Train 351's trip through to Chicago is hosted by Amtrak and another Host Railroad (Norfolk Southern). (Id.).¹¹

30. If CN causes a significant delay to Train 351 on its system between Pontiac, MI and Detroit, MI, that delay can also result in poor OTP at downstream Amtrak stations after Detroit and which are located on another Host Railroad's system, such as Amtrak's stations at Dearborn, Ann Arbor, Jackson, Albion and, even at Union Station in Chicago.

C. CN's "Reopener" And "Concrete Action" Proposals

31. As explained in detail in Amtrak's opposing brief, CN's proposed "reopener" and approach to implementing "concrete action" fails to reasonably meet the Board's concerns as described in its 2019 Decision. (2019 Decision, p. 17).

⁹ Train 351 reenters CN's system at a control point identified as "XB0-Baron" on the Schedule Skeleton for Train 351. (CN Redline, Appx II).

¹⁰ That control point is identified as "XGO - Gord" on the Schedule Skeleton for Train 351. (CN Redline, Appx II).

¹¹ Between Battle Creek, MI and Chicago, there are six intermediate Amtrak station stops at: Kalamazoo, MI; Dowagiac, MI; Niles, MI; New Buffalo, MI; Michigan City, IN; and Hammond-Whiting, IN. (CN Redline, Appx II, Sch. Skeleton for Train 351).

32. As part of CN's proposal, it is suggesting that, approximately eight months after Amtrak's trains have been performing poorly, each Party independently investigate the cause or causes of Amtrak's poor performance on CN's system.

33. CN proposes that the Parties investigate a multitude of operational issues, including the following eight issues:

(i) CN's dispatching; (ii) Amtrak's operation of its trains; (iii) rail line infrastructure and capacity issues; (iv) Amtrak's equipment; (v) Amtrak train schedules; (vi) freight schedules; (vii) structural issues with the incentive or penalty provisions of Appendix V [of the OA], [and] (viii) issues with the levels of performance payments and penalties provided under Appendix V; (CN Opening Br., p. 28; CN Redline, Appx V, § G(1)).

34. CN also adds two amorphous issues that the Parties may investigate and which encompass nearly every aspect of their respective operations. Those are: "(ix) other issues with the terms of the Operating Agreement; or (x) other causes." (*Id.*).

35. This illustrates CN's misinterpretation of the Board's 2019 guidance urging the Parties to include a reopener and concrete action. CN has proposed investigating issues that are far afield from anything contemplated by the Board in the 2019 Decision. Indeed, CN is ignoring most of the Board's guidance on this issue.

36. The Board contemplated remedial "concrete action" only in the event that CN's *conduct* was the cause of Amtrak's poor performance on CN's system. Indeed, that was CN's own proposal in the first place, which the Board described as follows:

CN proposes a "reopener" provision that would provide that, if CN's *performance* falls below a certain level, the parties will confer to determine how to improve service Under the proposal, if CN's *performance* results in penalties for six consecutive months for a service, the parties will "use their best efforts to work together in good faith" to determine why the performance is resulting in penalties, to verify that the incentives and penalties payment system is being properly determined, to verify that *only delays within CN's control are being attributed to CN*, and to develop remedial

measures including, if appropriate, changes to the operating agreement.

(2019 Decision, p. 16) (emphasis added).

37. This is why the Board suggested that, in a provision providing for “concrete action” in a new OA, the Parties “could consider including in the provision mandatory actions *by CN* to improve service.” (*Id.* p. 17) (emphasis added).

38. There is no need to require the Parties to conduct two independent and wide-ranging investigations of the causes of poor performance before implementing “concrete action,” as CN proposes. Rather, in its 2019 Decision, the Board called for “concrete action” only in one instance – when *CN’s culpable conduct* is known to be the cause of Amtrak’s poor performance. And, if it is, the ensuing concrete remedial action should be focused where the Board urged it to be focused – *on remedying CN’s culpable conduct* that is causing those delays.

39. The Board’s focus on advocating that the Parties agree in their OA to take “concrete action” in response to CN-caused delays of Amtrak’s trains is reasonable. If the cause of poor performance is not CN-caused delays, but rather delays caused by another Host Railroad or Amtrak itself, there is no need to require collaboration with CN before actions are taken to address the problem. Concerted concrete action, and remedial steps involving CN and Amtrak, are necessary only if CN is significantly involved in causing poor performance.

40. Under CN’s proposal, if the Parties cannot resolve the appropriate “concrete action” to be implemented, [REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. For the reasons stated in Amtrak’s opposing brief, the Board cannot, and should not, impose these terms. Among those reasons, arbitrated disputes between Amtrak and CN are subject to a separate agreement dated April 16, 1971, going back to Amtrak’s creation. (**Exhibit 2**; see also CN and Amtrak Redlines, Article VI). [REDACTED]

[REDACTED]

D. CN’s Alleged Incremental Costs

43. CN asks the Board to find that Amtrak is obligated to reimburse as “incremental costs” certain of its crew overtime, fuel and equipment costs that CN characterizes as “freight delay costs.” For the reasons set forth in Amtrak’s opposing brief, the Board should reject CN’s position as a matter of law.

44. Notably, [REDACTED]

[REDACTED]

[REDACTED]

45. By contrast, for the reasons explained in detail in Amtrak’s brief, the crew overtime, fuel, and equipment costs that CN is asking the Board to consider to be “incremental” in this case are of an entirely different character.

46. [REDACTED]

For example, CN is seeking reimbursement from Amtrak of costs it is incurring to move its own freight, including the fuel and locomotives used to move CN trains, for which CN is seeking “equipment costs.”

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

47. [REDACTED]

[REDACTED]

[REDACTED] but rather

they are incurred for the services provided by CN to its customers.

48. CN's alleged freight delay costs do not meet the "but for" standard or causation requirement established by the Board in its 2019 Decision. This is, in part, because CN has exclusive operational control over many of the factors that have caused the very CN freight train delays for which CN is seeking reimbursement from Amtrak, including its decisions with respect to scheduling, infrastructure and prioritization of velocity of its freight trains and cars (by, for example, running longer freight trains).¹⁶

49. Freight traffic on CN's system has grown dramatically over the years. (See Vilter/Maga RVS, p. 8-9). That growth has continued through today.¹⁷ Amtrak's service on CN's system has, however, grown modestly in comparison.

50. CN is in exclusive control of the infrastructure on its system, including the infrastructure it builds and maintains to accommodate its freight traffic. (See Id., pp. 10-11). Over the years, CN has actually *removed* infrastructure, which resulted in *reduction* of the capacity to accommodate traffic on its system. (Id.).

¹⁶ Amtrak previously explained these issues in its prior brief submitted to the Board dated January 19, 2018 at pp. 83-87 and in the Rebuttal Joint Verified Statement of Paul Vilter and Jason Maga dated September 14, 2017 ("Vilter/Maga RVS") at pp. 8-21. I am familiar with the arguments raised in those submissions and am in full agreement with them. The Vilter/Maga RVS is attached hereto as **Exhibit 3** for the Board's reference. However, given the voluminous nature of the attachments to the Vilter/Maga RVS, I have only attached the statement itself.

¹⁷ See CN Management Information Circular and Notice of Annual Meeting of Shareholders dated May 20, 2022, p. 42) (identifying growth in gross ton miles on CN's system (available at <https://www.cn.ca/-/media/Files/Investors/Investor-Shareholder/information-circular-2022-en.pdf?la=en>)).

51. Growth of CN's freight traffic obviously increases the burden on CN's system and inescapably results in delays to all traffic on CN's system – freight and passenger service alike. CN has exclusive control on how to accommodate that increased traffic load in decisions related to its infrastructure. If it does not do so successfully, the resulting delays (for example, in the form of increased or unplanned meets between Amtrak and CN trains) is directly attributable to CN's infrastructure decisions, not to Amtrak. And, in particular, where CN decides for its own reasons to *reduce* the capacity of its system in the face of traffic growth, the resulting delays are caused by CN, not Amtrak.

52. CN is also in exclusive control of scheduling when and where to run its freight trains. (See Id., p. 13). CN's freight train schedules, and its adherence or lack of adherence to those schedules, directly impacts whether, where and to what extent CN's trains meet or pass Amtrak's trains. (Id.). Thus, CN's scheduling decisions have a direct impact on freight train delays which result when such meets occur. (Id.).

53. Because it has exclusive control over scheduling and dispatching its freight trains – without any input from Amtrak – CN has the ability to schedule and dispatch its trains in a manner to *avoid* meets with Amtrak trains. (See Id., p. 14). If CN fails to do so, resulting in a meet with an Amtrak train, it cannot reasonably argue that Amtrak somehow caused the delay. Rather, the cause of that delay is unquestionably CN's scheduling and dispatching practices.

54. CN also establishes its own performance priorities, some of which have the direct (and documented) result of causing the very freight train delays that they seek to attribute to Amtrak. For example, CN's witnesses explained in this proceeding that CN's operational priorities are train and freight car velocity (*i.e.*, the speed at which a freight train or car moves between two

points). (See Id.).¹⁸ Prioritizing velocity can result in an *increase* in delays to CN’s freight trains. (Id.).

55. For example, in order to increase freight train and car velocity, CN has made the operational decision to operate longer freight trains. (Id., pp. 15-16). Indeed, this has resulted in CN running trains that are actually longer than many of the sidings on CN’s system. (Id.). This directly prohibits CN’s freight train from utilizing those sidings to make way for Amtrak trains to pass them. (Id.).

56. These delays are directly attributable to CN’s operational prioritization of train velocity and the operation of these “no-fitter” trains, rather than the mere presence of Amtrak trains on CN’s system. Notably, CN could alternatively address this issue either by running shorter trains or by lengthening the sidings on its system – again, an operational or infrastructure choice for which CN is exclusively responsible.

E. Amtrak’s Wi-Trinox and GPS Data

57. In its proposed new OA, CN asks the Board to impose terms that would require Amtrak to produce to CN its Wi-Trinox and GPS data. (CN Redline, Appx. V, § A(4)).

58. Wi-Trinox continuously monitors vital locomotive systems and reports same periodically. This data concerning Amtrak’s locomotives is proprietary to Amtrak. As a result, Amtrak does not share its Wi-Trinox data in the normal course of business, including with its Host Railroads, absent an exceptional circumstance (such as in connection with a reported rules violation or accident investigation).

59. This is generally the approach taken by other railroads with respect to their Wi-

¹⁸ See, e.g., Joint Verified Statement of John Summerfield, Gregg Girard and Anne Morehouse (“Summerfield/Girard/Morehouse V.S.”), p. 20 (Train and car velocity are “the two most important metrics by which [CN] measure[s] the success of [its] operations.”).

Tronix data. For example, CN does not share its Wi-Tronix data concerning its freight trains with Amtrak.

60. Because Amtrak does not share its Wi-Tronix data in the normal course of business, it does not maintain processes to collect and share it. Rather, on those occasions where it is appropriate to produce Wi-Tronix data, it does so on an “as-needed” and per-train basis.

61. CN has not proffered any reasonable basis why or how it is entitled to compel Amtrak to disclose its proprietary Wi-Tronix data – data which CN itself guards and protects as proprietary and does not provide to Amtrak.

62. Moreover, CN appears to be requesting that Amtrak provide it with Wi-Tronix data for each and every train trip on every route operating over its system. Because Amtrak does not have a process in place for such *en masse* productions of Wi-Tronix data, it would be complicated and burdensome task which CN would presumably demand that Amtrak replicate month-after-month. There is no basis for this overbroad and burdensome demand.

63. The Board should also reject CN’s proposed term that requires Amtrak to provide CN with “GPS” data for each and every Amtrak train that operates on its system. CN already is – or should be – aware of the location of Amtrak’s trains on its rail lines from its own sources.

64. For example, CN dispatches Amtrak’s trains and, as a result, its dispatchers know the location of every Amtrak train on its system at any given time.

65. Moreover, at all times, Amtrak’s website displays the location (based on GPS data) and other information related to its trains (including whether the trains are late or on time).¹⁹

66. Additionally, Amtrak provides CN with on-line access to and daily reports from Amtrak’s Electronic Delay Reporting (“EDR”) data. This is to provide CN with, among other

¹⁹ See <https://www.amtrak.com/track-your-train.html>.

things, all of the delay codes recorded by Amtrak's conductors for the trains operating on its system. This data also enables CN to determine: where a train was at a given time; its arrival and departure times at stations and control points; whether that train was delayed; the cause of the delay; and the length of the delay.

67. CN has not articulated any basis why it should be entitled to have Amtrak also compile and provide it with Wi-Tronix and GPS data for each and every Amtrak train operating on its system.

68. I, James A. Blair, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

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Dated: July 26, 2022
Philadelphia, PA



James A. Blair

EXHIBIT 1

Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations



Covering the Quarter Ending December 2021
(First Quarter of Fiscal Year 2022)

Federal Railroad Administration
U.S. Department of Transportation

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Abbreviations, Acronyms, and Phrases in this Report

Term	Meaning
C.F.R.	Code of Federal Regulations
FRA	Federal Railroad Administration
FY	Fiscal Year (October 1 to September 30)
NEC	Northeast Corridor, rail line between Boston, Massachusetts, and Washington, D.C.
OTP	On-Time Performance
P.L.	Public Law
PRIIA	<i>Passenger Rail Investment and Improvement Act of 2008</i> , P.L. 110-432
MSA	Metropolitan Statistical Area
U.S.C.	United States Code
U.S. DOT	United States Department of Transportation

I. Executive Summary

The Federal Railroad Administration (FRA) must publish a quarterly report on the performance and service quality of intercity train operations, in accordance with Section 207 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, 122 Stat. 4907 (PRIIA). This report, covering the first quarter of FY 2022 from October 1 to December 31, 2021, includes data about Amtrak's on-time performance, minutes of delay, causes of delay, cost recovery, ridership, onboard services, stations, public benefits and other services.

In addition to the data in this report, other supporting data files and information about FRA's quarterly reporting requirements are available at railroads.dot.gov. Key highlights from the FY 2022 first quarter report are below.

Customer On-Time Performance

Customer on-time performance is included in this quarterly report for all routes and train in operation during the first quarter of FY2022, regardless of schedule status. The previous report, which covered the fourth quarter of FY2021, did not include route or train OTP for the more than 20 routes that had one or more disputed train schedules on either a section or the entirety of the route.

The routes with the highest OTP in FY2022 Q1 were the Hiawatha (95.1 percent), Ethan Allen (93.3 percent), and the Keystone (93.2%), and those with the lowest were the Auto Train (24.2%), Capitol Ltd (35.0%), and the Sunset Ltd (40.0%). The FY2022 first quarter report provides the first opportunity to apply the customer OTP minimum standard described in the rule: 80 percent for any two consecutive calendar quarters. Of the trains that operated in either quarter, 70.4 percent met the standard, 14.2 percent did not meet the standard, and 15.4 percent had either a disputed schedule in FY21 Q4 or did not operate in one of the two quarters.

Train Delays

Delay minutes are tracked for each Amtrak train according to 40 individual delay codes across three major categories: Host Responsible Delays (including freight train interference and slow orders on the track), Amtrak Responsible Delays (including equipment problems and delays related to passenger loading and unloading), and Third Party Responsible Delays (primarily weather-related).

Amtrak trains experienced approximately 1.3 million minutes of delay during the first quarter of FY 2022, up 9 percent from the previous quarter. System-wide, train miles increased by 8 percent from the fourth quarter of FY 2021 to the first quarter of FY 2022 (from 8,168,324 train miles to 8,790,595 train miles), as Amtrak continued to restore service. The largest cause of delays was freight train interference at 299,252 minutes of delay – 22 percent of total delay minutes, an increase of 12

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percent from the previous quarter. The following host railroads were responsible for 92 percent of the freight train interference delay minutes: Union Pacific (84,000 minutes), Norfolk Southern (69,116 minutes), BNSF Railway (69,079 minutes), and CSX Transportation (54,810 minutes). Other significant causes of delay were unused recovery time, passenger train interference, and slow orders.

Customer Service

Responses to Amtrak's customer satisfaction survey are reported by route in this report. Customers rated the majority (31 of 41) of routes as 80 percent or higher in terms of overall satisfaction, with only one route below 70 percent (Auto Train). Several routes, including the Cardinal, Carolinian, California Zephyr, and Palmetto improved their customer service scores from the previous quarter.

Financial

Financial metrics are tracked across several categories, including cost recovery and ridership. System-wide, Amtrak earned \$672M in adjusted operating revenue and incurred \$823M in fully allocated operating expenses, achieving a cost recovery ratio of 82 percent. Routes that operated in the first quarter with high cost recovery ratios include the Auto Train (131 percent), Illini/Saluki (124 percent), Northeast Regional (115 percent), and Hiawatha (114 percent).

Amtrak had 5,530,225 total riders during the quarter, an increase of 7 percent over the previous quarter. The Northeast Regional (1,706,419 riders), Acela Express (478,441 riders), and Pacific Surfliner (349,304 riders) accounted for approximately 46 percent of the total ridership. These routes, along with the Auto Train, also accounted for 41 percent of Amtrak's adjusted operating revenue: Northeast Regional (\$151.9M), Acela Express (\$76.7M), Auto Train (\$27.6M), and Pacific Surfliner (\$22.3M).

Public Benefits

Public benefits metrics are reported annually, and they are included for the first time in the FY2022 first quarter report, covering all of FY2021. The public benefits metrics track connectivity, missed connections, community access, and service availability across Amtrak's network. In FY2021, 12.4 percent of Amtrak trips included a connection to another route: 6.4 percent of Northeast Corridor trips, 16.6 percent of State-supported trips, and 17.7 percent of Long Distance trips. Of all multi-leg Amtrak trips in FY2021, 2 percent included a missed connection, with the highest number on the San Joaquins, Pacific Surfliner, and Southwest Chief routes. In FY2021, Amtrak served 67,835 riders (0.56 percent of all riders) in areas not well-served by other modes of intercity transportation.

II. Introduction

This report responds to Section 207 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, 122 Stat. 4907 (PRIIA) that requires the Federal Railroad Administrator to collect the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance, minutes of delay, causes of delay, onboard services, stations, and other services.

The Federal Railroad Administration (FRA) published a final rule on November 16, 2020 (see 49 C.F.R 273) that established metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. Consistent with the rule (preamble section IV), this third quarterly report covers the third full calendar quarter 3 months after the publication of the final rule in the Federal Register, which is the first quarter (Q1) of Federal fiscal year (FY) 2022, running from October 1, 2021, to December 31, 2021. This report provides an overview of the metrics and standards established in FRA's final rule, a description of Amtrak's route structure, and metrics reporting tables for the first quarter of FY 2022. Additional information about the final rule and the supporting data files are available at railroads.dot.gov.

The FY2022 first quarter report includes customer on-time performance for all trains in operation in FY2022 Q1 and, for the first time, the public benefits metrics, which are reported annually.

FRA is pleased to publish this third report and set of quarterly data using the metrics established in 2020. Standardized, consistent reporting will provide key stakeholders, including host railroads, Congress, and the Surface Transportation Board (STB), along with Amtrak's customers and the public, a way to measure the performance of intercity passenger train operations.

III. Summary of Metrics and Standards

49 C.F.R. Part 273 establishes metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations in four categories: on-time performance (OTP) and train delays, customer service, financial, and public benefits. FRA will publish quarterly reports on the metrics and minimum standards according to the reporting structure established in the final rule. See Table 1 for a summary of the metrics and reporting schedule.

Table 1. Metrics Summary and Reporting Schedule

Category	Metric	First Period Reported	Summary Description
OTP & Delays	Customer OTP	July 1 – September 30, 2021 (except disputed schedules) October 1 – December 31, 2021 (all schedules)	Standard: 80% for two consecutive quarters Percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time
	Ridership data	Prior Month	Number of host railroads to whom Amtrak has provided host-specific ridership data
	Certified schedules	Prior Month	Number of certified schedules, uncertified schedules, and disputed schedules
	Train delays	April 1 – June 30, 2021	Minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third-party delays, reported by delay code.
	Train delays per 10K train miles	April 1 – June 30, 2021	Minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays
	Station performance	July 1 – September 30, 2021	Number of detraining passengers, the number of late passengers, and the average minutes late that late customers arrive at their detraining stations
	Host running time	July 1 – September 30, 2021	Average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad set forth in the Amtrak schedule skeleton

Category	Metric	First Period Reported	Summary Description
Customer Service	Customer satisfaction	April 1 – June 30, 2021	Percent of respondents who provided a score of 70 percent or greater for their “overall satisfaction” on a 100-point scale for their most recent trip, shown both adjusted for performance and unadjusted
	Amtrak personnel	April 1 – June 30, 2021	Average score from respondents for their overall review of Amtrak personnel
	Information given	April 1 – June 30, 2021	Average score from respondents for their overall review of information provided by Amtrak
Customer Service	On-board comfort	April 1 – June 30, 2021	Average score from respondents for their overall review of on-board comfort
	On-board cleanliness	April 1 – June 30, 2021	Average score from respondents for their overall review of on-board cleanliness
	On-board food service	April 1 – June 30, 2021	Average score from respondents for their overall review of on-board food service
Financial	Cost recovery	April 1 – June 30, 2021	Amtrak’s adjusted operating revenue divided by Amtrak’s adjusted operating expense
	Avoidable operating costs covered by passenger revenue	April 1 – June 30, 2021	Percent of avoidable operating costs divided by passenger revenue for each route, shown with and without State operating payments
	Fully allocated costs covered by passenger revenue	April 1 – June 30, 2021	Percent of fully allocated core operating costs divided by passenger revenue for each route, shown with and without State operating payments
	Average ridership	April 1 – June 30, 2021	Number of passenger-miles divided by train-miles for each route
	Total ridership	April 1 – June 30, 2021	Total number of passengers

Category	Metric	First Period Reported	Summary Description
Public Benefits	Connectivity	October 1 – December 31, 2021 (covering all of FY2021)	Percent of passengers connecting to and from other Amtrak routes
	Missed connections	October 1 – December 31, 2021 (covering all of FY2021)	Percent of passengers connecting to/from other Amtrak routes who missed connections due to a late arrival from another Amtrak train
	Community access	October 1 – December 31, 2021 (covering all of FY2021)	Percent of Amtrak passenger-trips to and from not well-served communities
	Service availability	October 1 – December 31, 2021 (covering all of FY2021)	Total number of daily Amtrak trains per 100,000 residents in a metropolitan statistical area (MSA) for each of the top 100 MSAs in the United States, shown in total and adjusted for time of day



IV. Amtrak Route Structure and Descriptions

Amtrak provides intercity passenger rail service across the nation, serving more than 500 destinations in 46 states. Amtrak has three operating service lines: **Northeast Corridor (NEC)**, which provides service between Boston, MA, and Washington, DC; **State-Supported**, which provides service on corridor routes of not more than 750 miles through cost-sharing agreements with State Partners; and **Long Distance**, which includes all routes over 750 miles nationwide. See Table 2 for a description of the service lines and routes.

Table 2. Route Descriptions

Service Line	Route Name	Sub Service	Route Description
Northeast Corridor	Acela Express	Acela Express	Between Boston, New York (Penn Station), and Washington, DC
	Northeast Regional	On Spine Northeast Regional	Between Boston, Springfield, New Haven, New York (Penn Station), and Washington, DC
State-Supported	Capitol Corridor	Capitol Corridor	Between Auburn, Oakland Coliseum, Oakland (Jack London Square Station), and San Jose
	Carolinian	Carolinian	Between Charlotte, NC and New York (Penn Station)
	Cascades	Cascades	Between Eugene, Portland, Seattle, and Vancouver
	Downeaster	Downeaster	Between Boston (North Station), Portland, and Brunswick, ME
	Empire	Adirondack	Between New York (Penn Station) and Montreal
	Empire	Ethan Allen Express	Between New York (Penn Station) and Rutland, VT
	Empire	Maple Leaf	Between New York (Penn Station) and Toronto
	Empire	New York - Albany	Between New York (Penn Station) and Albany, NY
	Empire	New York - Niagara Falls	Between New York (Penn Station) and Niagara Falls
	Heartland Flyer	Heartland Flyer	Between Fort Worth, TX and Oklahoma City, OK
	Hiawatha	Hiawatha	Between Chicago and Milwaukee, WI
	Illinois	Carl Sandburg / Illinois Zephyr	Between Chicago and Quincy, IL
	Illinois	Illini / Saluki	Between Chicago and Carbondale
	Illinois	Lincoln Service	Between Chicago and St. Louis

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Service Line	Route Name	Sub Service	Route Description
State Supported	Keystone	Keystone	Between Harrisburg, PA, Philadelphia, and New York (Penn Station)
	Michigan	Blue Water	Between Chicago and Port Huron
	Michigan	Pere Marquette	Between Chicago and Grand Rapids
	Michigan	Wolverine	Between Chicago and Pontiac
	Missouri	Missouri	Between Kansas City and St. Louis
	Northeast Regional	Richmond / Newport News / Norfolk	Between Norfolk, Newport News, Richmond, New York (Penn Station) and Boston
	Northeast Regional	Roanoke	Between Lynchburg/Roanoke, VA and Boston
	Northeast Regional	Springfield Shuttles	Between New Haven, CT, and Springfield, MA
	Pacific Surfliner	Pacific Surfliner	Between San Luis Obispo, Goleta, Los Angeles, and San Diego, CA
	Pennsylvanian	Pennsylvanian	Between New York (Penn Station) and Pittsburgh
	Piedmont	Piedmont	Between Charlotte and Raleigh, NC
	San Joaquins	San Joaquins	Between Bakersfield, Oakland (Jack London Square Station), and Sacramento, CA
	Vermont	Vermont	Between St. Albans, VT, and Washington, DC
Long Distance	Auto Train	Auto Train	Between Lorton, VA, and Sanford, FL
	California Zephyr	California Zephyr	Between Chicago and Emeryville, CA
	Capitol Ltd	Capitol Ltd	Between Chicago and Washington, DC
	Cardinal	Cardinal	Between Chicago and New York (Penn Station) via Cincinnati
	City Of New Orleans	City Of New Orleans	Between Chicago and New Orleans
	Coast Starlight	Coast Starlight	Between Los Angeles and Seattle
	Crescent	Crescent	Between New York (Penn Station) and New Orleans
	Empire Builder	Empire Builder	Between Chicago, Portland, and Seattle
	Lake Shore Ltd	Lake Shore Ltd	Between Chicago, New York (Penn Station), and Boston via Cleveland and Buffalo
	Palmetto	Palmetto	Between New York (Penn Station) and Savannah, GA
	Silver Meteor	Silver Meteor	Between New York (Penn Station) and Miami via Charleston, SC



Service Line	Route Name	Sub Service	Route Description
Long Distance	Silver Star	Silver Star	Between New York (Penn Station) and Miami via Columbia, SC
	Southwest Chief	Southwest Chief	Between Chicago and Los Angeles
	Sunset Ltd	Sunset Ltd	Between Los Angeles and New Orleans
	Texas Eagle	Texas Eagle	Between Chicago and San Antonio

Figure 1. Amtrak Route Map



All route/map data provided by Amtrak

Figure 2. Amtrak Host Map



All route/map data provided by Amtrak

For some routes, Amtrak reports operational (train performance) data differently than it reports financial or ridership data. In some State-supported service arrangements, a State, under a contractual agreement with Amtrak, will provide financial support for a portion of a larger route.

Amtrak has two route hierarchies within its reporting systems to account for these arrangements. The first route hierarchy is used to track the physical versions of the routes on the network. This hierarchy includes the entire physical train that moves between its origin and ultimate destination. The second hierarchy, financial routes, are a financial construction in Amtrak's accounting that breaks the physical train up into the Amtrak-supported portion of the route and State-supported portion of the route. These financial routes exist to allocate financials between the State-supported segment and the Amtrak-Supported segment for various accounting purposes. See Table 3 for a summary of where financial routes may be different from physical routes.

In this quarterly report, all OTP and train delay metrics will be reported using the physical route structure (Table 2), and financial, customer service, and public benefits metrics will be reported using the financial route structure (Table 3).

Table 3. Financial Routes Descriptions Different than Physical Routes

Route	Physical Route	Financial Route
Adirondack	New York, NY – Montreal, Canada	New York, NY – Albany, NY (Empire Service)
		Albany, NY – Montreal, Canada (Adirondack Service)
Carolinian	Charlotte, NC – New York, NY	Charlotte, NC – Washington, DC
Cascades	Eugene, OR – Vancouver, WA	Eugene – Portland, OR (Oregon Service)
		Portland, OR – Vancouver, WA (Washington Service)
Empire West / Maple Leaf	New York, NY – Niagara Falls, NY	New York – Albany, NY (Empire Service)
		Albany – Niagara Falls, NY (Empire West/Maple Leaf Service)
Ethan Allen	New York, NY – Rutland, VT	New York – Albany, NY (Empire Service)
		Albany, NY – Rutland, VT (Ethan Allen Service)
Keystone	Harrisburg, PA – New York, NY	Harrisburg – Philadelphia, PA

FRA Quarterly Report | **IV. Amtrak Route Structure and Descriptions**

Route	Physical Route	Financial Route
Lynchburg/ Roanoke	Lynchburg/Roanoke – New Haven, CT/ Boston, MA	Lynchburg, VA – Washington, DC
Newport News	Newport News, VA – New Haven, CT/ Boston, MA	Newport News, VA – Washington, DC
Norfolk	Norfolk, VA – New Haven, CT/Boston, MA	Norfolk, VA – Washington, DC
Springfield Shuttles	Washington, DC – New Haven, CT/ Boston, MA	New Haven, CT – Springfield, MA
Pennsylvanian	Pittsburgh, PA – New York, NY	Pittsburgh – Philadelphia, PA
Richmond	Richmond – New Haven, CT/Boston, MA	Richmond, VA – Washington, DC
Vermont	Washington, DC – St. Albans, VT	New Haven, CT – Springfield, MA; Springfield, MA – St. Albans, VT



V. Quarterly Reporting Data Categories**A. On-Time Performance and Train Delays**

This section includes definitions of each of the metrics and any associated standard. There are also descriptions of the reported data for each metric, including definitions of key terms, and other notes as needed. This section includes reporting tables and charts for selected metrics; to access the complete data files, please visit railroads.dot.gov.

The only service not in operation during FY22 Q1 was the Adirondack, although many routes were still operating at reduced frequency from pre-COVID service levels during FY22 Q1, including: Northeast Regional, Acela, Capitol Corridor, Cascades, Empire Service, Keystone, Pacific Surfliner, and San Joaquins.

Table 4. On-Time Performance and Train Delays Metrics – Definitions and Notes

Metric	Definition	Data Description and Notes
Customer On-Time Performance	The percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route. The customer on-time performance minimum standard is 80 percent for any 2 consecutive quarters.	Customer on-time performance for all schedules, at the route-level and by train, are included in this FY 2022 first quarter (Q1) report covering October 1 – December 31, 2021.

Metric	Definition	Data Description and Notes
Ridership Data	The number of host railroads to whom Amtrak has provided ridership data reported by host railroad and by month.	Ridership data means, in a machine-readable format: the total number of passengers, by train and by day; the station-specific number of detraining passengers, reported by host railroad, whose railroad right-of-way serves the station, by train and by day; and the station-specific number of on-time passengers reported by host railroad whose railroad right-of-way serves the station, by train and by day. There are two host railroads not listed in the data over which Amtrak does not currently operate: Florida East Coast Railway and Sound Transit. Ridership data will be provided to these host railroads in advance of operations. Amtrak provided ridership data to Portland Terminal Railroad Company via BNSF Railway.
Certified Schedules	The number of certified schedules, uncertified schedules, and disputed schedules, reported by train, by route, and by host railroad (excluding switching and terminal railroads), identified in a notice to the Federal Railroad Administrator by Amtrak.	The metric was reported monthly through May 2021 after which is reported annually, most recently in the FY2021 Quarter 4 report available at railroads.dot.gov. <i>Certified schedule</i> means a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance metric and standard. <i>Uncertified schedule</i> means a published train schedule that has not been reported as a certified schedule or a disputed schedule. <i>Disputed schedule</i> means: (1) A published train schedule for which a specific change is sought: (i) that is the only subject of a non-binding dispute resolution process led by a neutral third-party and involving Amtrak and one or more host railroads; (ii) that is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by one or more host railroads and Amtrak has not consented to participate in the process within 30 calendar days; or (iii) that is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by Amtrak and the host railroad has not consented to participate in the process within 30 calendar days.

FRA Quarterly Report | V. Quarterly Reporting Data Categories

Metric	Definition	Data Description and Notes
Train Delays	The train delays metric is the minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third-party delays, for the host railroad territory within each route. The train delays metric is reported by delay code; total minutes of delay; Amtrak-responsible delays; Amtrak's host-responsible delays; Amtrak's host-responsible delays and Amtrak-responsible delays combined; non-Amtrak host-responsible delays; and third-party delays. 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.	<i>Amtrak-responsible</i> delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as Amtrak-responsible delays, including passenger-related delays at stations, Amtrak equipment failures, holding for connections, injuries, initial terminal delays, servicing delays, crew and system delays, and other miscellaneous Amtrak-responsible delays. <i>Host-responsible</i> delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours. <i>Third-party</i> delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as third-party delays, including bridge strikes, debris strikes, customs, drawbridge openings, police-related delays, trespassers, vehicle strikes, utility company delays, weather-related delays (including heat or cold orders, storms, floods/washouts, earthquake-related delays, slippery rail due to leaves, flash-flood warnings, wayside defect detector actuations caused by ice, and high-wind restrictions), acts of God, or waiting for scheduled departure time. In this quarterly dataset, the third-party delays are coded as "Neither."
Disputed Train Delays		<i>Delay minutes disputed by host railroad and not resolved by Amtrak</i> means delay minutes for which a host railroad disputed the code used by Amtrak to classify the delay, or the number of delay minutes assigned to the host railroad, but were not changed by Amtrak after the host's initial request. Ultimately, Amtrak and the host railroads may agree that a different delay code or number of delay minutes is appropriate following further discussion; this data only reports delay minutes that were not adjusted after the host railroad's initial request for reclassification. Delays are reported by operating business line, which is similar to the service line structure (see Amtrak Route Structure and Descriptions). The NEC business line includes the following routes: Acela, Northeast Regional, Northeast Regional – Richmond / Newport News / Norfolk, Northeast Regional – Roanoke, and Northeast Regional – Springfield Shuttles. See Table 4 for a list of host railroads and abbreviated host railroad codes used in the delay reports. See Table 5 for a list of the delay codes, abbreviations, and responsibilities.
Train Delays per 10,000 Train Miles	The minutes of delay per 10,000 train-miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route.	<i>Delays per 10,000 train-miles</i> is the number of minutes of delay normalized by train-miles so that routes of different lengths, and hosts with different amounts of Amtrak service, can be compared to each other. Specifically, it is the number of minutes of host-responsible delay, divided by the number of Amtrak train-miles operated over that host, multiplied by 10,000. Data is available for download at railroads.dot.gov .

Metric	Definition	Data Description and Notes
Station Performance	The number of detraining passengers, the number of late passengers, and the average minutes late that late customers arrive at their detraining stations, reported by route, by train, and by station. The average minutes late per late customer calculation excludes on-time customers that arrive no later than 15 minutes after their scheduled time.	Data is available for download at railroads.dot.gov .
Host Running Time	The average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad set forth in the Amtrak schedule skeleton, reported by route, by train, and by host railroad (excluding switching and terminal railroads).	<i>Actual running time</i> means the actual elapsed travel time of a train's travel on a host railroad, between the departure time at the first reporting point for a host railroad segment and the arrival time at the reporting point at the end of the host railroad segment. <i>Scheduled running time</i> means the scheduled duration of a train's travel on a host railroad, as set forth in the Amtrak schedule skeleton. <i>Schedule skeleton</i> means a schedule grid used by Amtrak and host railroads to communicate the public schedule of an Amtrak train and the schedule of operations of an Amtrak train on host railroads. Data is available for download at railroads.dot.gov.

Table 5. Host Railroad Names and Codes

Host Railroad Name	Host Railroad Code
Amtrak	AM
Belt Railway of Chicago	BR
BNSF Railway Company	BN
Buckingham Branch Railroad	BB
Central Florida Rail Corridor	FR
Chicago Terminal	CT
CN – IC (Former GTW and IC)	CC
Conrail Shared Assets	CR
CP Rail (Soo Line)	CP
CSX Corporation	CS
Delaware & Hudson (CP Rail)(StL&H)	DH
Florida DOT (CSX Dispatched) ¹	FL
Kansas City Terminal	KC
Long Island Railroad	LG
Massachusetts DOT	MA
MBTA	MT
Metra	ME
Metro-North Railroad	MN
Michigan DOT	MI
Minnesota Commercial	MC
New England Central	NE
New Mexico DOT	NM
Norfolk Southern	NS
Pan Am Railways (formerly Guilford)	GT
S.C.R.R.A (Moorpark to LAX)	SC
San Diego Northern	SN
Sound Transit (XNI-XTW =Tacoma, WA vicinity)	ST
Terminal Railroad Assn. Of St. Louis (TRRA)	TR
Trinity Rail Express	TE
Union Pacific	UP
Vermont Railway	VR

¹ CSX does not dispatch this segment of railroad. Amtrak has corrected the host name in its data systems, and it will appear as Florida DOT in the next report covering FY2022 Q2.

Table 6. Amtrak Delay Code Definitions

Responsibility	Code	Code Description	Explanation
Amtrak-responsible delays	ADA	Passenger-related	All delays related to disabled passengers, wheelchair lifts, guide dogs, etc.
	CAR	Car failure	Mechanical failure on all types of cars
	CCR	Cab car failure	Mechanical failure on Cab Cars
	CON	Hold for guaranteed connection	Holding for connections from other trains or buses
	CTC	CETC system failure	Failure of the Centralized Electrification and Traffic Control (CETC) train control system
	ENG	Locomotive failure	Mechanical failure on engines
	HLD	Passenger-related	All delays related to passengers, checked baggage, large groups, etc.
	INJ	Injured/Ill guest/ Employee	Delay due to injured passengers or employees
	ITI	Initial terminal delay	Delay at initial terminal due to late arriving inbound trains causing late release of equipment
	MTI	Disabled train ahead	Disabled train ahead due to mechanical failure
	OTH	Miscellaneous delays	Lost-on-run, heavy trains, unable to make normal speed, etc.
	SVS	Servicing	All switching and servicing delays
	SYS	Crew & system	Delays related to crews including lateness, lone-engineer delays
Host-responsible delays	CTI	Commuter train interference	Delays for meeting or following commuter trains
	CTP	Commuter train problems	Delays directly caused by abnormal occurrences to commuter trains
	DBB	B&B work due to defect	Delays caused by bridge or building maintenance
	DCS	C&S work due to defect	Signal failure or other signal delays, wayside defect-detector false alarms, defective road crossing protection, efficiency tests, drawbridge stuck open
	DCT	Defective concrete ties	Delays caused by the replacement of concrete ties
	DDA	Defect detector actuation	Delays caused by train inspection following a defect detector actuation
	DET	ET work due to defect	Catenary or other electrical maintenance
	DMW	M/W work due to defect	Maintenance of Way delays including holds for track repairs or MW foreman to clear
	DSR	Slow order delays	Temporary slow orders, except heat or cold orders

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Responsibility	Code	Code Description	Explanation
Host-responsible delays	FTI	Freight train interference	Delays from freight trains
	PBB	Planned B&B work	Scheduled bridge and building maintenance
	PET	Planned ET work	Scheduled catenary or other electrical work
	PSC	Planned C&S work	Scheduled communications and signal work
	PSR	Planned speed restrictions	Scheduled speed restrictions
	PTI	Passenger train interference	Delays for meeting or following other passenger trains (not commuter trains)
	RTE	Routing delays, including late bulletins	Routing-dispatching delays including diversions, late track bulletins, etc.
	SMW	Scheduled M/W work	Scheduled maintenance of way work
Third-party delays	BSP	Bridge strike	Delay due to train striking an overhead bridge
	CUI	Customs and immigration	U.S. and Canadian customs delays; Immigration-related delays
	DBS	Debris strike, damage, set outs	Debris strikes
	MBO	Movable bridge opening	Movable bridge openings for marine traffic where no bridge failure is involved
	NOD	Unused recovery time	Waiting for scheduled departure time at a station
	POL	Police-related delay	Police/fire department holds on right-of-way or on board trains
	TRS	Trespasser incident	Trespasser incidents including road crossing accidents, trespasser/animal strikes, vehicle stuck on track ahead, bridge strikes
	UTL	Utility company failure	Failure due to utility company issue
	WTR	Weather-related	All severe-weather delays, landslides or washouts, earthquake-related delays, heat or cold orders



Table 7. Customer On-Time Performance by Route

Service Line / Route	OTP
Long Distance	
Auto Train	24.2%
California Zephyr	47.1%
Capitol Ltd	35.0%
Cardinal	58.3%
City Of New Orleans	79.9%
Coast Starlight	54.0%
Crescent	56.8%
Empire Builder	45.6%
Lake Shore Ltd	59.8%
Palmetto	71.9%
Silver Meteor	42.3%
Silver Star	41.6%
Southwest Chief	44.6%
Sunset Ltd	40.0%
Texas Eagle	66.1%
Northeast Corridor	
Acela Express	83.0%
On Spine Northeast Regional	84.8%
Richmond / Newport News / Norfolk	74.1%
Roanoke	81.5%
Springfield Shuttles	87.7%
State Supported	
Blue Water	66.5%
Capitol Corridor	82.4%
Carl Sandburg / Illinois Zephyr	89.3%
Carolinian	70.6%
Cascades	54.5%
Downeaster	81.7%
Ethan Allen Express	93.3%
Heartland Flyer	80.8%
Hiawatha	95.1%
Illini / Saluki	60.4%
Keystone	93.2%
Lincoln Service	80.1%
Maple Leaf	83.9%
Missouri	60.1%
New York - Albany	92.2%
New York - Niagara Falls	78.7%
Pacific Surfliner	81.9%
Pennsylvanian	63.8%
Pere Marquette	73.0%
Piedmont	73.8%
San Joaquins	75.0%
Vermont	85.1%
Wolverine	58.8%

Figure 3. Customer OTP by Service Line & Route

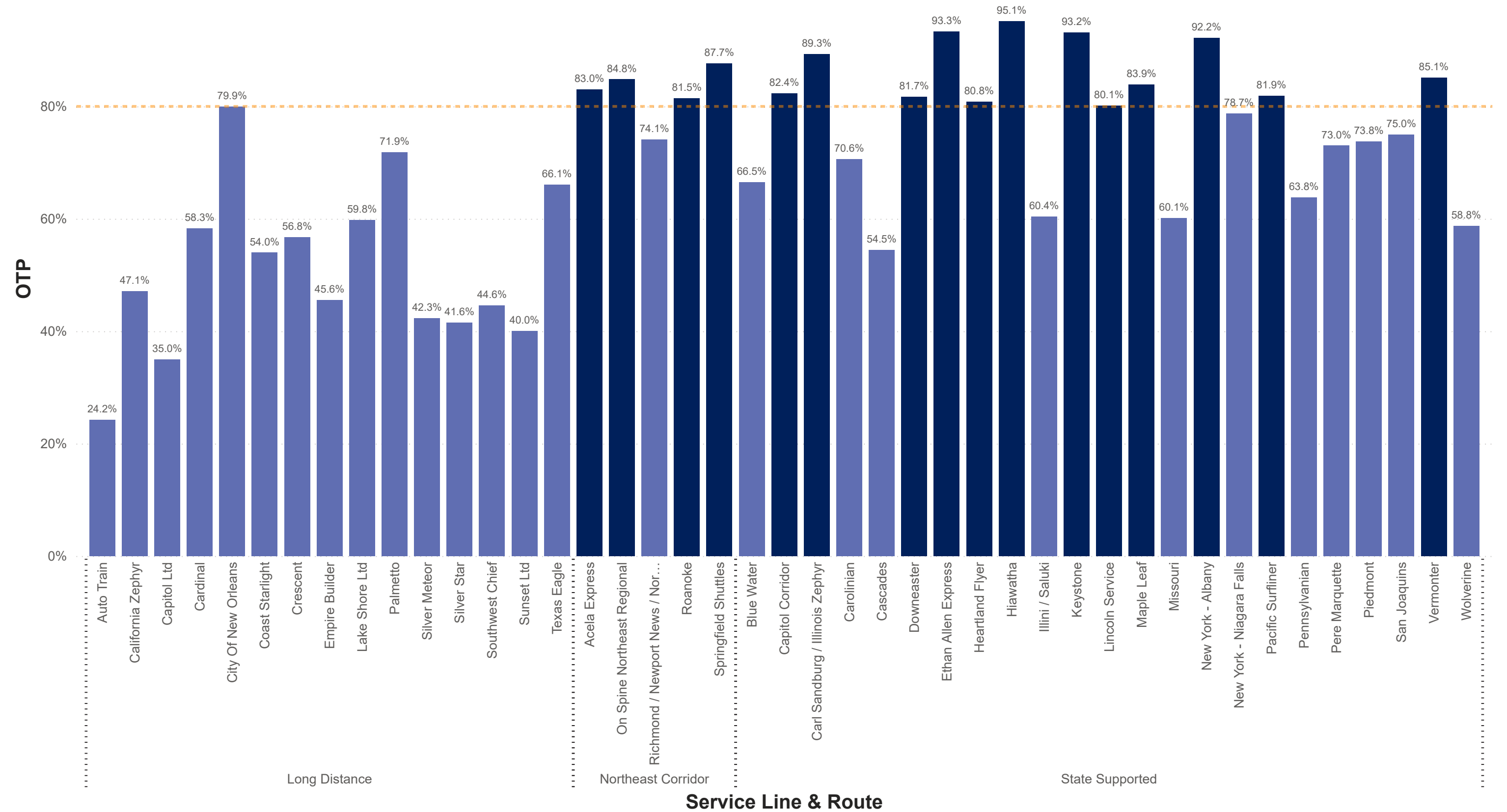


Figure 4. Customer OTP by Route

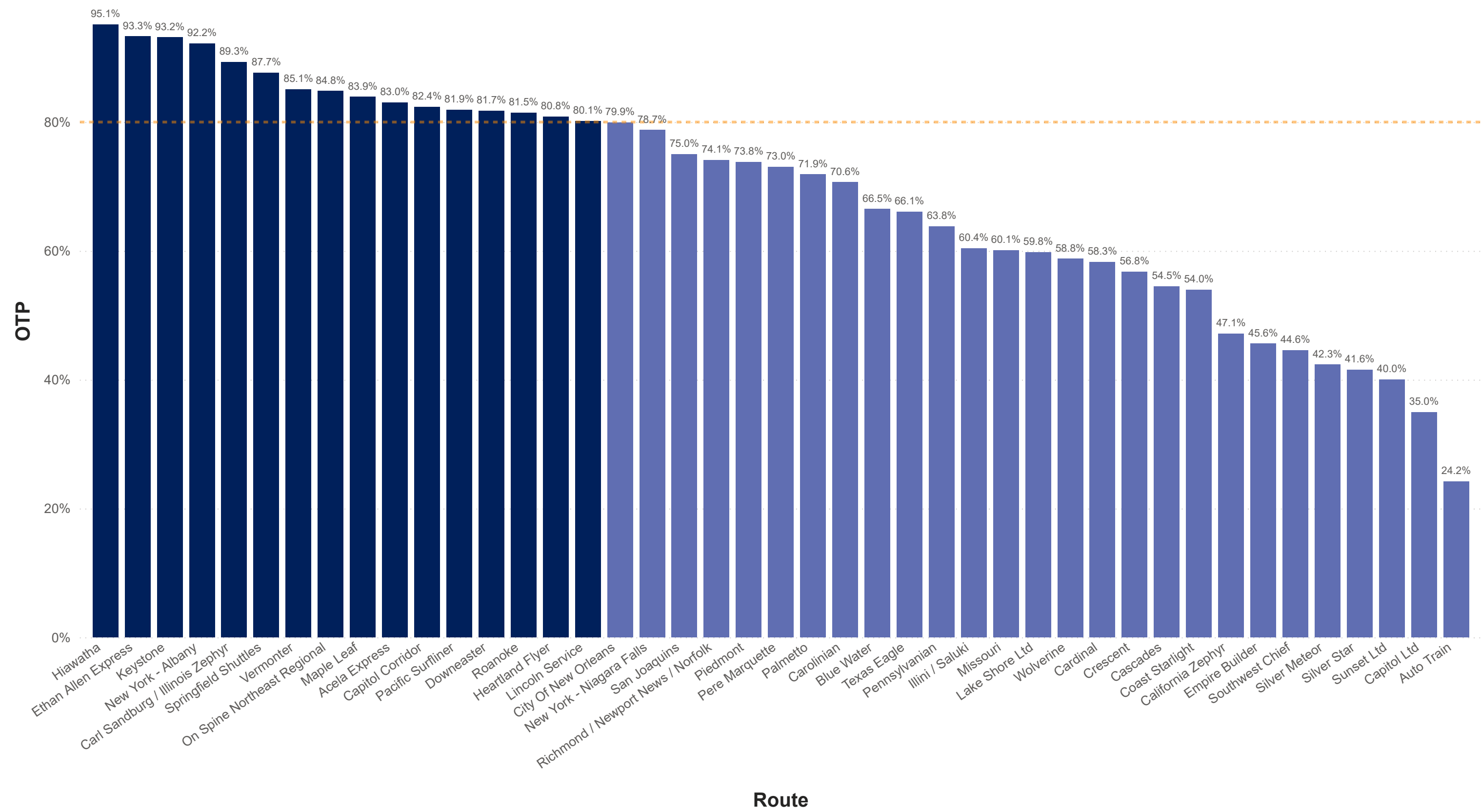


Table 8. Ridership Data Metrics

Host Railroad Name	October 2021	November 2021	December 2021
Belt Railway Company of Chicago	Yes	Yes	Yes
BNSF Railway	Yes	Yes	Yes
Buckingham Branch Railroad	Yes	Yes	Yes
Canadian National	Yes	Yes	Yes
Canadian Pacific	Yes	Yes	Yes
Central Florida Rail Corridor (Florida Rail)	Yes	Yes	Yes
Conrail	Yes	Yes	Yes
CSX Transportation	Yes	Yes	Yes
Golden Isles Terminal Railroad	Yes	Yes	Yes
Kansas City Terminal Railway	Yes	Yes	Yes
Massachusetts Bay Transportation Authority	Yes	Yes	Yes
Massachusetts Department of Transportation	Yes	Yes	Yes
Metra	Yes	Yes	Yes
Metro-North Railroad	Yes	Yes	Yes
Michigan Department of Transportation	Yes	Yes	Yes
Minnesota Commercial Railway	Yes	Yes	Yes
New England Central Railroad	Yes	Yes	Yes
New Mexico Department of Transportation	Yes	Yes	Yes
Norfolk Southern	Yes	Yes	Yes
North County Transit District (San Diego Northern)	Yes	Yes	Yes
Pan Am Railways	Yes	Yes	Yes
Portland Terminal Railroad Company	Yes	Yes	Yes
Regional Transportation District (Denver Union Station)	Yes	Yes	Yes
South Florida Regional Transportation Authority (Florida Department of Transportation)	Yes	Yes	Yes
Southern California Regional Rail Authority	Yes	Yes	Yes
Terminal Railroad Association of St. Louis	Yes	Yes	Yes
Trinity Railway Express	Yes	Yes	Yes
Union Pacific Railroad	Yes	Yes	Yes
Vermont Railway	Yes	Yes	Yes

Table 9. Disputed Delay Minutes

Host Railroad	Disputed Delay Minutes	Unresolved Disputed Delay Minutes
Buckingham Branch	49	0
Canadian National	10,364	0
Canadian Pacific	3	0
Norfolk Southern	1,593	0
Union Pacific	618	0
Total	12,627	0



Table 10. Amtrak Responsible Train Delay Minutes

	Amtrak (Host)																	Amtrak (Non-Host)															Amtrak Total
Service Line / Route	CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	DTR	FTI	PET	PSC	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	CTC	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total		
Long Distance																																	
Auto Train																		24	645				1,302	4	226	7,680		257	2,348	2,179	14,665	14,665	
California Zephyr	6			3										48	3		60	799	566		93		1,713	1,965	240	637		1,789	3,244	2,905	13,951	14,011	
Capitol Ltd	18			47			62	2						57	30		216	190	598		106		1,753	615	22	92		626	183	1,616	5,801	6,017	
Cardinal	47	9		52		15	8	3		11			47	19	36	149	396	473	3		139		800	498		84	53	697	327	616	3,690	4,086	
City Of New Orleans	7			1										29	8		45	482	505		34		1,204	1,215	79	110		1,148	556	961	6,294	6,339	
Coast Starlight																		790	234		274		657	2,608	85	189		2,518	2,682	3,895	13,932	13,932	
Crescent	124	5		200			14	2		14			54	209	6	177	805	969	151		22		1,086	1,087	150	656	51	693	1,921	5,322	12,108	12,913	
Empire Builder	8			6			8								6		28	436	457	15	4,820		1,770	2,286	87	2,870		1,640	4,843	4,030	23,254	23,282	
Lake Shore Ltd	64			257			5	395		13				304	120		1,158	456	640		2,104		1,244	1,027	24	235		532	678	2,234	9,174	10,332	
Palmetto	78	21		57		15	4						65	109	17	216	582	497	81	4			631	349	196			609	303	823	3,493	4,075	
Silver Meteor	95	16		81		69	37	6					77	315	52	409	1,157	2,308	179		85		1,098	1,924	157	23	28	623	851	2,332	9,608	10,765	
Silver Star	61			98	15		68			276			36	384	210	263	1,411	1,975	230	11	98	3	1,761	2,062	157	68	9	703	1,382	3,553	12,012	13,423	
Southwest Chief	21			4										2	23		50	827	430		431		2,509	2,493	231	82		443	2,996	2,216	12,658	12,708	
Sunset Ltd				1				41						10	4		56	582	234		349		746	1,579	185	235		1,335	1,370	1,550	8,165	8,221	
Texas Eagle	3			30						22				32			87	586	154		232		967	1,688	152	20		512	2,285	2,335	8,931	9,018	
Northeast Corridor																																	
Acela Express	1,178	196	186	937	57	223	391	442		21		46	2,090	702	96	3,281	9,846	434	489	4		44	1,136	1,122	24	39	136	281	23	273	4,005	13,851	
On Spine Northeast Regional	2,204	283	42	899		382	378	187		5		24	1,679	994	120	2,851	10,048	644	343		453	97	2,214	1,537	212	139	284	475	423	967	7,788	17,836	
Richmond / Newport News / Norfolk	1,153	126	51	978	40	313	317	144	31	270	3	4	1,059	987	133	2,162	7,771	1,530	299		79	22	3,360	2,599	84	297	92	2,016	1,473	1,463	13,314	21,085	
Roanoke	213	18	45	293	18	13	86	21					219	572	15	224	1,737	447	357				359	736	36	4	28	145	282	292	2,686	4,423	
Springfield Shuttles	230	13		236			3	5		411			34	756	150	31	1,869	36	79	192	2,335		1,073	98		501	67	1,364	273	153	6,171	8,040	
State Supported																																	
Blue Water	5			68			71	34		34				422	12		646	195	102				215	147		189		648	281	683	2,460	3,106	
Capitol Corridor																		952	299	445	91		651	848	123	1,520		1,629	469	1,299	8,326	8,326	
Carl Sandburg / Illinois Zephyr	5			6			9							9	4		33	301	5				123	354				100	31	402	1,316	1,349	
Carolinian	35			58	9	31	27	5		10			67	70	30	287	629	874	106		30		546	487			7	654	379	620	3,703	4,332	
Cascades																		1,088	464	122	31		690	717		272		1,089	421	1,461	6,355	6,355	
Downeaster																		138		7	53		290	316	17	974		177	52	537	2,561	2,561	
Ethan Allen Express	8			72				9						94	77		260	131	4		64		275	372				351	161	163	1,521	1,781	
Heartland Flyer																		180					131	235				11	55	56	668	668	
Hiawatha	28			29			3							29	11		100	84	79				292	196		259		1,891	397	487	3,685	3,785	
Illini / Saluki	4			29										94	16		143	439	448				399	1,097	12	38		1,770	106	757	5,066	5,209	
Keystone	739	287		325		124	249	162		17	13	1	2,295	542	64	712	5,530	53	197	440	21		1,322	196	54	10	134	72	8	57	2,564	8,094	
Lincoln Service	22			106				27		52				75	22		304	372	82	21			321	530	68	32		637	235	1,190	3,488	3,792	
Maple Leaf	15	2		40			2	77						87	148	65	436	261	2				285	443				237	538	942	2,708	3,144	
Missouri																		883	37				56	490	24	962		250	38	375	3,115	3,115	
New York - Albany	67	13	38	265			33	78		8				371	294	17	1,184	220	23		21		160	951		24	14	83	20	130	1,646	2,830	
New York - Niagara Falls	14	5		259			16	139						560	171		1,164	415	51		29		659	730	38			535	397	1,637	4,491	5,655	
Pacific Surfliner																		1,790	518	968	856		2,390	3,112	89	2,249		1,393	400	3,281	17,046	17,046	
Pennsylvanian	41	2		45	8	45	21	12					303	166		80	723	283	106		99		339	237		27	57	414	120	1,240	2,922	3,645	
Pere Marquette	2			21						5				35	3		66	60					64	51				397		177	749	815	
Piedmont																		750				30		173	359	18	720		510	3	594	3,157	3,157
San Joaquins																		1,334	135	364	820		1,092	947	97	522		961	434	1,553	8,259	8,259	
Vermonter	185	37		132		51	62	27		29			194	196	14	427	1,354	194	150	5			275	275	62		50	1,570	44	305	2,930	4,284	
Wolverine	81			166			78	232		84				1,746	77		2,464	776	432				1,181	478	24	262		3,525	2,007	4,266	12,951	15,415	

Table 11. Host Railroad Responsible Train Delay Minutes

Service Line / Route	Delay Cause																Total
	CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	DTR	FTI	PET	PSC	PSR	PTI	RTE	SMW	
Long Distance																	
Auto Train	380			1,051			106	4,531		12,834				6,153	1,236		26,291
California Zephyr	505			4,900			1,595	7,961	68	22,667				4,950	3,495		46,141
Capitol Ltd	80			982			200	1,242		15,209				2,145	3,323		23,181
Cardinal	219	9		932		15	255	1,213		3,056			47	1,064	1,010	149	7,969
City Of New Orleans	35			1,001			266	1,927		4,989				2,341	1,739		12,298
Coast Starlight	532			5,046			718	5,261	339	12,767				9,002	943		34,608
Crescent	492	5		3,598			183	2,389		25,295			54	3,159	2,292	177	37,644
Empire Builder	515			2,985			1,587	5,752		26,567				3,094	1,237		41,737
Lake Shore Ltd	4,074			1,254			893	1,856		13,192				3,928	2,528		27,725
Palmetto	139	21		964		15	487	1,933		5,599			65	2,968	363	216	12,770
Silver Meteor	2,208	16		1,363		69	293	3,774		9,794			77	5,065	1,106	409	24,174
Silver Star	1,314			2,175	15		586	5,155	0	6,922			36	5,817	1,439	263	23,722
Southwest Chief	1,959			5,279			939	8,414	0	13,806				4,311	1,226		35,934
Sunset Ltd	63			1,906			619	3,723		15,777				416	3,976		26,480
Texas Eagle	213			2,441			675	6,013	298	20,386				2,915	1,955		34,896
Northeast Corridor																	
Acela Express	2,615	196	186	1,165	57	425	904	5,714	10	29		46	2,090	775	422	3,281	17,915
On Spine Northeast Regional	6,336	283	42	1,229		571	636	7,737	7	52		24	1,679	1,029	449	2,851	22,925
Richmond / Newport News / Norfolk	4,970	126	51	3,858	40	421	1,685	6,266	315	5,610	3	4	1,059	4,110	4,281	2,162	34,961
Roanoke	1,076	18	45	615	18	15	226	1,034	21	1,179			219	791	114	224	5,595
Springfield Shuttles	244	13		301			3	298	2	707			34	814	253	31	2,700
State Supported																	
Blue Water	7			335			167	118		3,198				609	223		4,657
Capitol Corridor	1,086			3,584			461	1,624	18	1,778				5,617	1,692		15,860
Carl Sandburg / Illinois Zephyr	829			330			190	602	2	2,388				200	686		5,227
Carolinian	193			1,214	9	31	579	1,365		2,903			67	3,063	1,499	287	11,210
Cascades	251			2,362			719	3,700	8	8,090				4,008	1,651		20,789
Downeaster	1,768			1,892			765	3,495	20	1,198				3,218	272		12,628
Ethan Allen Express	713			190			87	668		153				190	414		2,415
Heartland Flyer	24			172			76	2,690		2,294				2	77		5,335
Hiawatha	2,576			1,032			548	511		413				347	195		5,622
Illini / Saluki	473			689			499	2,183	7	2,918				2,930	317		10,016
Keystone	739	287		325		124	249	162		17	13	1	2,295	542	64	712	5,530
Lincoln Service	113			2,249			618	615	332	10,996				4,768	1,509		21,200
Maple Leaf	548	2		521			229	1,020		2,208				612	1,589	65	6,794
Missouri				900			603	4,157		7,451				1,992	568		15,671
New York - Albany	5,650	13	38	408			410	1,647		17				618	1,422	17	10,240
New York - Niagara Falls	2,093	5		1,118			915	2,219		3,857				905	2,795		13,907
Pacific Surfliner	7,734			10,418			1,501	4,288	13	2,313				10,990	2,292		39,549
Pennsylvanian	41	2		536	8	45	351	331		4,610			303	194	1,096	80	7,597
Pere Marquette	2			255			50	70		1,875				661	89		3,002
Piedmont				1,222			80	1,283		2,394				1,207	229		6,415
San Joaquins	82			3,280			1,411	3,305		13,918				14,526	631		37,153
Vermonter	499	37		469		51	380	6,174	13	117			194	474	156	427	8,991
Wolverine	198			1,497			375	2,118		7,709				5,344	924		18,165

Table 12. Third Party Responsible Train Delay Minutes

Service Line / Route	Delay Cause									Total
	BSP	CUI	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Long Distance										
Auto Train			59		523	311	1,803		466	3,162
California Zephyr			582	413	9,413	1,059	2,123		4,445	18,035
Capitol Ltd			241	108	2,584	440	392		216	3,981
Cardinal			230	31	1,997	362	229	4	391	3,244
City Of New Orleans			245	83	9,127	453	273		2,311	12,492
Coast Starlight			204	369	7,838	1,483	2,216		2,393	14,503
Crescent	11		59	118	7,039	435	970	23	297	8,952
Empire Builder			93	233	10,816	927	876		2,886	15,831
Lake Shore Ltd			47	135	3,656	317	169	21	313	4,658
Palmetto	3		40	5	1,323	365	505	44	90	2,375
Silver Meteor	23		391		3,017	702	339	28	163	4,663
Silver Star	26		220	12	2,097	750	1,463	3	474	5,045
Southwest Chief			323	194	7,086	834	861		480	9,778
Sunset Ltd		13	82	28	3,030	351	1,371		94	4,969
Texas Eagle			42	77	14,474	848	1,117		971	17,529
Northeast Corridor										
Acela Express	292		88	188	1,937	772	1,230	574	2,341	7,422
On Spine Northeast Regional	249		380	125	2,108	1,462	1,471	338	4,386	10,519
Richmond / Newport News / Norfolk	99		223	133	5,465	909	1,547	205	3,166	11,747
Roanoke	25		26	19	1,398	124	321	29	852	2,794
Springfield Shuttles					738	383	286		2,285	3,692
State Supported										
Blue Water			10	182	3,321	290	319		266	4,388
Capitol Corridor			290	2,981	2,533	2,114	4,658		453	13,029
Carl Sandburg / Illinois Zephyr			21		1,119	75	73		48	1,336
Carolinian	14		40		1,961	601	220	22	139	2,997
Cascades			150	498	1,008	373	953		1,105	4,087
Downeaster			9		3,061	475	96		291	3,932
Ethan Allen Express					1,033	8			70	1,111
Heartland Flyer					81	11	154		72	318
Hiawatha			1	2	742	9	166		3	923
Illini / Saluki			10	59	93	124	504		238	1,028
Keystone	146		36	16		174	170	15	1,251	1,808
Lincoln Service			13	56	9,333	242	313		442	10,399
Maple Leaf			11		1,785	151	181		240	2,368
Missouri			80		940	40	164		334	1,558
New York - Albany			23		990	117	43	57	192	1,422
New York - Niagara Falls			7	21	1,541	96	235		696	2,596
Pacific Surfliner			449		13,301	2,684	2,553		552	19,539
Pennsylvanian	2		214		34	66	136	9	243	704
Pere Marquette				129	263		155		280	827
Piedmont			68		846	380	652		213	2,159
San Joaquins			294		5,933	2,742	1,437		547	10,953
Vermont	40		70	20	503	417	339	20	469	1,878
Wolverine			161	591	705	803	1,917		1,752	5,929

Figure 5. Delay Minutes by Service Line

Delay Responsibility ● Amtrak ● Host Railroad ● Third Party

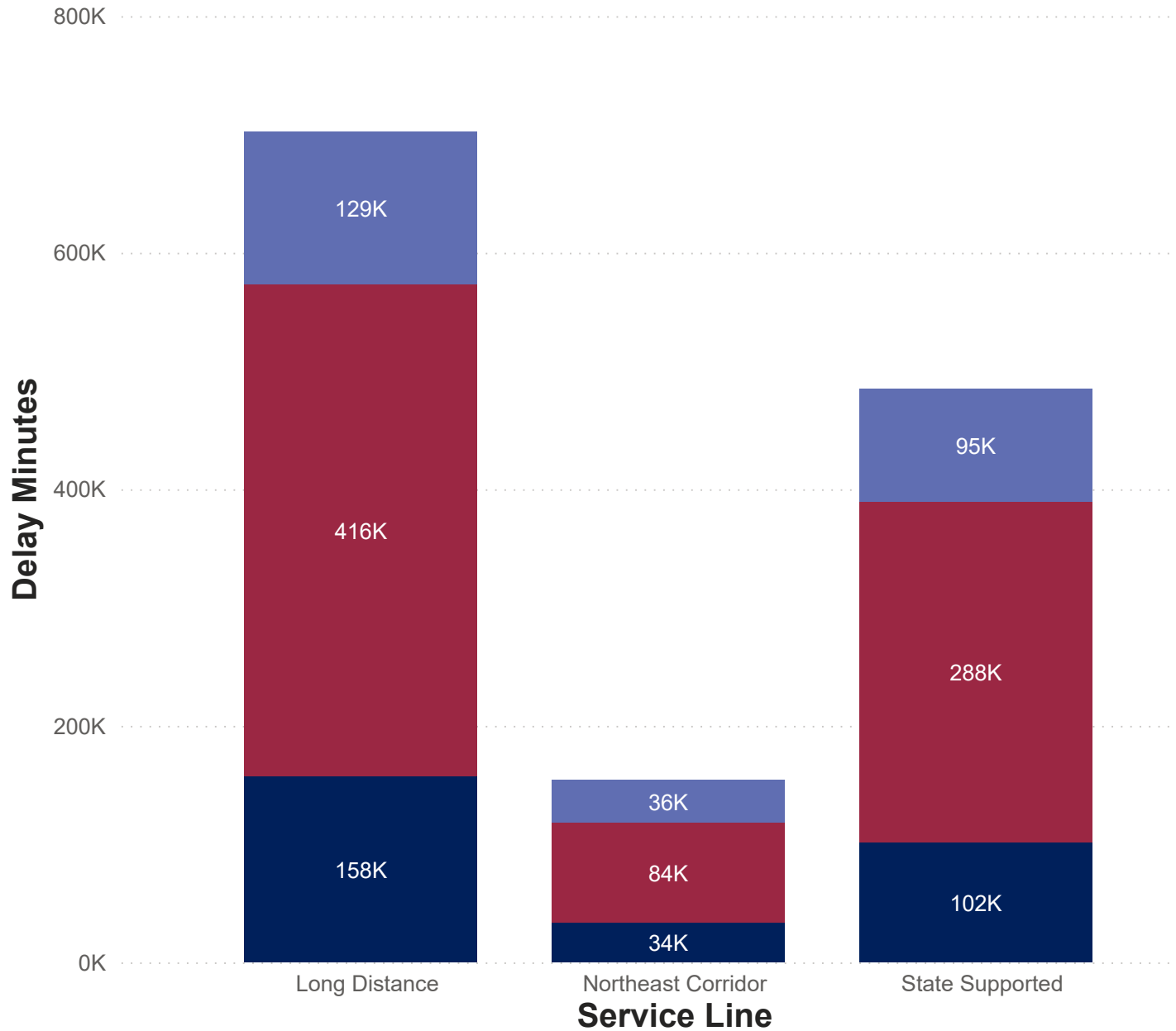


Figure 6. Delay Minutes by Route

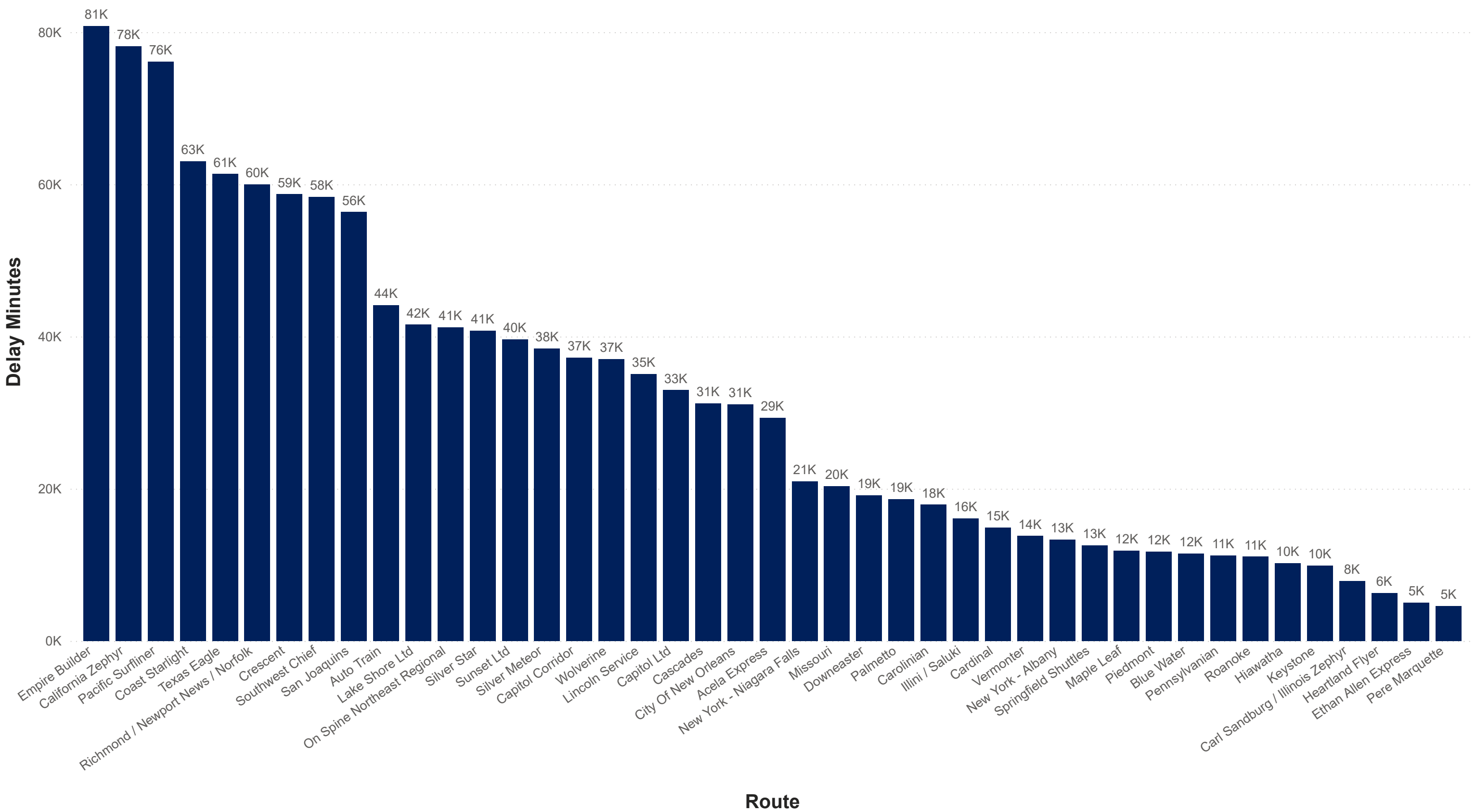


Figure 7. Class I Host Responsible Train Delay Minutes

Delay Code ● CTI ● DCS ● DMW ● DSR ● DTR ● FTI ● PTI ● RTE

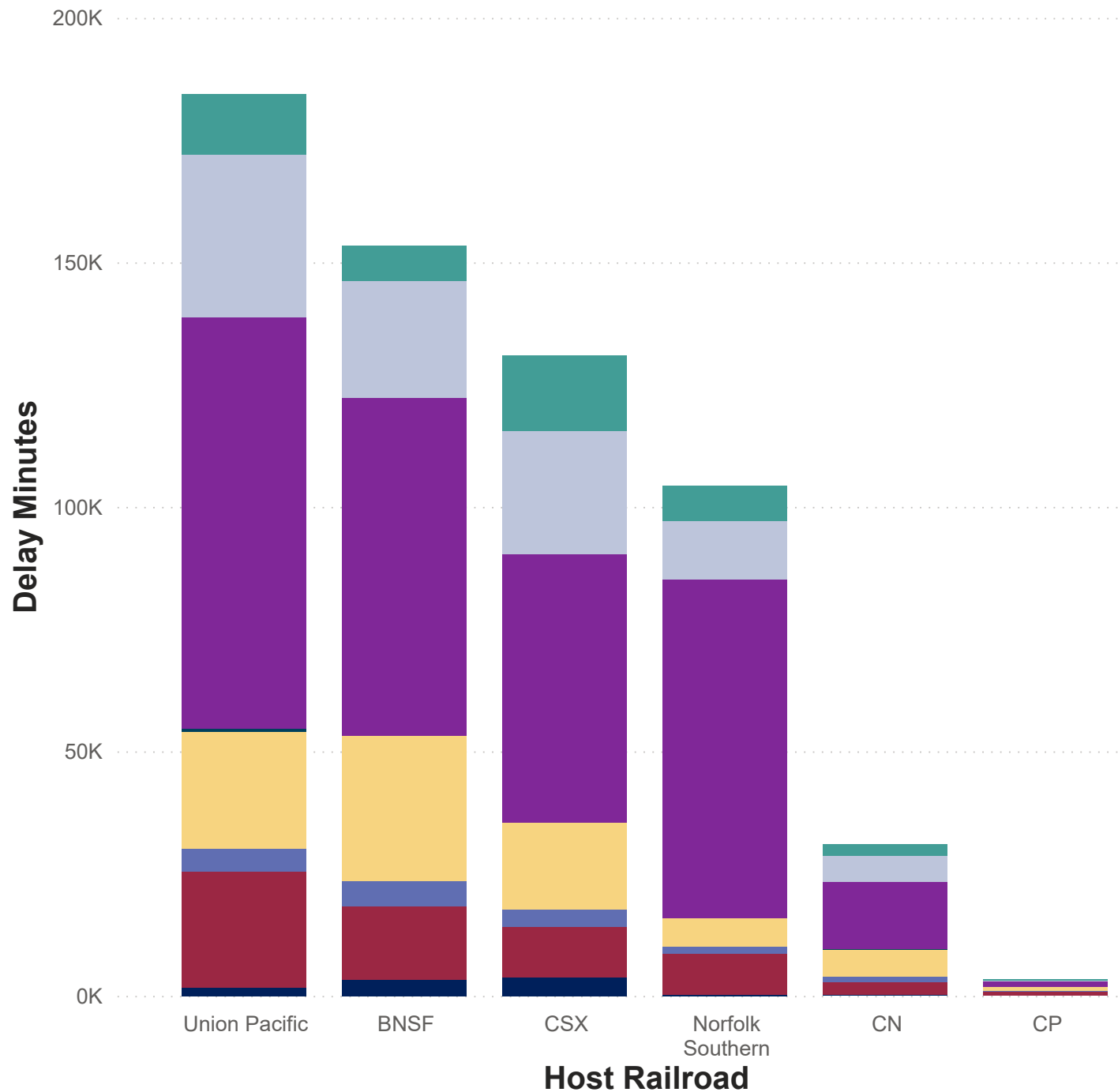
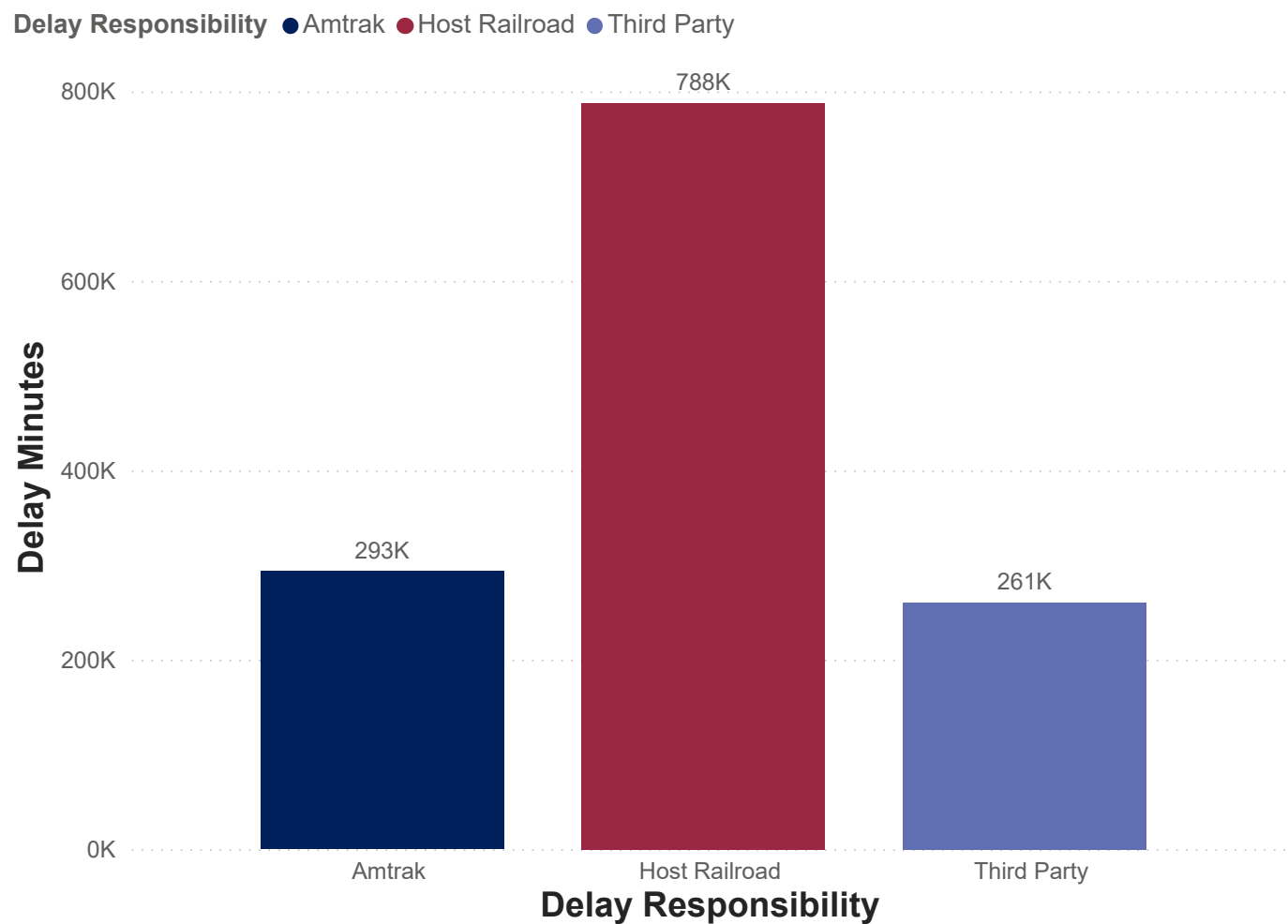


Figure 8. Train Delay Minutes by Responsibility



B. Customer Service

Amtrak's customer satisfaction survey means a market-research survey that measures Amtrak's satisfaction score as measured by specific service attributes that cover the entire customer journey.

FRA will publish information about Amtrak's customer satisfaction survey (including the survey questions and methodology) annually as an appendix to the quarterly report. See Appendix 4 of the FY2021 Quarter 4 report.

Amtrak adjusts overall satisfaction score performance by removing passengers who arrive at their destinations on State-supported and long-distance routes excessively late (30 minutes late for State-supported routes and 120 minutes for long-distance routes) from the system-wide calculation. Amtrak provided the percent of respondents to the Amtrak customer satisfaction survey who provided a score of 70 percent or greater for their overall satisfaction (Top 4) and the percent of respondents who provided a score of 80 percent or greater (Top 3). The tables and charts in this report reflect the percent of respondents to the Amtrak customer satisfaction survey who provided a score of 70 percent or greater for their overall satisfaction (Top 4).

The only service not in operation during FY22 Q1 was the Adirondack. In addition, many routes were still operating at reduced frequency from pre-COVID service levels during FY22 Q1, including: Northeast Regional, Acela, Capitol Corridor, Cascades, Empire Service, Keystone, Pacific Surfliner, and San Joaquins.

Table 13. Customer Service Metrics – Definitions and Notes

Metric	Definition
Customer Satisfaction	The percent of respondents to the Amtrak customer satisfaction survey who provided a score of 70 percent or greater for their "overall satisfaction" on a 100-point scale for their most recent trip, by route, shown both adjusted for performance and unadjusted
Amtrak Personnel	The average score from respondents to the Amtrak customer satisfaction survey for their overall review of Amtrak personnel on their most recent trip, by route.
Information Given	The average score from respondents to the Amtrak customer satisfaction survey for their overall review of information provided by Amtrak on their most recent trip, by route.
On-board Comfort	The average score from respondents to the Amtrak customer satisfaction survey for their overall review of onboard comfort on their most recent trip, by route.
On-board Cleanliness	The average score from respondents to the Amtrak customer satisfaction survey for their overall review of onboard comfort on their most recent trip, by route.
On-board food service	The average score from respondents to the Amtrak customer satisfaction survey for their overall review of on-board food service on their most recent trip, by route.

Table 14. Customer Satisfaction by Route - Not Adjusted for Train Performance

Service Line / Route	Overall Service	Amtrak Personnel	Information Given	On-Board Comfort	On-Board Cleanliness	On-Board Food Service
Long Distance						
Auto Train	66%	86%	64%	70%	80%	56%
California Zephyr	77%	85%	73%	82%	71%	62%
Capitol Limited	74%	86%	72%	81%	79%	58%
Cardinal	77%	83%	76%	82%	78%	63%
City of New Orleans	85%	90%	83%	87%	87%	65%
Coast Starlight	75%	87%	71%	82%	77%	59%
Crescent	71%	85%	70%	80%	78%	56%
Empire Builder	76%	85%	71%	80%	73%	58%
Lake Shore Ltd	78%	86%	77%	81%	80%	57%
Palmetto	84%	85%	83%	89%	86%	69%
Silver Meteor	76%	85%	74%	79%	77%	58%
Silver Star	78%	84%	74%	82%	77%	59%
Southwest Chief	80%	88%	76%	82%	78%	68%
Sunset Limited	79%	86%	72%	83%	78%	69%
Texas Eagle	77%	84%	78%	82%	75%	58%
Northeast Corridor						
Acela Express	89%	91%	88%	90%	90%	74%
Northeast Regional	87%	89%	83%	91%	90%	68%
State Supported						
Blue Water	87%	89%	82%	89%	91%	69%
Capitol Corridor	87%	93%	84%	91%	90%	74%
Carolinian	84%	89%	83%	88%	85%	72%
Cascades	81%	93%	78%	85%	86%	62%
Downeaster	90%	94%	85%	94%	94%	82%
Empire South	90%	92%	88%	92%	93%	49%
Empire West/Maple Leaf	90%	92%	87%	91%	89%	70%
Ethan Allen	89%	91%	86%	90%	91%	70%
Heartland Flyer	90%	91%	85%	91%	88%	77%
Hiawatha	93%	95%	93%	95%	94%	54%
Illini / Saluki	85%	90%	83%	90%	87%	71%
Illinois Zephyr/Carl Sandburg	91%	90%	88%	93%	94%	80%
Keystone	92%	93%	89%	94%	92%	52%
Lincoln Service	86%	89%	86%	87%	88%	70%
Missouri River Runner	82%	92%	81%	90%	82%	66%
New Haven - Springfield	89%	92%	82%	91%	90%	69%
Pacific Surfliner	86%	90%	82%	92%	88%	77%
Pennsylvanian	85%	91%	83%	90%	86%	66%
Pere Marquette	92%	95%	91%	94%	93%	74%
Piedmont	93%	94%	91%	94%	95%	73%
San Joaquin	84%	90%	84%	88%	83%	67%
Vermont	88%	93%	85%	92%	89%	67%
Washington- Lynchburg/Roanoke	86%	89%	82%	89%	86%	67%
Washington-Newport News	83%	88%	77%	88%	86%	71%
Washington-Norfolk	88%	91%	82%	92%	86%	70%
Washington-Richmond	88%	92%	76%	92%	88%	68%
Wolverine	79%	89%	77%	86%	85%	64%

Table 15. Customer Satisfaction by Route - Adjusted for Train Performance

Service Line / Route	Overall Service	Amtrak Personnel	Information Given	On-Board Comfort	On-Board Cleanliness	On-Board Food Service
Long Distance						
Auto Train	79%	90%	82%	74%	86%	62%
California Zephyr	82%	87%	79%	84%	74%	65%
Capitol Limited	77%	87%	75%	82%	80%	59%
Cardinal	80%	84%	79%	82%	79%	64%
City of New Orleans	87%	91%	86%	88%	88%	66%
Coast Starlight	81%	89%	77%	86%	80%	62%
Crescent	78%	87%	76%	83%	81%	58%
Empire Builder	82%	87%	77%	83%	77%	60%
Lake Shore Ltd	81%	87%	79%	82%	81%	58%
Palmetto	86%	86%	84%	89%	86%	70%
Silver Meteor	80%	86%	78%	81%	79%	60%
Silver Star	81%	86%	77%	83%	79%	60%
Southwest Chief	83%	89%	80%	83%	80%	69%
Sunset Limited	83%	88%	76%	83%	78%	70%
Texas Eagle	79%	84%	80%	83%	76%	59%
Northeast Corridor						
Acela Express	89%	91%	88%	90%	90%	74%
Northeast Regional	87%	89%	83%	91%	90%	68%
State Supported						
Blue Water	90%	90%	86%	90%	91%	70%
Capitol Corridor	91%	94%	88%	93%	92%	75%
Carolinian	88%	89%	87%	89%	86%	74%
Cascades	87%	94%	85%	89%	89%	66%
Downeaster	92%	95%	89%	95%	95%	85%
Empire South	91%	92%	89%	92%	93%	49%
Empire West/Maple Leaf	91%	92%	89%	91%	90%	70%
Ethan Allen	89%	91%	86%	90%	91%	71%
Heartland Flyer	92%	92%	88%	93%	90%	79%
Hiawatha	94%	95%	93%	95%	94%	54%
Illini / Saluki	89%	91%	86%	91%	89%	72%
Illinois Zephyr/Carl Sandburg	92%	90%	89%	93%	94%	81%
Keystone	93%	94%	90%	94%	93%	52%
Lincoln Service	88%	89%	88%	88%	88%	71%
Missouri River Runner	87%	94%	86%	92%	85%	70%
New Haven - Springfield	91%	93%	85%	92%	91%	70%
Pacific Surfliner	90%	92%	86%	93%	90%	79%
Pennsylvanian	89%	93%	87%	91%	87%	68%
Pere Marquette	93%	95%	92%	95%	94%	75%
Piedmont	96%	95%	93%	95%	96%	75%
San Joaquin	88%	91%	87%	90%	85%	68%
Vermonteer	90%	93%	87%	92%	89%	68%
Washington- Lynchburg/ Roanoke	89%	90%	85%	90%	88%	69%
Washington-Newport News	87%	90%	81%	90%	87%	73%
Washington-Norfolk	91%	93%	86%	93%	87%	71%
Washington-Richmond	93%	94%	80%	94%	90%	71%
Wolverine	87%	92%	85%	90%	88%	67%

Figure 9. Customer Satisfaction by Service Line and Route - Adjusted and Not Adjusted for Train Performance

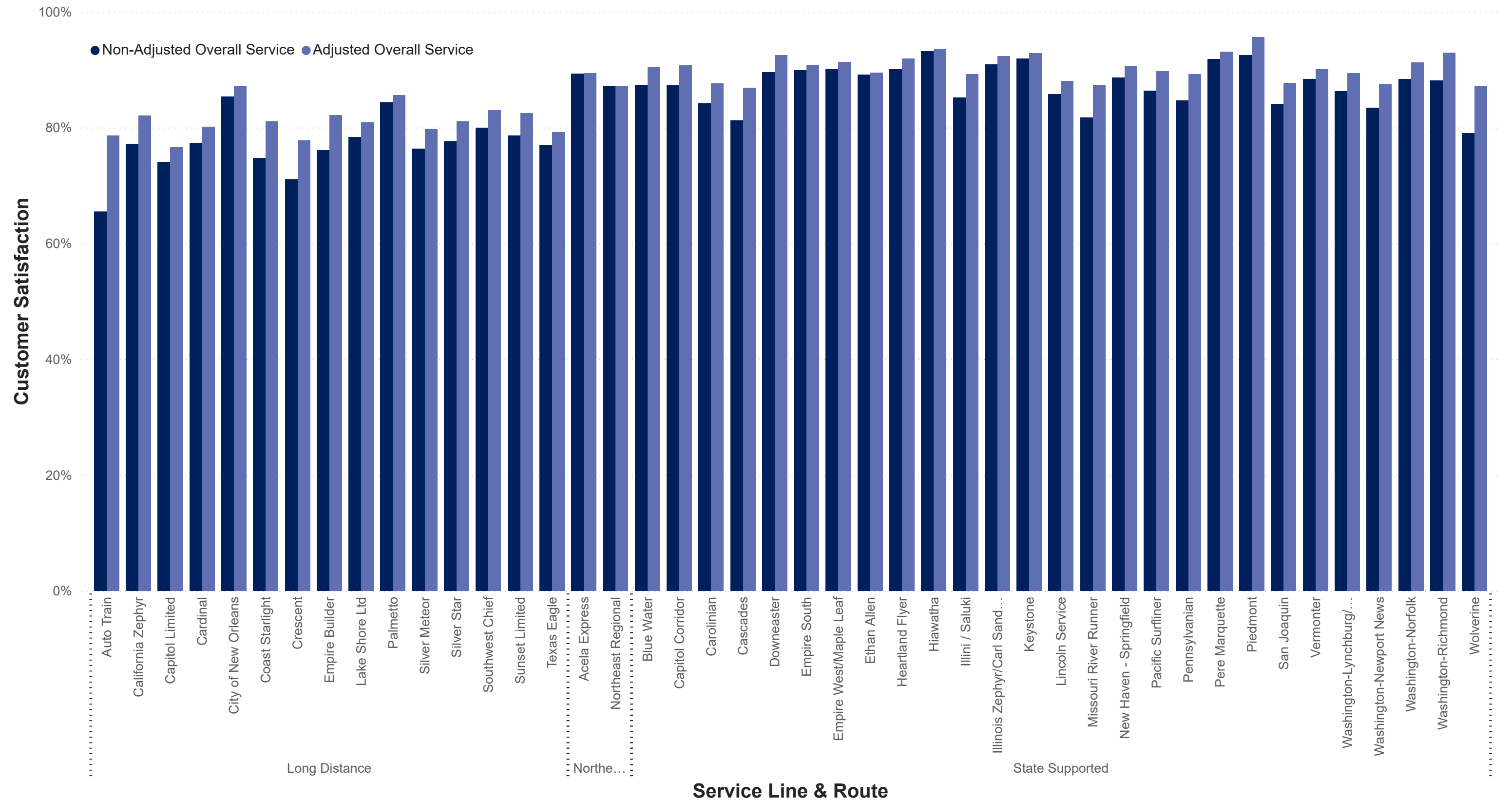
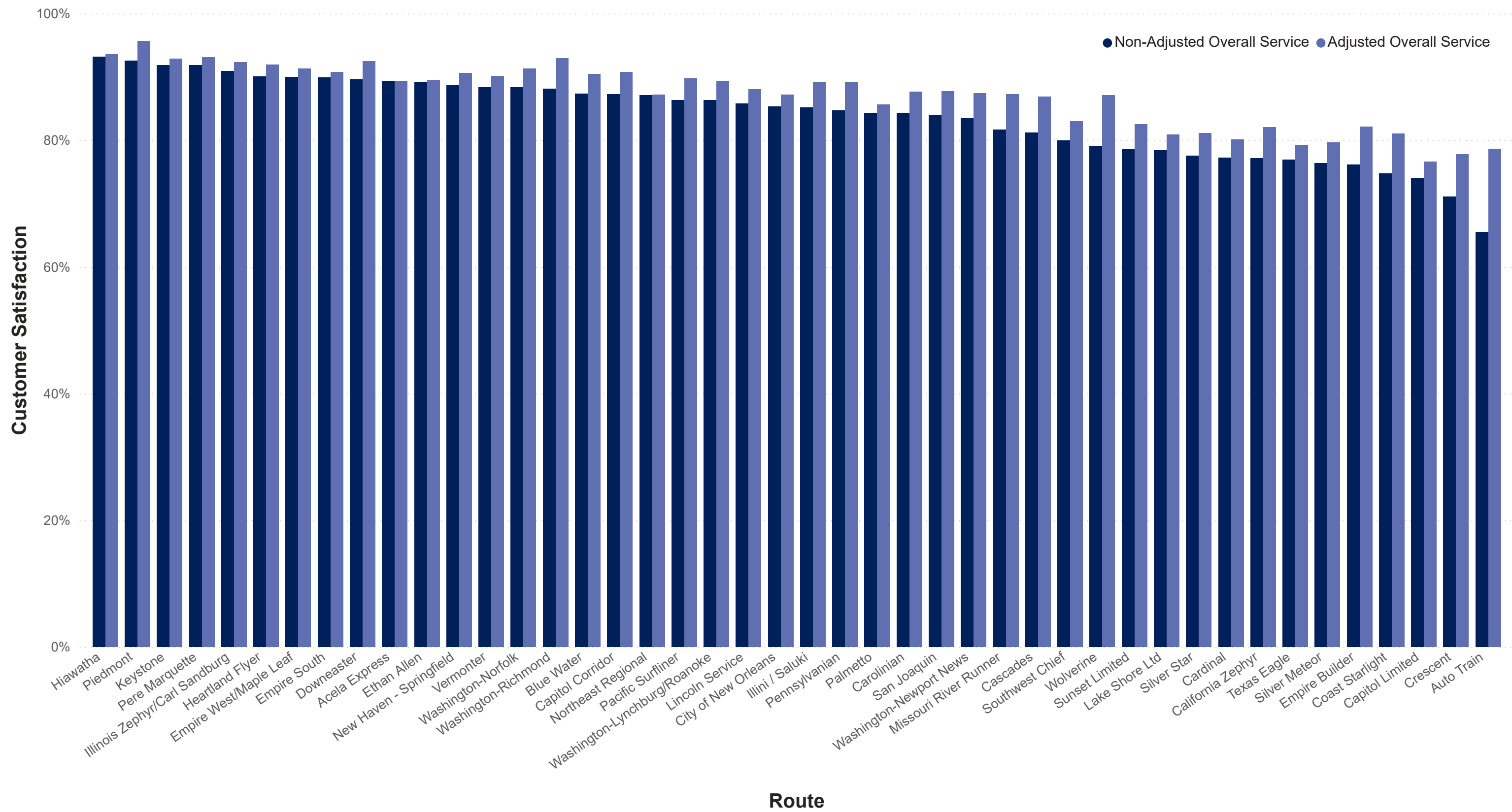


Figure 10. Customer Satisfaction by Route - Adjusted and Not Adjusted for Train Performance



C. Financial

The only service not operating during FY22 Q1 was the Adirondack, although many routes were still operating at reduced frequency from pre-COVID service levels during FY22 Q1, including: Northeast Regional, Acela, Capitol Corridor, Cascades, Empire Service, Keystone, Pacific Surfliner, and San Joaquins.

Table 16. Financial Metrics – Definitions and Notes

Metric	Definition	Data Description and Notes
Cost Recovery	Amtrak's adjusted operating revenue divided by Amtrak's adjusted operating expense. This metric is reported at the corporate level/system-wide and for each route and is reported in constant dollars of the reporting year based on the Office of Management and Budget's gross domestic product chain deflator.	<i>Adjusted operating expenses</i> means Amtrak's operating expenses adjusted to exclude certain Amtrak expenses that are not considered core to operating the business. The major exclusions are depreciation, capital project-related expenditures not eligible for capitalization, the non-cash portion of pension and post-retirement benefits, and Amtrak's Office of Inspector General expenses. Adjusted operating expenses do not include any operating expenses for State-supported routes that are paid for separately by States. <i>System-wide</i> (Total Amtrak) includes Ancillary and Infrastructure expenses not related to train operations. National Train Service includes expenses from all train operations and routes. Special Trains includes expenses related to contracting of Amtrak's equipment crews for private excursion.
Avoidable Operating Costs Covered by Passenger Revenue	The percent of avoidable operating costs divided by passenger revenue for each route, shown with and without State operating payments.	<i>Avoidable operating costs</i> means costs incurred by Amtrak to operate train service along a route that would no longer be incurred if the route were no longer operated. For this quarterly report, Avoidable Operating Expense is calculated by adding Frequency Variable & Route Variable costs. <i>Passenger revenue</i> means intercity passenger rail revenue generated from passenger train operations, including ticket revenue, food and beverage sales, operating payments collected from States or other sponsoring entities, special trains, and private car operations.
Fully Allocated Core Operating Costs Covered by Passenger Revenue	The percent of fully allocated core operating costs divided by passenger revenue for each route, shown with and without State operating payments.	<i>Fully allocated core operating costs</i> means Amtrak's total costs associated with operating an Amtrak route, including direct operating expenses, a portion of shared expenses, and a portion of corporate overhead expenses. Fully allocated core operating costs exclude ancillary and other expenses that are not directly reimbursed by passenger revenue to match revenues with expenses. <i>Passenger revenue</i> means intercity passenger rail revenue generated from passenger train operations, including ticket revenue, food and beverage sales, operating payments collected from States or other sponsoring entities, special trains, and private car operations.
Average Ridership	The number of passenger-miles divided by train-miles for each route	None.
Total Ridership	The total number of passengers on Amtrak trains, reported by route	None.

Table 17. Cost Recovery by Service Line and Route

Service Line / Route	Cost Recovery
Long Distance	
Auto Train	131%
California Zephyr	48%
Capitol Limited	48%
Cardinal	38%
City of New Orleans	39%
Coast Starlight	52%
Crescent	49%
Empire Builder	41%
Lake Shore Ltd	48%
Palmetto	65%
Silver Meteor	55%
Silver Star	44%
Southwest Chief	45%
Sunset Limited	23%
Texas Eagle	48%
Northeast Corridor	
Acela Express	103%
NEC Special Trains	88%
Northeast Regional	115%
State Supported	
Adirondack	133%
Blue Water	91%
Capitol Corridor	93%
Carolinian	100%
Cascades	91%
Downeaster	95%
Empire South	96%
Empire West/Maple Leaf	56%
Ethan Allen	51%
Heartland Flyer	94%
Hiawatha	114%
Illini / Saluki	124%
Illinois Zephyr/Carl Sandburg	111%
Keystone	45%
Lincoln Service	100%
Missouri River Runner	111%
New Haven - Springfield	60%
Non-NEC Special Trains	27%
Pacific Surfliner	86%
Pennsylvanian	77%
Pere Marquette	62%
Piedmont	99%
San Joaquin	92%
Vermonter	94%
Washington-Lynchburg/Roa- noke	80%
Washington-Newport News	57%
Washington-Norfolk	65%
Washington-Richmond	70%
Wolverine	91%
System-Wide	
National Train Service	81%
System-wide (Total Amtrak)	82%

Figure 11. Cost Recovery by Service Line and Route

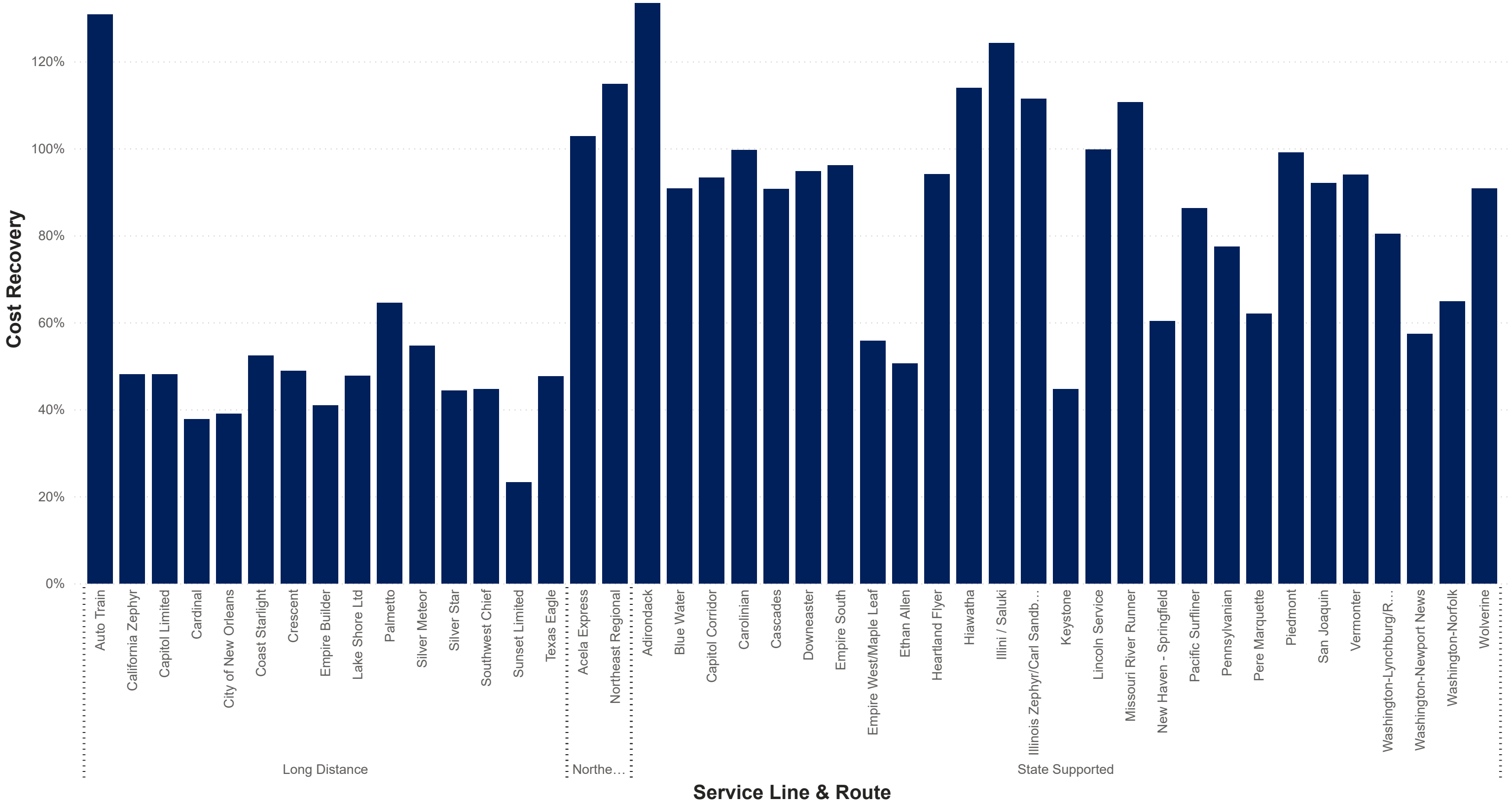


Figure 12. Cost Recovery by Route

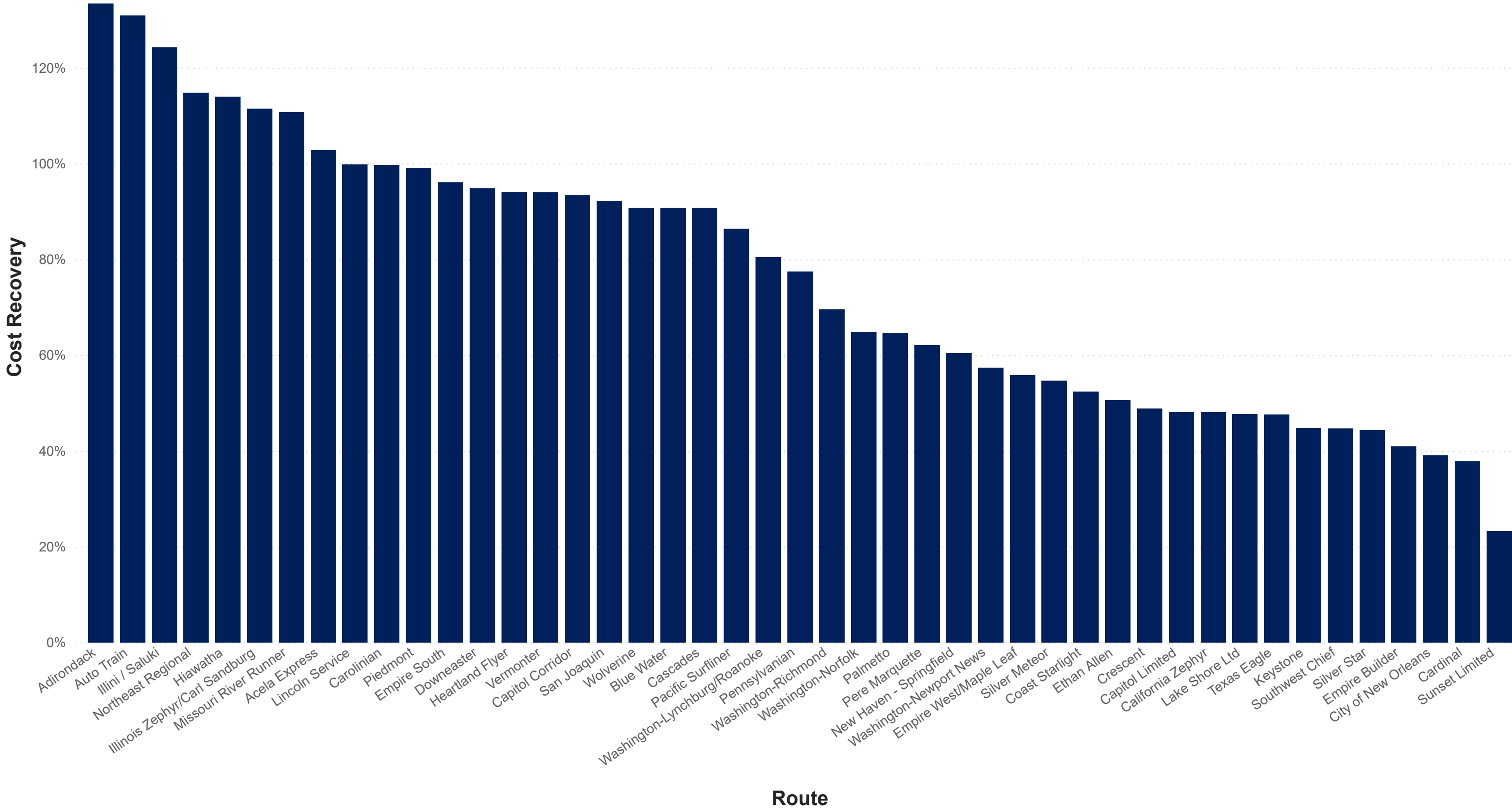


Table 18. Avoidable Operating Expenses Covered By Passenger Revenue

Service Line	Without State Operating Payments	With State Operating Payments
Long Distance		
Auto Train	146%	146%
California Zephyr	54%	54%
Capitol Limited	59%	59%
Cardinal	49%	49%
City of New Orleans	45%	45%
Coast Starlight	60%	60%
Crescent	57%	57%
Empire Builder	45%	45%
Lake Shore Ltd	54%	54%
Palmetto	77%	77%
Silver Meteor	63%	63%
Silver Star	52%	52%
Southwest Chief	50%	50%
Sunset Limited	25%	25%
Texas Eagle	51%	51%
Northeast Corridor		
Acela Express	120%	120%
NEC Special Trains	167%	167%
Northeast Regional	144%	144%
State Supported		
Adirondack ¹	0%	139%
Blue Water	53%	103%
Capitol Corridor	38%	110%
Carolinian	85%	114%
Cascades	50%	106%
Downeaster	57%	114%
Empire South	109%	114%
Empire West/Maple Leaf	56%	63%
Ethan Allen	21%	57%
Heartland Flyer	30%	115%
Hiawatha	63%	125%
Illini / Saluki	59%	148%
Illinois Zephyr/Carl Sandburg	41%	132%
Keystone	40%	54%
Lincoln Service	49%	112%
Missouri River Runner	47%	127%
New Haven - Springfield	27%	73%
Non-NEC Special Trains	65%	65%
Pacific Surfliner	56%	102%
Pennsylvanian	69%	92%
Pere Marquette	58%	101%
Piedmont	69%	119%
San Joaquin	35%	104%
Vermonter	43%	110%
Washington-Lynchburg/Roa- noke	100%	92%
Washington-Newport News	75%	64%
Washington-Norfolk	68%	74%
Washington-Richmond	43%	79%
Wolverine	63%	103%
System-Wide		
National Train Service	82%	95%
System-wide (Total Amtrak)	66%	76%

1 Service suspended.

Figure 13. Avoidable Operating Expenses Covered By Passenger Revenue By Service Line and Route

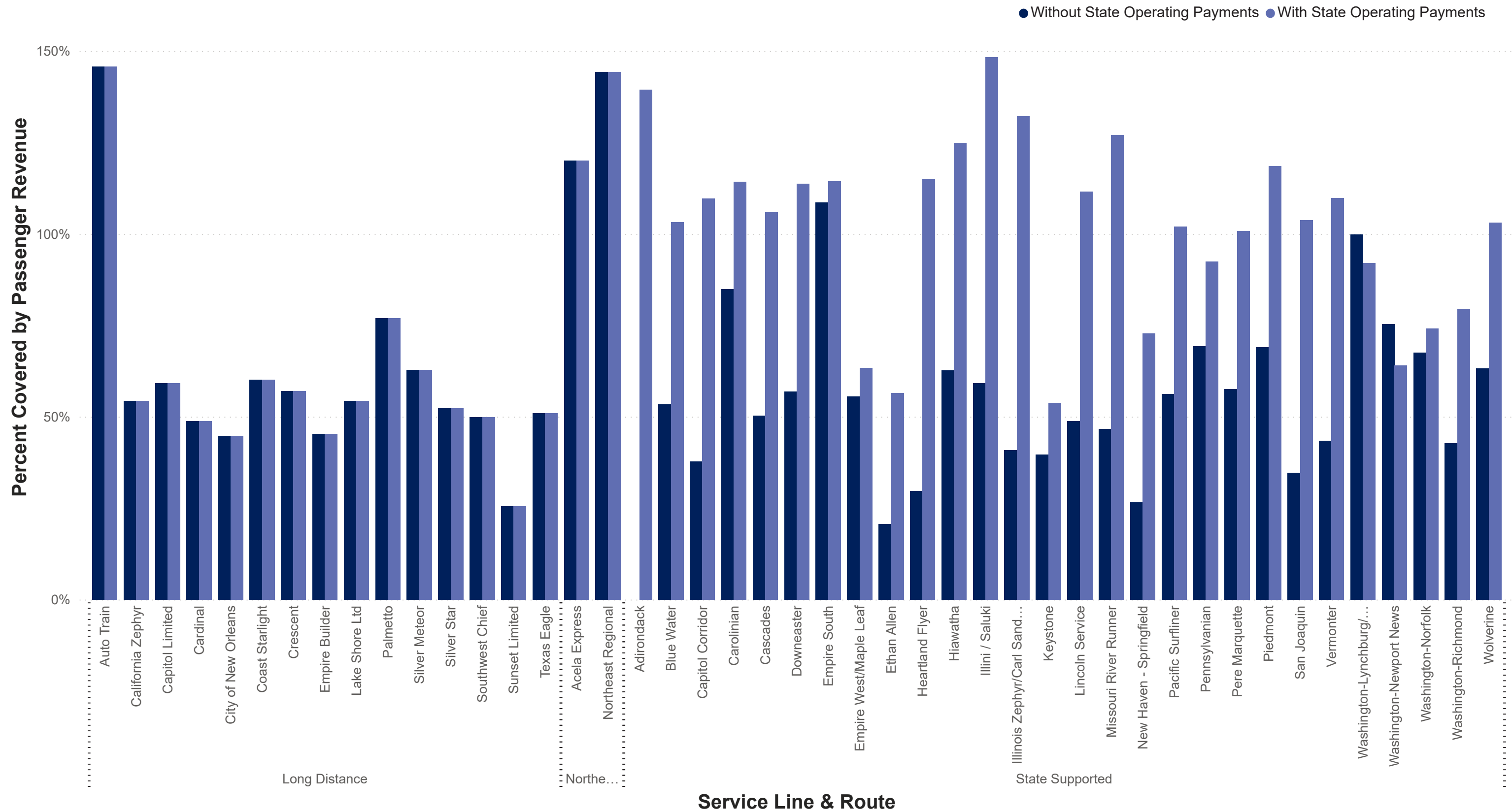


Figure 14. Avoidable Operating Expenses Covered By Passenger Revenue By Route

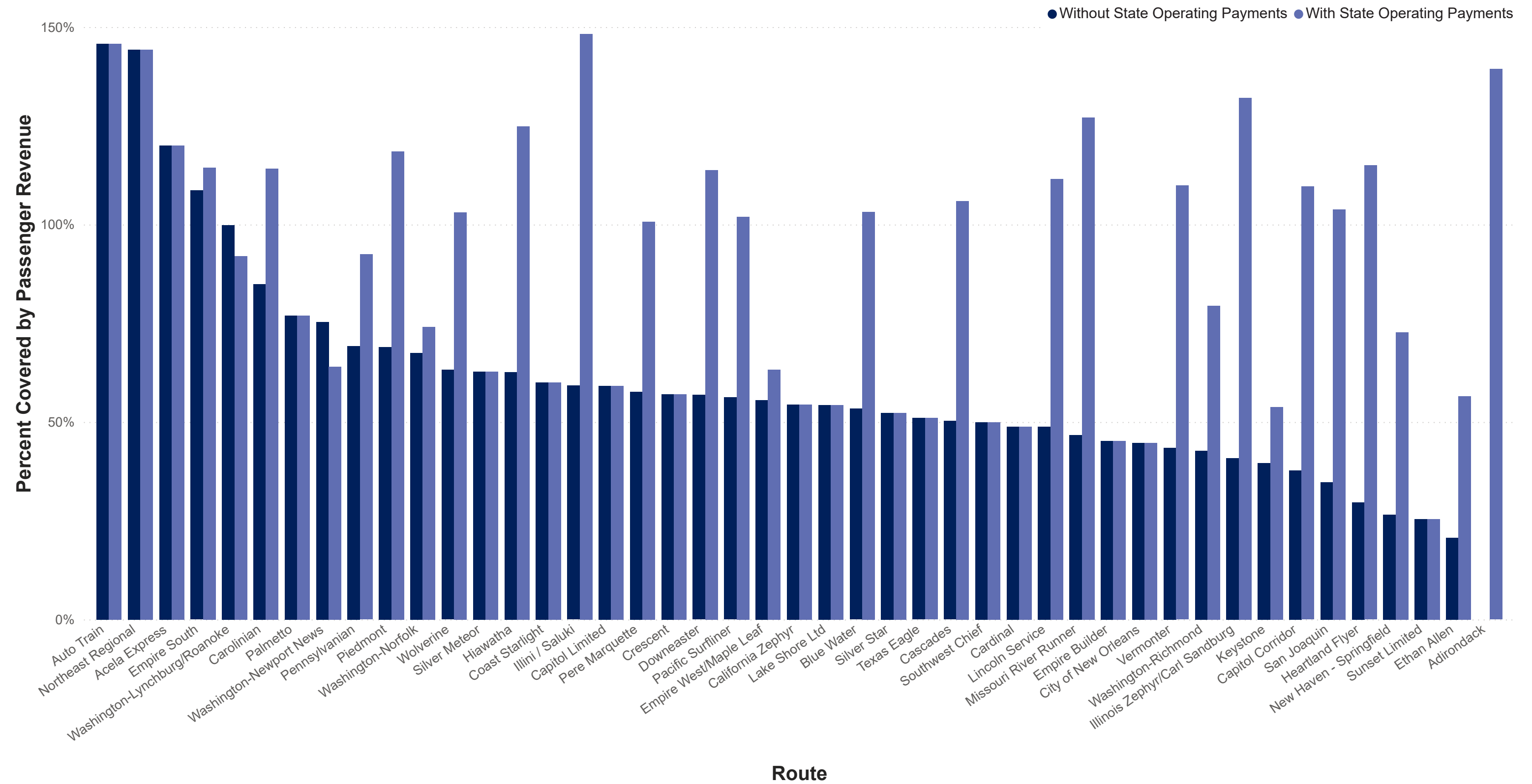


Table 19. Fully Allocated Costs Covered by Passenger Revenue by Route

Service Line	Without State Operating Payments	With State Operating Payments
Long Distance		
Auto Train	128%	128%
California Zephyr	46%	46%
Capitol Limited	46%	46%
Cardinal	36%	36%
City of New Orleans	37%	37%
Coast Starlight	51%	51%
Crescent	47%	47%
Empire Builder	39%	39%
Lake Shore Ltd	45%	45%
Palmetto	62%	62%
Silver Meteor	53%	53%
Silver Star	42%	42%
Southwest Chief	43%	43%
Sunset Limited	22%	22%
Texas Eagle	44%	44%
Northeast Corridor		
Acela Express	100%	100%
NEC Special Trains	87%	87%
Northeast Regional	111%	111%
State Supported		
Adirondack ¹	0%	133%
Blue Water	46%	89%
Capitol Corridor	32%	92%
Carolinian	72%	97%
Cascades	42%	89%
Downeaster	45%	91%
Empire South	87%	92%
Empire West/Maple Leaf	46%	52%
Ethan Allen	18%	49%
Heartland Flyer	24%	93%
Hiawatha	56%	111%
Illini / Saluki	48%	121%
Illinois Zephyr/Carl Sandburg	34%	109%
Keystone	31%	41%
Lincoln Service	43%	98%
Missouri River Runner	40%	109%
New Haven - Springfield	21%	59%
Non-NEC Special Trains	27%	27%
Pacific Surfliner	47%	85%
Pennsylvanian	56%	75%
Pere Marquette	34%	60%
Piedmont	56%	96%
San Joaquin	30%	91%
Vermonter	36%	91%
Washington-Lynchburg/Roa- noke	84%	77%
Washington-Newport News	64%	55%
Washington-Norfolk	57%	62%
Washington-Richmond	36%	67%
Wolverine	54%	88%
System-Wide		
National Train Service	68%	78%
System-wide (Total Amtrak)	53%	62%

1 Service suspended.

Figure 15. Fully Allocated Costs Covered by Passenger Revenue by Service Line and Route

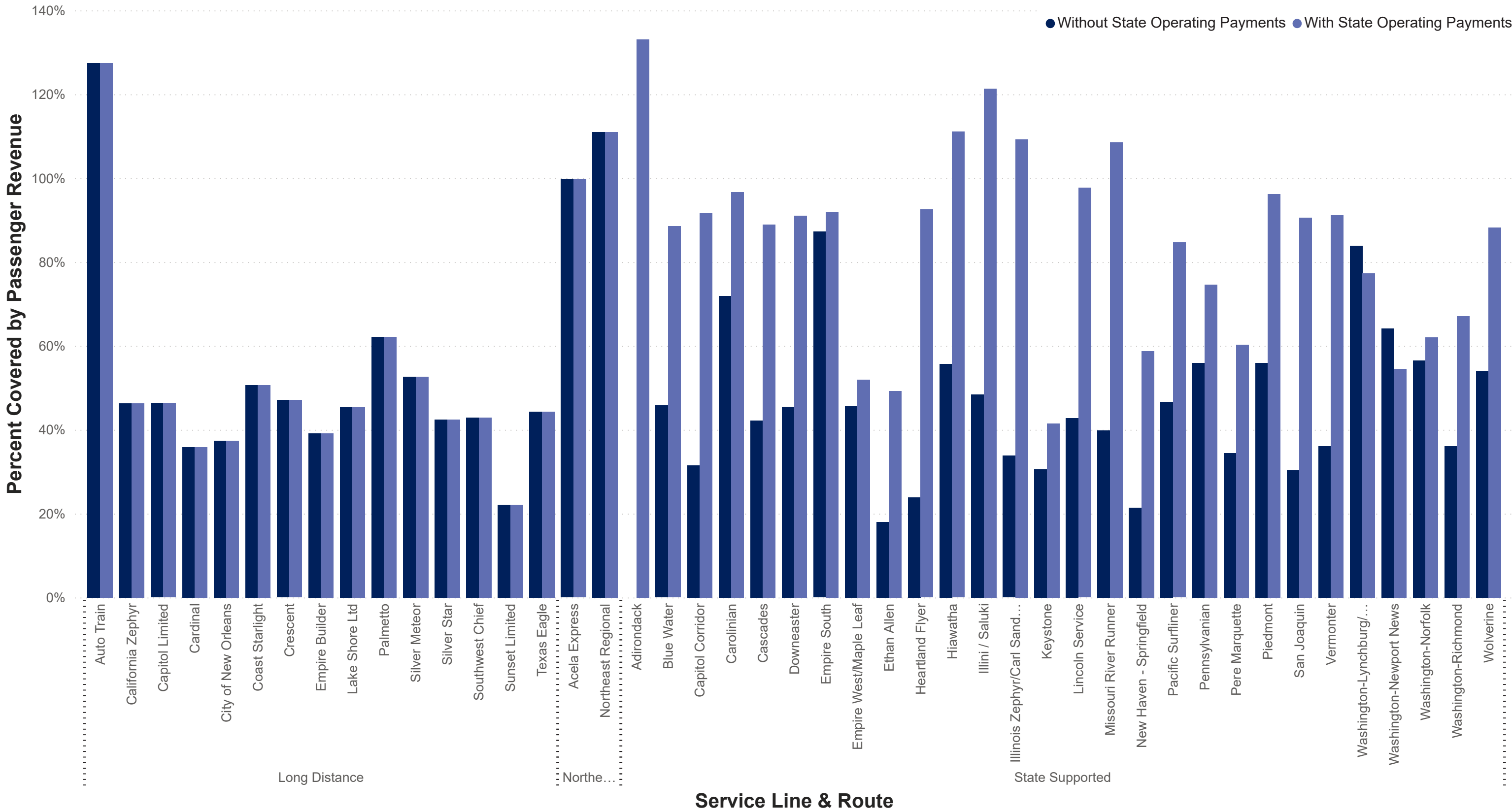


Figure 16. Fully Allocated Costs Covered by Passenger Revenue by Route

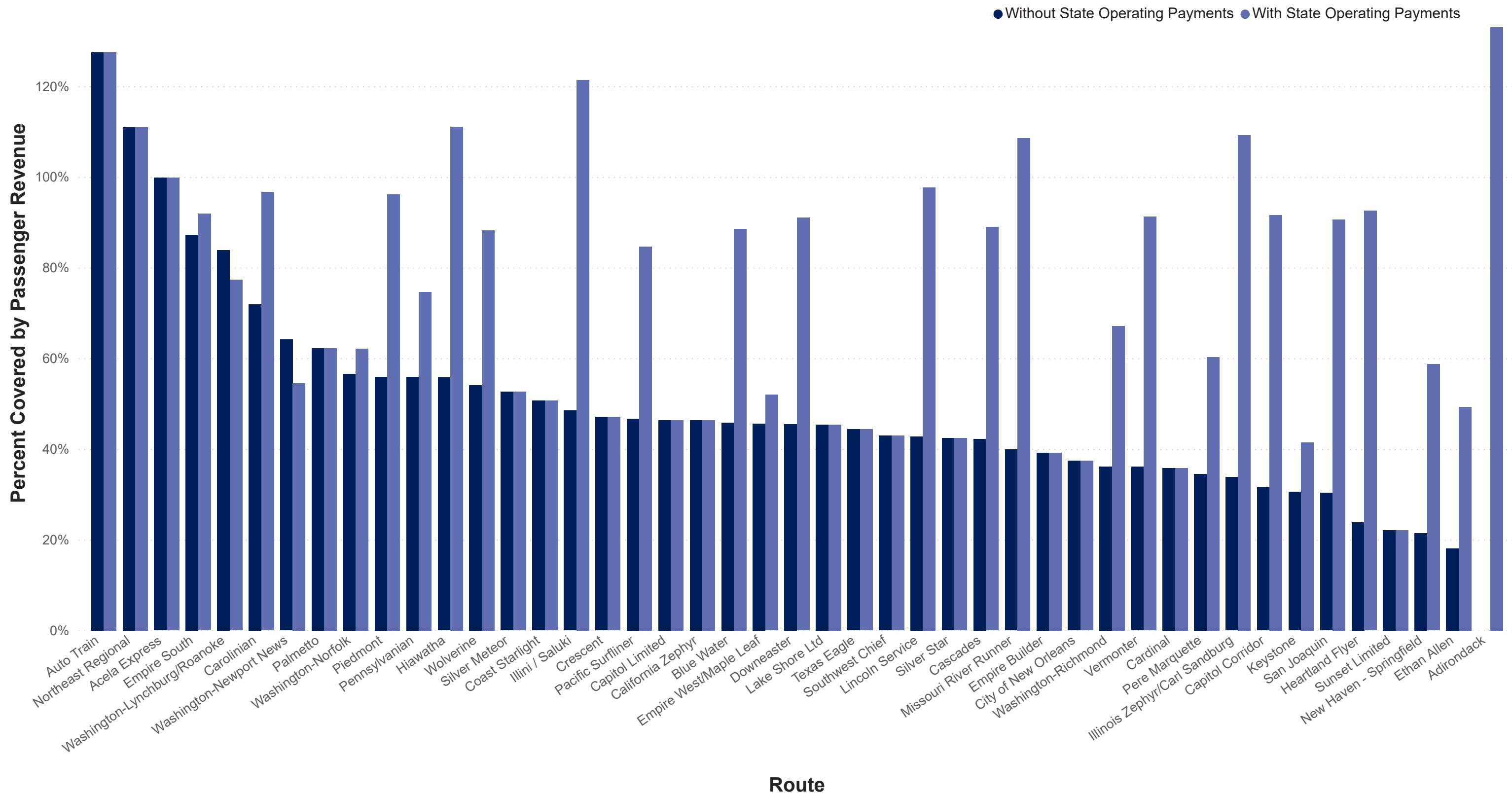


Table 20. Average Ridership (Passenger Miles divided by Train Miles) and Total Ridership

Service Line / Route	Average Ridership	Total Ridership
Long Distance		
Auto Train	377	66,724
California Zephyr	118	73,865
Capitol Limited	125	41,371
Cardinal	86	23,435
City of New Orleans	95	41,640
Coast Starlight	153	87,138
Crescent	98	60,993
Empire Builder	110	82,335
Lake Shore Ltd	159	83,909
Palmetto	97	64,391
Silver Meteor	143	69,194
Silver Star	122	79,034
Southwest Chief	116	56,433
Sunset Limited	85	17,958
Texas Eagle	124	63,329
Northeast Corridor		
Acela Express	185	478,441
NEC Special Trains		
Northeast Regional	248	1,706,419
State Supported		
Adirondack ¹		
Blue Water	116	35,350
Capitol Corridor	51	162,478
Carolinian	159	64,451
Cascades	95	89,920
Downeaster	67	99,115
Empire South	183	264,794
Empire West/Maple Leaf	102	94,976
Ethan Allen	38	12,603
Heartland Flyer	70	14,587
Hiawatha	86	116,205
Illini / Saluki	107	75,643
Illinois Zephyr/Carl Sandburg	62	35,644
Keystone	88	199,215
Lincoln Service	100	112,492
Missouri River Runner	65	35,623
New Haven - Springfield	43	86,190
Non-NEC Special Trains		
Pacific Surfliner	91	349,304
Pennsylvanian	148	45,014
Pere Marquette	94	19,838
Piedmont	65	51,504
San Joaquin	75	168,335
Vermonter	60	23,457
Washington-Lynchburg/Roa- noke	172	48,158
Washington-Newport News	136	71,304
Washington-Norfolk	102	56,427
Washington-Richmond	45	15,037
Wolverine	112	85,952
System-Wide		
National Train Service	136	5,530,225
System-wide (Total Amtrak)	136	5,530,225

1 Service suspended.

Figure 17. Total Ridership FY21 Q4 and FY22 Q1 by Service Line and Route

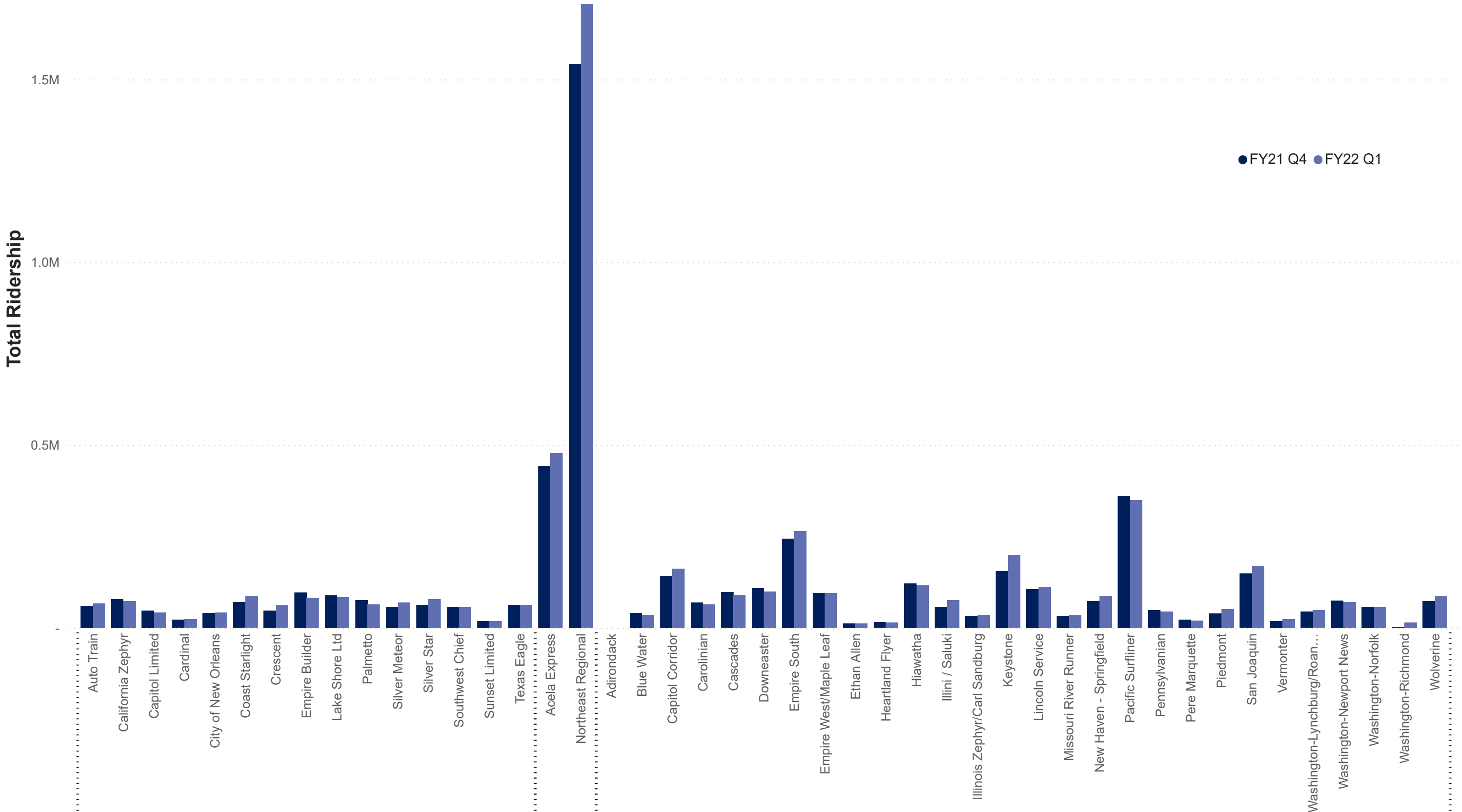


Figure 18. Total Ridership FY21 Q4 and FY22 Q1 by Route

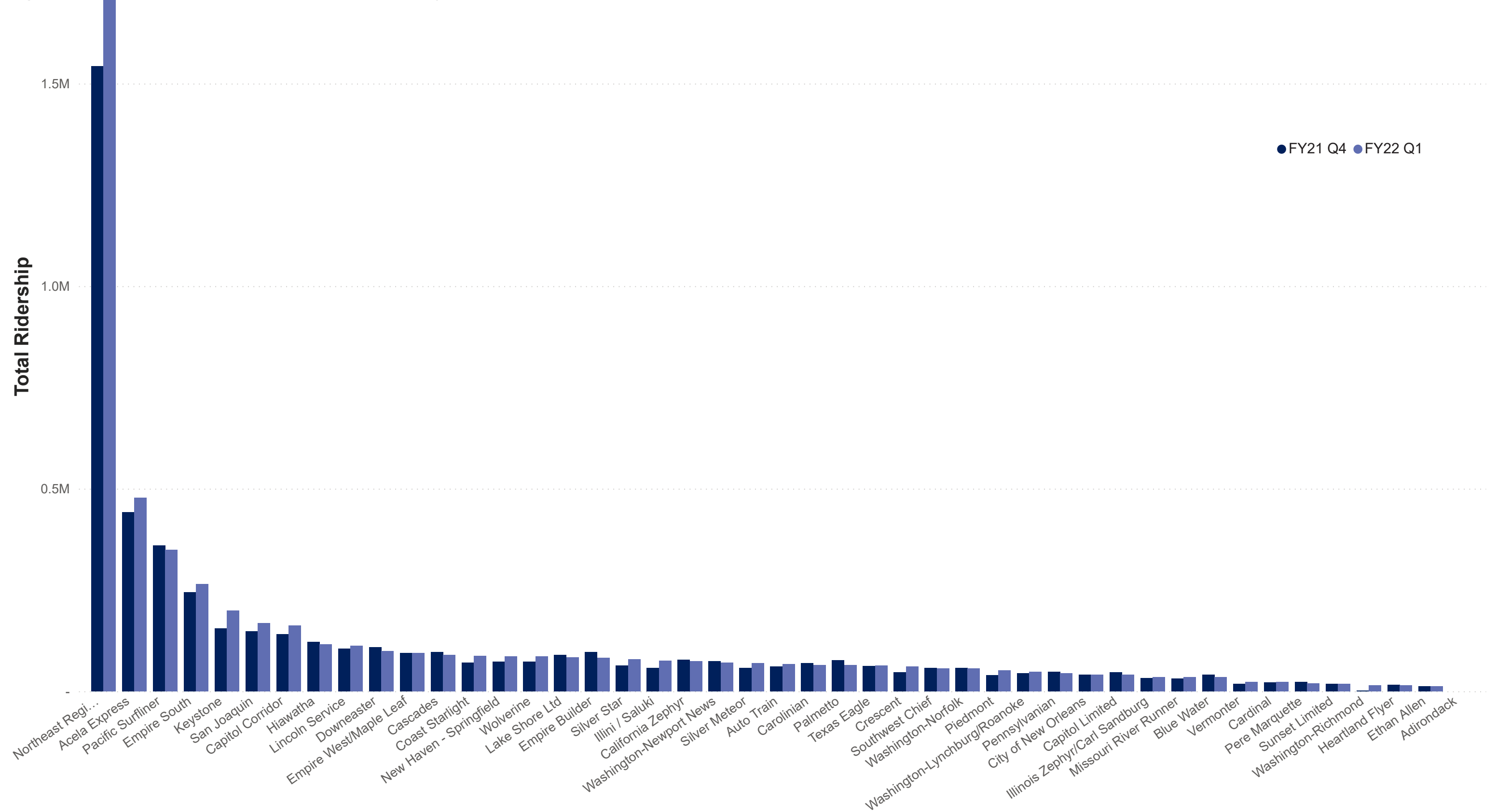


Figure 19. Average Ridership (Passenger Miles divided by Train Miles) by Service Line and Route

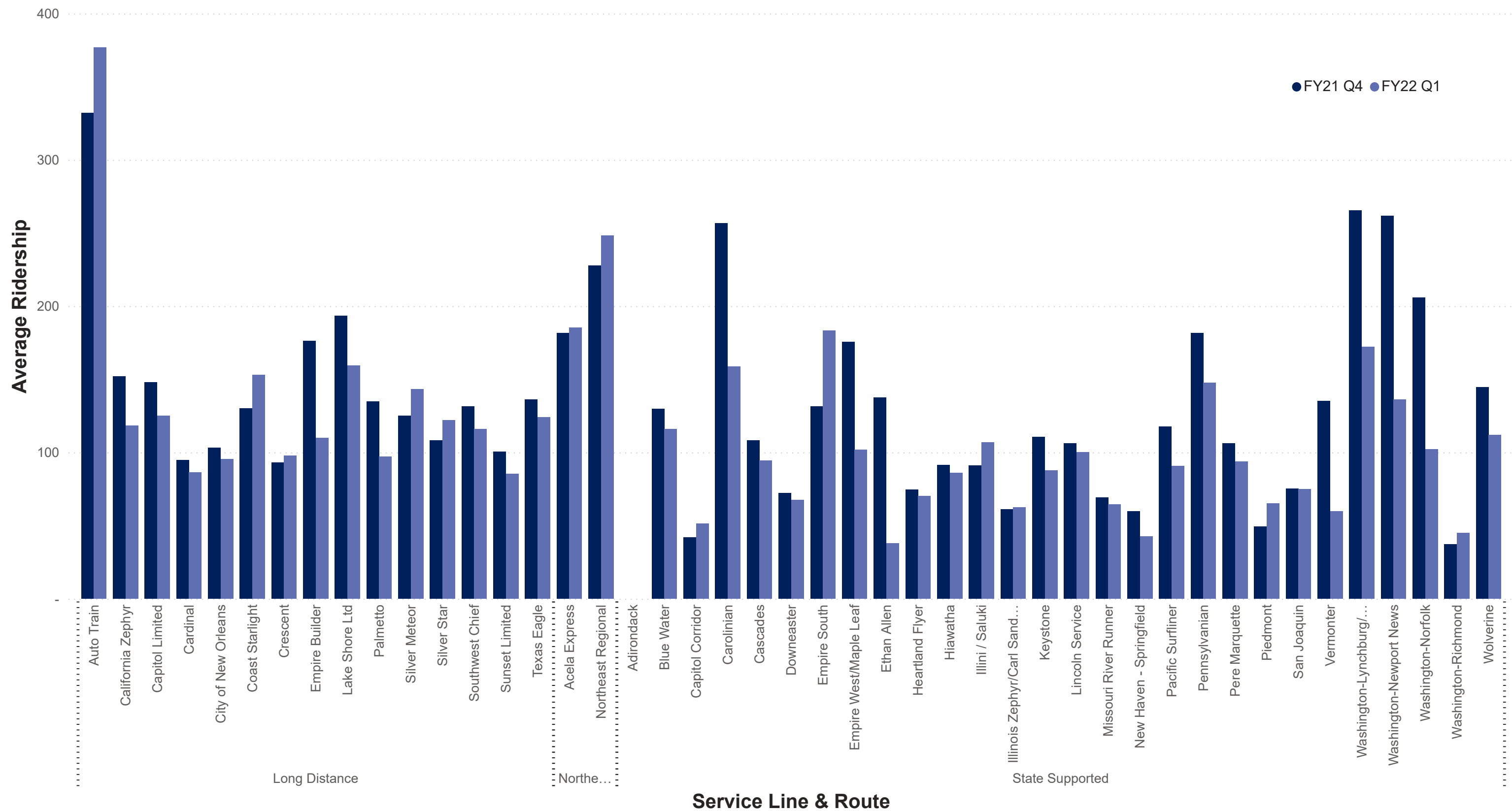
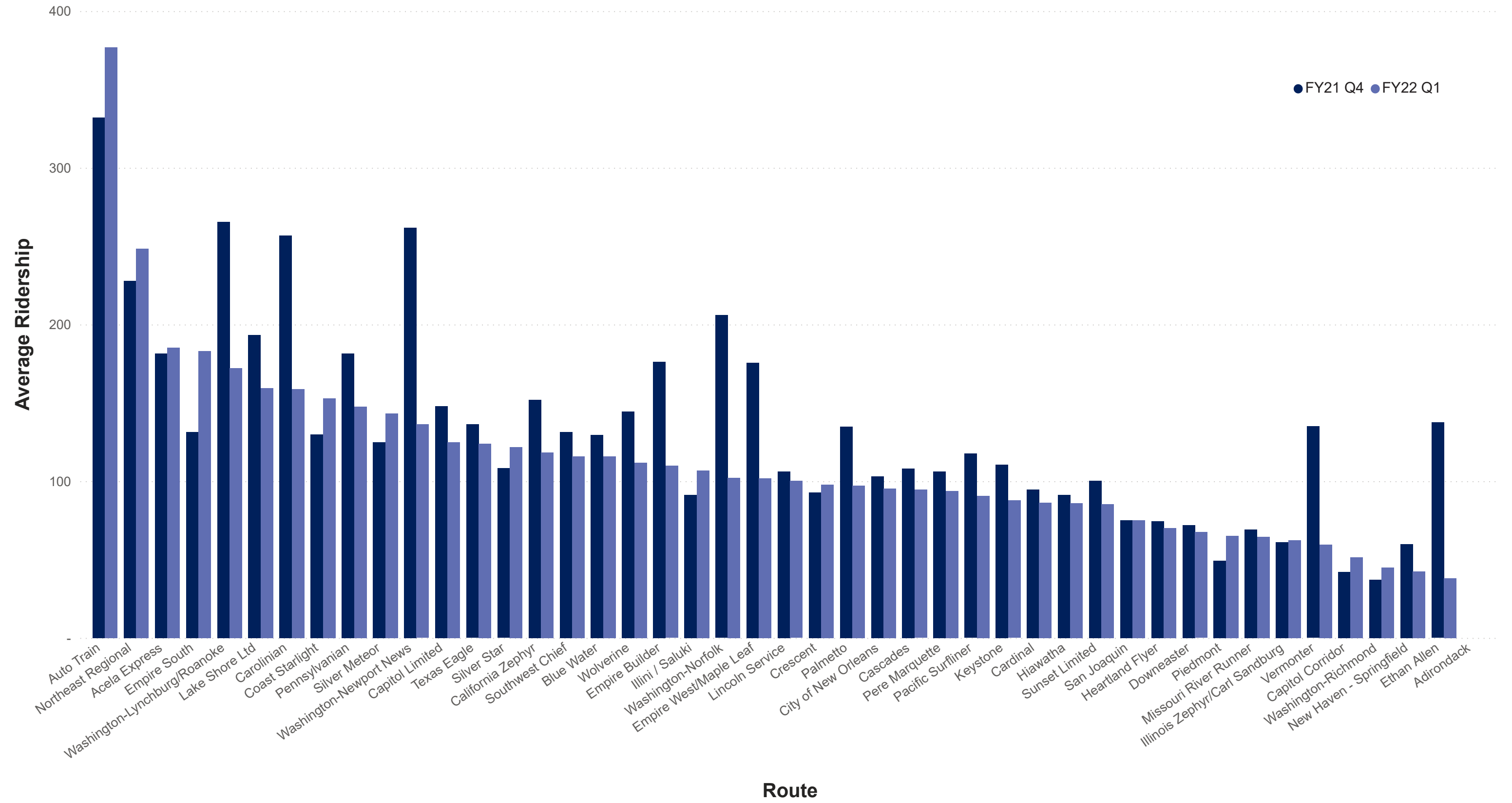


Figure 20. Average Ridership (Passenger Miles divided by Train Miles) by Route



D. Public Benefits

Public benefits metrics are reported annually, and they are included for the first time in the FY2022 first quarter report, covering all of FY2021.

Table 21. Public Benefits Metrics – Definitions and Notes

Metric	Definition	Data Description and Notes
Connectivity	The percent of passengers connecting to and from other Amtrak routes, updated on an annual basis.	Under this metric, a <i>connection</i> means a passenger arriving on one train and connecting to a departing train within 23 hours. Data reported for the first time in this quarter's report covering FY 2021. Data is available for download at railroads.dot.gov .
Missed Connections	The percent of passengers connecting to/from other Amtrak routes who missed connections due to a late arrival from another Amtrak train, reported by route and updated on an annual basis.	Data reported for the first time in this quarter's report covering FY 2021. Data is available for download at railroads.dot.gov .
Community Access	The percent of Amtrak passenger-trips to and from not well-served communities, updated on an annual basis.	<i>Not well-served communities</i> means those rural communities: within 25 miles of an intercity passenger rail station; more than 75 miles from a large airport; and more than 25 miles from any other airport with scheduled commercial service or an intercity bus stop. Data reported for the first time in this quarter's report covering FY 2021. Data is available for download at railroads.dot.gov .
Service Availability	The total number of daily Amtrak trains per 100,000 residents in a metropolitan statistical area (MSA) for each of the top 100 MSAs in the United States, shown in total and adjusted for time of day, updated on an annual basis.	The metric, as adjusted for time of day, shows only those trains that arrive or depart between 5:00 a.m. and 11:00 p.m. Data reported for the first time in this quarter's report covering FY 2021. Data is available for download at railroads.dot.gov .

Table 22. Connectivity by Service Line

Service Line / Route	Acela	Long Distance	Northeast Regional	State Corridors	Total - Connecting to Another Route
Acela	0	904	3,112	4,961	8,977
Long Distance	904	125,222	31,565	237,681	395,372
Northeast Regional	3,112	31,565	0	153,486	188,163
State Corridors	4,961	237,681	153,486	520,895	917,023
Total	8,977	395,372	188,163	917,023	1,509,535



Table 23. Missed Connections by Service Line and Route

Service Line / Route	Itineraries
Long Distance	
California Zephyr	1,144
Capitol Limited	370
Cardinal	64
City of New Orleans	40
Coast Starlight	766
Crescent	73
Empire Builder	185
Lake Shore Limited	292
Palmetto	202
Silver Meteor	134
Silver Star	494
Southwest Chief	1,741
Sunset Limited	151
Texas Eagle	407
Northeast Corridor	
Acela	33
Northeast Regional	936
State Supported	
Blue Water	25
Capitol Corridor	968
Carolinian	59
Cascades	289
Downeaster	22
Empire South	87
Empire West/Maple Leaf	44
Ethan Allen	3
Heartland Flyer	11
Hiawatha	40
Illini/Saluki	471
Illinois Zephyr/Carl Sandburg	1
Keystone	107
Lincoln Service	155
Missouri River Runner	34
New Haven-Springfield	140
Pacific Surfliner	2,239
Pennsylvanian	84
Pere Marquette	13
Piedmont	10
San Joaquins	6,004
Vermonter	1
Washington-Lynchburg/Roanoke	11
Washington-Newport News	331
Washington-Norfolk	32
Washington-Richmond	4
Wolverine	73

Table 24. Community Access

Fiscal Year	Percent Riders To and From Not Well Served Communities
2021	0.56%

E. Updates and Revisions to FY2021 Fourth Quarter Report

In March 2022, Amtrak provided FRA with a revised set of FY2021 fourth quarter financial metrics tables. It explained that after submitting the original data, it found and corrected an error in the formula for calculating the avoidable operating expense metric. While correcting the error, Amtrak also recalculated the avoidable operating expense, fully allocated adjusted operating expense, and cost recovery metrics using the company's FY2021 period 14 financial results, which include end of year adjustments not available when it submitted the original data to FRA.

The first version of the FY2021 fourth quarter report posted by FRA in February 2022 included several charts and a table that summarized train delays per 10,000 train miles. Subsequently, FRA found that these items contained errors, and it posted a revised version of the report with the items removed. The calculation errors occurred in the summarization of the data, and the raw data provided by Amtrak in the data tables available at railroads.dot.gov were unaffected.

The delay data in this report and the FY2021 Q4 report include a host railroad named "Florida DOT (CSX Dispatched)." The correct name is "Florida DOT" as CSX does not dispatch this segment of railroad. Amtrak has corrected the host name in its data systems, and it will appear as Florida DOT in the next report covering FY2022 Q2 .

Appendix 1: Customer OTP by Train**Table 25. Customer OTP by Train**

Route	Train	OTP	Route	Train	OTP	Route	Train	OTP
Acela Express	2103	88.3%	Blue Water	364	77.3%	Capitol Corridor	736	66.8%
	2109	96.6%		365	56.7%		737	91.5%
	2122	94.7%	California Zephyr	5	47.6%		741	82.2%
	2126	81.9%		6	46.7%		742	52.1%
	2150	86.5%	Capitol Corridor	520	92.6%		743	82.0%
	2153	88.4%		521	92.2%		744	71.8%
	2154	79.9%		522	88.1%		745	86.6%
	2155	86.3%		523	88.7%		746	78.7%
	2158	73.5%		524	85.5%		747	83.8%
	2159	79.6%		525	87.7%		748	74.0%
	2163	75.7%		526	86.6%		751	85.6%
	2166	77.2%		527	81.5%	Capitol Ltd	29	38.5%
	2169	83.0%		528	74.4%		30	31.9%
	2170	93.5%		531	87.2%	Cardinal	50	54.1%
	2172	83.5%		532	79.5%		51	61.5%
	2173	85.6%		533	0.0%	Carl Sandburg / Illinois Zephyr	380	96.8%
	2203	91.5%		535	88.1%		381	89.6%
	2205	87.7%		536	91.1%		382	84.8%
	2213	80.4%		537	79.1%		383	84.1%
	2218	88.0%		538	79.6%	Carolinian	79	72.5%
	2222	99.2%		541	78.8%		80	68.2%
	2224	83.2%		542	85.8%	Cascades	500	46.8%
	2248	92.4%		544	86.6%		503	54.7%
	2249	56.5%		545	88.6%		504	60.5%
	2250	87.7%		546	93.9%		505	59.2%
	2251	60.5%		547	77.1%		507	55.2%
	2252	84.4%		551	83.9%		508	49.7%
Auto Train	2253	77.1%		552	63.3%	City Of New Orleans	58	77.5%
	2254	83.4%		720	86.9%		59	82.2%
	2255	64.9%		723	78.8%	Coast Starlight	11	64.7%
	2256	86.0%		724	91.5%		14	43.6%
	2257	94.0%		727	87.3%	Crescent	19	60.2%
	2259	83.3%		728	83.4%		20	53.1%
	52	29.3%		729	73.6%	Downeaster	680	79.2%
	53	20.8%		732	84.5%		681	84.7%

FRA Quarterly Report | Appendix 1: Customer OTP by Train

Route	Train	OTP	Route	Train	OTP	Route	Train	OTP
Downeaster	682	89.1%	Hiawatha	333	89.0%	Keystone	652	96.6%
	683	89.5%		334	94.4%		653	98.0%
	684	71.5%		335	91.0%		654	96.5%
	685	84.0%		336	95.0%		655	90.7%
	686	73.3%		337	95.2%		660	82.5%
	687	84.7%		338	93.4%		661	93.0%
	688	84.7%		339	99.2%		662	98.0%
	689	88.5%		340	97.3%		663	100.0%
	690	100.0%		341	95.4%		664	93.4%
	691	85.6%		342	98.5%		665	99.1%
	692	77.6%		343	100.0%		666	95.3%
	693	80.9%	Illini / Saluki	390	77.9%		667	98.8%
	694	59.7%		391	35.9%		669	91.2%
	695	100.0%		392	64.5%		670	94.7%
	696	61.7%		393	54.6%		671	96.8%
	697	89.6%	Keystone	600	96.2%		672	97.8%
	698	81.7%		601	95.7%	Lake Shore Ltd	48	62.1%
	699	90.6%		605	93.2%		49	61.6%
	1689	100.0%		610	94.1%		448	39.0%
Empire Builder	7	64.4%		611	98.7%		449	87.5%
	8	29.8%		612	99.5%	Lincoln Service	300	79.4%
	27	40.5%		615	99.6%		301	85.8%
	28	42.1%		619	94.7%		302	76.1%
Ethan Allen Express	290	97.3%		620	94.2%		303	70.3%
	291	89.2%		622	95.2%		304	91.3%
	292	99.5%		637	99.7%		305	80.2%
	293	91.2%		639	89.6%		306	82.1%
	295	92.2%		640	74.2%		307	75.8%
	296	90.5%		642	96.7%	Maple Leaf	63	74.4%
Heartland Flyer	821	81.4%		643	95.7%		64	91.4%
	822	80.2%		645	94.8%	Missouri	311	68.8%
Hiawatha	329	96.9%		646	86.4%		313	56.6%
	330	97.8%		647	93.0%		314	60.4%
	331	95.0%		650	90.6%		316	52.7%
	332	97.9%		651	93.9%			
						New York - Albany	232	98.3%



FRA Quarterly Report | Appendix 1: Customer OTP by Train

Route	Train	OTP	Route	Train	OTP	Route	Train	OTP
New York - Albany	233	74.4%	On Spine North-east Regional	148	90.3%	On Spine North-east Regional	1164	90.4%
	234	94.3%		149	88.5%		1173	84.2%
	236	88.8%		150	68.8%		1186	75.4%
	237	96.3%		152	96.2%	Pacific Surfliner	562	94.8%
	238	96.6%		153	95.0%		564	84.5%
	239	93.0%		154	86.7%		567	85.9%
	241	93.1%		155	97.2%		569	75.9%
	243	98.7%		158	89.0%		572	88.3%
	244	90.2%		159	96.1%		573	87.7%
	250	96.4%		160	98.2%		579	73.6%
	253	95.5%		161	62.4%		580	85.7%
	255	100.0%		162	80.0%		581	83.1%
	256	99.6%		163	82.4%		583	87.4%
	259	98.6%		165	75.3%		584	89.3%
	260	95.6%		166	69.4%		586	82.6%
	261	52.7%		167	75.7%		588	77.0%
New York - Niagara Falls	280	90.3%		168	93.1%		590	95.4%
	281	64.5%		169	79.4%		591	65.4%
	283	72.2%		170	88.3%		593	82.4%
	284	90.9%		172	77.2%		594	68.4%
On Spine North-east Regional	123	91.9%		173	87.6%		595	86.1%
	126	100.0%		175	81.2%		761	92.9%
	129	90.2%		177	83.5%		763	64.9%
	130	97.0%		178	95.3%		765	85.5%
	132	87.0%		179	88.5%		768	83.9%
	134	86.0%		182	91.4%		770	83.8%
	135	82.3%		183	97.9%		774	77.5%
	136	91.5%		184	89.0%		777	82.6%
	137	75.8%		185	81.4%		784	83.2%
	138	96.8%		189	85.3%		785	72.3%
	139	63.3%		190	83.6%		794	75.4%
	140	81.1%		192	100.0%		796	90.0%
	141	89.6%		193	71.4%		1564	100.0%
	143	72.2%		196	89.1%		1567	95.4%
	146	88.2%		1135	68.6%		1572	90.4%



FRA Quarterly Report | Appendix 1: Customer OTP by Train

Route	Train	OTP	Route	Train	OTP	Route	Train	OTP
Pacific Surfliner	1584	97.6%	Richmond / Newport News / Norfolk	96	71.7%	Springfield Shut- tles	416	78.0%
	1761	45.5%		99	50.9%		417	95.1%
	1763	100.0%		125	92.8%		432	86.3%
	1768	84.7%		157	82.4%		450	70.6%
	1774	66.9%		164	71.8%		451	91.1%
	1777	51.9%		174	79.8%		460	83.5%
	1784	100.0%		194	90.8%		461	99.8%
	1785	90.0%		195	63.2%		463	100.0%
	1790	100.0%	Roanoke	145	89.5%		464	84.0%
	1793	100.0%		147	75.0%		465	99.9%
Palmetto	89	68.8%		156	75.0%		467	84.8%
	90	74.8%		171	82.5%		470	69.0%
Pennsylvanian	42	60.6%	San Joaquins	176	82.4%		471	97.0%
	43	67.1%		702	82.5%		473	96.5%
Pere Marquette	370	72.2%		703	79.4%		474	90.8%
	371	73.8%		710	71.4%		475	94.1%
Piedmont	73	69.9%		711	77.2%		476	81.7%
	74	75.3%		712	79.9%		478	90.6%
	75	72.3%		713	71.5%		479	89.0%
	76	71.6%		714	75.9%		488	70.7%
	77	69.6%		715	69.1%		490	94.7%
	78	85.6%		716	74.8%		494	68.7%
Richmond / Newport News / Norfolk	65	54.6%		717	81.0%	Sunset Ltd	495	96.6%
	66	82.5%		718	68.9%		497	82.5%
	67	79.9%	Silver Meteor	719	80.6%		499	85.7%
	82	65.5%		97	47.9%		1	39.9%
	84	78.4%	Silver Star	98	35.9%		2	40.2%
	85	83.7%		91	39.6%	Texas Eagle	21	64.3%
	86	68.6%	Southwest Chief	92	43.8%		22	67.7%
	87	72.1%		3	44.9%	Vermont	54	92.5%
	88	67.1%	Springfield Shut- tles	4	44.3%		55	77.4%
	93	63.7%		400	100.0%		56	85.0%
	94	72.1%		405	95.5%		57	92.8%
	95	80.2%		409	83.6%	Wolverine	350	41.6%
				412	98.0%		351	56.1%
							352	64.3%
							353	78.7%
							354	48.4%
							355	52.2%



Appendix 2: Delay Minutes by Train and Responsibility

Table 26: Amtrak Responsible Train Delay Minutes

		Amtrak (Host)															Amtrak (Non-Host)														Total Amtrak	
Route	Train	CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	FTI	PSC	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CTC	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes		
Acela Express	2103	58	4		26			3				80	4		136	311	3	17			36	11						5	72	383		
	2109	60	9		20	2	4	9				29		4	202	339	4	9			8				4	2		3	30	369		
	2122	14						13	22			36	13		118	216		5			14	3		8				30	246			
	2126	24			7		21	5	12			123	4	3	130	329		5			58	2		20			56	141	470			
	2150	23	11		47			32	45			69	24	21	81	353	1	42			116	28			6		4	197	550			
	2153		6	56	41		29	12	9			150	4	5	112	424	7	30		3	9	34				17	24	124	548			
	2154	68	36		43		29	21	53	7		215	8		147	627	9	19		6	71	25				1		131	758			
	2155	47		62	18	28	26	30	3		1	56	127	16	193	607	30	15		31	164	36				3	2	281	888			
	2158	66	39		18	13	24	49	80			234	36		104	663	30	45			10	75	7	4		69		240	903			
	2159	60	15		160	10	11	33	1	8	1	18	34	9	117	477	49	31			62	94	3			6	2	20	267	744		
	2163	87		6	117	4	8	23	4		28	121	68	2	229	697	55	95			15	200				15		51	431	1,128		
	2166	110		54	58			16	58			159	39		197	691	38	22			36	135			6	13	31	281	972			
	2169	138	7		47		14		1		2	42	42		234	527	6	30		4	100	56			26	8		230	757			
	2170	11	13		15			9	30			185	58	7	148	476	19	3			88	24			13	10		4	161	637		
	2172	76	11		58			31	88	6		69	30	3	236	608	17	16	4		13	50		7	15	29			151	759		
	2173	152	9		40			22	5		1	42	8	3	168	450	29	18			75	61			39	10	3	4	239	689		
	2203	3					6					24			32	65						9							9	74		
	2205	8	14									4			39	65														65		
	2213	8										18	2		44	72					4	4				4			12	84		
	2218									3			30	3		17	53		2			10						1	13	66		
	2222		6							1			16	2		20	45											2	2	47		
	2224	7			7					3			28	3		36	84	10	3				2			5			20	104		
	2248	29			6			38	13			17	14		56	173	2					13				5			20	193		
	2249	9	11					5				22	4		30	81	2	12			116	34				4		2	170	251		
	2250				41				2			17	19		46	125	5	5				13				15		4	42	167		
	2251	18	3	8	27					3			11	6		48	124	35	6			118	27				9		195	319		
	2252	22			30			14	2			45	13	3	89	218	23	14			9	13	14			18		40	131	349		
	2253	12	2				16	9				52	46		91	228	29	6			2	66				18	7		128	356		
	2254	30			85		11	10	2			57	23	17	73	308	6	11				46				5		20	88	396		
	2255	22			6		19	4			2	40	33	3	40	169	3					40			14	25			82	251		
	2256	7					5	1	2			38	15		23	91	4	6			2	11							23	114		
	2257				8						6	15	3		22	54	4	3				5							12	66		
	2259	9			12			2			5	28	17		23	96	14	19				5			3		11		52	148		
Auto Train	52																	347			1,003		90	4,032		96	332	1,059	6,959	6,959		
	53																24	298			299	4	136	3,648		161	2,016	1,120	7,706	7,706		

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Amtrak (Host)								Amtrak (Non-Host)											Total Amtrak Responsible Delay Minutes	
		CTI	DCS	DMW	DSR	FTI	PTI	RTE	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	OTH	SVS	SYS	Total	
Blue Water	364	5	13		8	13	30	6	75	104	102			108	80		189	97	224	310	1,214	1,289
	365		55	71	26	21	392	6	571	91				107	67			551	57	373	1,246	1,817
California Zephyr	5	4					3		7	320	194		15	888	966	169		947	1,274	1,593	6,366	6,373
	6	2	3				45	3	53	479	372		78	825	999	71	637	842	1,970	1,312	7,585	7,638
Capitol Corridor	520									21		27		15				14		31	108	108
	521										1	4		21	9			20		46	101	101
	522									7	19	7		67	10		43	2	27	13	195	195
	523									4	7			54	21			81	11	21	199	199
	524									30	4	7		24	38			102	7	44	256	256
	525									5	6			11	8			33		22	85	85
	526									11	4				12		169	30		9	235	235
	527									8	6	49		11	43		2	35	108	85	347	347
	528									62	9	56		3	11	8	5	66		91	311	311
	531									81	5			2	11			58		18	175	175
	532									42	3	16			18		68	28	17	18	210	210
	535									8	5			11	4		12				40	40
	536									37		4		8	1		9	67		9	135	135
	537									40	2	8		5	22		53	29		25	184	184
	538									68	85	119	17	29	37		142	166	20	209	892	892
	541									33	4		15	3	56		49	21	19	79	279	279
	542									15	10	40	1	58	29		95	38		75	361	361
	544									17	2			25	18		42	51	12	86	253	253
	545									26	3	2			23	46		3		17	120	120
	546									19	7	22		5	31			139	1	27	251	251
	547									34	2		5	33	113			82	15	38	322	322
	551									46	4		21	138	12	21	295	21		13	571	571
	552														5			7			12	12
	720									9	2	21		10		48		2	63	15	170	170
	723										2			21	9			10		30	72	72
	724									8	1		28		46			63	1	29	176	176
	727									5	2			11	7			45	8	12	90	90
	728									16		26			19		122	10		2	195	195
	729									33				5	20			32	84	10	184	184
	732									51					5			63	2	18	139	139
	736									77	71	11	4	9	15			116		13	316	316

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

		Amtrak (Host)													Amtrak (Non-Host)													Total Amtrak	
Route	Train	CTI	CTP	DCS	DDA	DET	DMW	DSR	FTI	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes	
Capitol Corridor	737														21					13				9		30	73	73	
	741														33	3				15				8	5	25	89	89	
	742														24				5	33		40		22		10	134	134	
	743														15		3		46	28		30		21	2	25	170	170	
	744														6		23		6	8				12	2	27	84	84	
	745														10	3			13	40				24		2	92	92	
	746															4				8		99		13		19	143	143	
	747														15	3				27				32	5	8	90	90	
	748														11	16				23				53	60	29	192	192	
	751														4	4			2			245		1		19	275	275	
Capitol Ltd	29			17			3	2			30	11		63	89	143		12	744	219		23		340	141	706	2,417	2,480	
	30	18		30			59				27	19		153	101	455		94	1,009	396	22	69		286	42	910	3,384	3,537	
Cardinal	50	34		41			8	3		6	15	36	19	162	199	3		14	445	258		84	53	312	272	328	1,968	2,130	
	51	13	9	11		15			11	41	4		130	234	274			125	355	240				385	55	288	1,722	1,956	
Carl Sandburg / Illinois Zephyr	380	2		6			9				3			20	113	3			7	163				52	11	27	376	396	
	381										2			2	29				104	18				2	20	286	459	461	
	382	3									4	4		11	69	2				55				6		31	163	174	
	383														90				12	118				40		58	318	318	
Carolinian	79	9		25	9	31	21	2		54	44		236	431	426	8			270	268				228	333	365	1,898	2,329	
	80	26		33			6	3	10	13	26	30	51	198	448	98		30	276	219			7	426	46	255	1,805	2,003	
Cascades	500														295	162	1		10	149		26		84	34	270	1,031	1,031	
	503														174	73	71		95	97		82		216	135	437	1,380	1,380	
	504														124	104		26	327	116				233	25	87	1,042	1,042	
	505														258	21	50		54	144		16		121	105	253	1,022	1,022	
	507														60	44		5	169	89				233	52	225	877	877	
	508														177	60			35	122		148		202	70	189	1,003	1,003	
City Of New Orleans	58	7		1							20	8		36	243	192			537	619	65			409	280	445	2,790	2,826	
	59										9			9	239	313		34	667	596	14	110		739	276	516	3,504	3,513	
Coast Starlight	11														384	65		40	176	1,138	42	117		1,090	1,330	1,696	6,078	6,078	
	14														406	169		234	481	1,470	43	72		1,428	1,352	2,199	7,854	7,854	
Crescent	19	20	5	104			9			24	53	6	143	364	407	77		22	843	435	69		34	300	1,085	3,356	6,628	6,992	
	20	104		96			5	2	14	30	156		34	441	562	74			243	652	81	656	17	393	836	1,966	5,480	5,921	
Downeaster	680														2				32	4				2		49	89	89	
	681														10				2	42		30				9	93	93	
	682														25			24	20	9				4		34	116	116	

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Amtrak (Host)							Amtrak (Non-Host)											Total Amtrak Responsible Delay Minutes	
		CTI	DCS	DMW	DSR	PTI	RTE	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	OTH	SVS	SYS	Total	
Downeaster	683								21				6	7		56	2		55	147	147
	684								8			2	58	5			26		20	119	119
	685								7				8	15	17	287	74		13	421	421
	686								15		7	8	26	49			14	33	115	267	267
	687								14				30	27		364	29		26	490	490
	688								5				11	20				19	11	66	66
	689												29	4		211	22		3	269	269
	691								2					40					30	72	72
	692								6			4		19					24	53	53
	693								17					10					20	47	47
	694								2			4	15	17					25	63	63
	695								2					14		7			40	63	63
	696											8		9			4		26	47	47
	697												13	10		19			20	62	62
	698								2			3	40	4						49	49
	699													7					8	15	15
	1689													4					9	13	13
Empire Builder	7			8			6	14	168	99	15	42	765	1,008	34	3	306	969	1,761	5,170	5,184
	8	8	6					14	204	313		1,036	960	1,183	34	1,795	1,196	3,537	2,027	12,285	12,299
	27								28			3,530	37	35	15	287	107	55	193	4,287	4,287
	28								36	45		212	8	60	4	785	31	282	49	1,512	1,512
Ethan Allen Ex-press	290	3	16		3	31	33	86	50	4			23	97			116	50	21	361	447
	291	5	38		5	55	40	143	60			64	188	200			95	15	111	733	876
	292				1	8		9	10					8			43		8	69	78
	293		7				2	9	2				39	34			21	30	14	140	149
	295		11				2	13	9				2	31			30	40	9	121	134
	296												23	2			46	26		97	97
Heartland Flyer	821								88				93	133			3	52	3	372	372
	822								92				38	102			8	3	53	296	296
Hiawatha	329												15				109	33	60	217	217
	330	4						4					7	3			17		16	43	47
	331	3						3					83	8		17	230	20	36	394	397
	332			3				3	2				33	18		27	112	12	30	234	237
	333		2				4	6	22	8			10	16			189	62	121	428	434

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

		Amtrak (Host)													Amtrak (Non-Host)													Total Amtrak	
Route	Train	CTI	CTP	DCS	DET	DMW	DSR	FTI	PET	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes	
Hiawatha	334	6												6	24					48		25		120	53	34	304	310	
	335	4									5			9	14				18	41		16		248	14	42	393	402	
	336	6		12							2			20	7					2		33		108	15	2	167	187	
	337			7								2		9	5	64			37	18		7		155	73	16	375	384	
	338	5									13			18		4			4	9		69		125	17	29	257	275	
	339										1			1	8	3				17				56	41	29	154	155	
	340			7							6	2		15						5		16		123		12	156	171	
	341			1							2	2		5	2				64	9		46		181	51	21	374	379	
	342											1		1					21	2		3		101	6	13	146	147	
	343																							17		26	43	43	
Illini / Saluki	390			11							17	6		34	114				66	356		15		194	30	197	972	1,006	
	391	1										7		8	106				5	199				613		161	1,084	1,092	
	392	3		18							70	3		94	95				13	322		23		622		203	1,278	1,372	
	393										7			7	124	448			315	220	12			341	76	196	1,732	1,739	
Keystone	600	4	33		14	11	9			133	12			216					142								142	358	
	601			47						12			25	84					32			10		15		10	67	151	
	605	7		9		30	4			13				63					54		9		53				116	179	
	610									29				29					20								20	49	
	611			5					3				16	24														24	
	612									32				32														32	
	615												33	33	7											7	40		
	619												52	52														52	
	620	12	12				7			240			7	278				5	20	4							29	307	
	622	12					4			21				37			33										33	70	
	637			7		13				19			25	64														64	
	639	29	4		60	53				47		8	49	250					32	3			7				42	292	
	640	214	74	50		51	8			173	20		25	615			5		102		18		30				155	770	
	642	14	15	19	16	17	3			75	10			169		97	5		70				8				180	349	
	643	49	20		26	8	10			4	6	8	59	190	4				36	4						37	81	271	
	645	12	9					10				5		36		54	31		11	4				3			103	139	
	646	14	5	41		17	42		5	210	41	6	5	386	13		26		84	30							153	539	
	647	43								46	115		13	217	6		20		10	6	7			4		4	57	274	
	650		18	6			40			159	24			247		18	102		162	19							301	548	
	651	37	17	29		5				4	27	21	9	149	4		20	5		22				3			54	203	
652	59	13	16			13				185	27		313	8				12	4			5			1	30	343		

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		Amtrak (Host)														Amtrak (Non-Host)														Total Amtrak	
Route	Train	CTI	CTP	DCS	DET	DMW	DSR	FTI	PET	PSC	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes		
Keystone	653	72	39	4						1	25	8	9	43	201	3		20				20		14	9			66	267		
	654	19	8	16		15	4				207	12		6	287					33	31			15			79	366			
	655	63	8	40				7			35	143	2	67	365	8		60	11	101	15			4	2			201	566		
	660	6		7			3				127	23		21	187					44					10			54	241		
	661					7	3		5		3			53	71		28			82					4			114	185		
	662	9		14			3				128			19	173					30							5	35	208		
	663													34	34						4							4	38		
	664	9		15							114	2		56	196			16		94	15				7			132	328		
	665	15									3	13	5	27	63					10	7							17	80		
	666	9					3				107	10		23	152			38		38	7					8		91	243		
	667	2				3					16	34		14	69						6							6	75		
	669	17				8	16				28	2		9	80			50		67	13							130	210		
	670						6				64				70			14		27	2			8				51	121		
	671	12	12			3					19	13		22	81					4				5				9	90		
	672										17				17					5								5	22		
Lake Shore Ltd	48	14		86		5	33	3				274	34		449	100	357		8	496	299	16	193		286	110	1,007	2,872	3,321		
	49	2		39			8	10				30	58		147	195	281		224	549	581	1			156	478	1,138	3,603	3,750		
	448	48		86			144						17		295	96	2		1,872	49	102				54	42	64	2,281	2,576		
	449			46			210						11		267	65				150	45	7	42		36	48	25	418	685		
Lincoln Service	300			8			5					7	4		24	50				3	48	17			31		116	265	289		
	301	11		12				3				5			31	10				26	14				67	31	121	269	300		
	302			11				12				6	4		33	46				52	78				58		90	324	357		
	303			45			20	6				40	5		116	100	43			60	104	39			87	83	303	819	935		
	304			12				6				7			25	64				56	83				72		46	321	346		
	305	11		4			2						9		26	72	3			96	149		32		120	74	155	701	727		
	306			8				25				1			34	21		21		4	24				46	39	140	295	329		
	307			6								9			15	9	36			24	30	12			156	8	219	494	509		
Maple Leaf	63	15	2	10		2	48					65	142	65	349	109				250	179				90	480	549	1,657	2,006		
	64			30			29					22	6		87	152	2			35	264				147	58	393	1,051	1,138		
Missouri	311															202	2				127				47	24	156	558	558		
	313															197	35			50	132		204		47	5	54	724	724		
	314															352				3	170				78		69	672	672		
	316															132				3	61	24	758		78	9	96	1,161	1,161		
New York - Albany	232	38					27						3		68	8				59	3		13		5			88	156		
	233	9		23		33	2	2				81	116	10	276	23				2	169		3	14	14	8	9	242	518		

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		Amtrak (Host)														Amtrak (Non-Host)														Total Amtrak	
Route	Train	CTI	CTP	DBB	DCS	DET	DMW	DSR	FTI	PSC	PSR	PTI	RTE	SMW	Total	ADA	CAR	CON	CTC	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes		
New York - Albany	234	9			10			20					6		45	16					7				1		9	33	78		
	236				14							18	12		44	8				22	38					3	71	115			
	237	2		34	23			2					23		84	4					86				13	13	116	200			
	238				4			1				149	6		160	39				3	151		8		4	2	207	367			
	239	2	10	4	37							11	26	3	93	15	15				48					13	91	184			
	241				39							19	62	2	122	27					62	65				12		166	288		
	243		3		23			21	6				21		74	9		21			59				9	19	117	191			
	244	2			43							70	1		116	40				9	175				4	15	243	359			
	250				23										23	2	3				15					2	22	45			
	253				14							7	6		27	13					15				2	4	34	61			
	255											16	5		21	5					52				14		71	92			
	256															6					45					12		63	63		
	259							5					5	2	12		3				18				2		23	35			
	260				12										12	5	2			3	5				3		2	20	32		
	261	5											2		7												39	39	46		
New York - Niagara Falls	280				30			56				8	45		139	79	2			181	151	38			142	34	286	913	1,052		
	281	4	5		46		6	33				230	54		378	101				265	158				143	172	505	1,344	1,722		
	283	6			144		4	10				59	57		280	142	6	29		106	236				119	112	485	1,235	1,515		
	284	4			39		6	40				263	15		367	93	43			107	185				131	79	361	999	1,366		
On Spine North-east Regional	123						19				24				43														43		
	126										8			18	26	14				10								24	50		
	129	120			19			1			104	22	5	117	388	9				13	12			77	24			135	523		
	130	39	34			4	8	4	5		53	51		19	217	5			4	46	8							63	280		
	132				25						13	12		8	58	17				47	36						11	111	169		
	134	6	26					3			8	4		7	54	28					7	15						50	104		
	135	13			17			2		2	21		2	108	165	3				11	55				17	19	30	135	300		
	136						2					6		10	18	1					8					17		26	44		
	137	278	15	22	24		13			3	88	262	2	195	902	24		3	10	65	189		13		1	12	29	346	1,248		
	138	9			19	16	67	3			17	2		28	161					10							9	19	180		
	139	8			11						24				43	4				17	21		15	10	23		12	102	145		
	140	17			4		11	12			48	24	5	78	199	7				36	17	11			25	18	59	173	372		
	141	100	12		29	24	26	4			126	107	8	68	504	53	9		3	112	143			12	38	113	33	516	1,020		
	143	10			11	17	13	3			36	19		58	167	13	7		5	42	47		5		3	17		139	306		
	146	2			15		8				7	6	3	7	48	1					8				17	17	3	46	94		
148	89	11		6		7	6			34	32	4	83	272	24	14			163	30			19	31	50		331	603			

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

		Amtrak (Host)													Amtrak (Non-Host)													Total Amtrak	
Route	Train	CTI	CTP	DBB	DCS	DET	DMW	DSR	PSC	PSR	PTI	RTE	SMW	Total	ADA	CAR	CON	CTC	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes	
On Spine North-east Regional	149				20					2	3		14	39	12				14	24			16				66	105	
	150				7	4					19	1		31	21	21			73	7						227	349	380	
	152				7			2		15	3		38	65	19				4	9				6		2	40	105	
	153	33	2			7				30			35	107	3					12							15	122	
	154				6					5			37	48						3	22						25	73	
	155	4				17				16			11	48														48	
	158	3						2		6			26	37						4	97		53			15	169	206	
	159						2			14	5		6	27					4	3							7	34	
	160					2	11					2		15	6					12							18	33	
	161	62	4		4	8				36	25	9	85	233	32	31	18		35	113			8	18	17		272	505	
	162				19	10	14	4		35	6	2	88	178	38	4			45	30		11					128	306	
	163				7					6	8		14	35	8					17							25	60	
	165	15			21		17			20	13	7	8	101	19	5			3	38				7	3	37	112	213	
	166	3			7	6		2		7			12	37	28					28				1		56	113	150	
	167											8		8	8		98		64					36			206	214	
	168				12		7	4		6	4		18	51	4			8	7	25							44	95	
	169				20							9		29			90			27		9		39		94	259	288	
	170	246	44		216	3	37	39		30	25	21	67	728	4	7			65	52			6	34		10	178	906	
	172	101	27		7	50	17	18		137	34	5	72	468	38	11			107	58	7		17	24		72	334	802	
	173	60	10		102		10			26	67	14	124	413	67		81	16	39	101			17	12		2	335	748	
	175	72	6		49		24	2		122	39	6	80	400	14		8		311	108			13	14	12	40	520	920	
	177	271		17	3	128	36		19	181	6	7	297	965	13	7		51	55	35				26		81	268	1,233	
	178	152			8			18		12	10	2	37	239	21	10			151	119	9			25		31	366	605	
	179	31			7		3					8		49	6		155		250	17					87	2	517	566	
	182	37			16	53	9	10		45	5	10	74	259		15			3	8					10	35	71	330	
	183	48	27		16	3				19	6		194	313	3					7						13	23	336	
	184	25	4		17		9	32		127			214	428	17	4			41	30						5	97	525	
	185	165	11	3	43	30				84	11		153	500	10	170			97	19				7	11	10	324	824	
	189	4								10			19	33	4							34		5		8	51	84	
	190	61				60			10		8			139	20					21	7	10			10	20	23	111	250
	192										3			3							4	7					12	23	26
	193	101	12			30			4		38	93	5	266	549	25	28			75	30		86	21	37			302	851
	196	12				15	0	5	2		28	29		58	149					170				10			6	186	335
	1135	7										11			18						2							2	20
	1164															1												1	1

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Amtrak (Host)			Amtrak (Non-Host)											Total	Total Amtrak Responsible Delay Minutes
		CTP	DMW	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	OTH	SVS	SYS		
On Spine Northeast Regional	1173								8	7						15	15
	1186	38	3	41													41
Pacific Surfliner	562				18	12	21		45	37			32		33	198	198
	564				25	86	52		131	18		10	35	40	72	469	469
	567				41	22	14			114			78	6	247	522	522
	569				17	5				12		52			36	122	122
	572				33	10	49		30	39	11		63		95	330	330
	573				55	4	87		358	56			15	12	43	630	630
	579				20	9	4	66		18		17	10	3	28	175	175
	580				57	15		20	25	180	22	3	83		63	468	468
	581				118	8	1	2	2	62		137	29		70	429	429
	583				16	6	48		12	43		196	25	4	197	547	547
	584				2			3		16		3	16		2	42	42
	586				33	9			39	22		36	40		57	236	236
	588				4	9	8	156	87	21		158	32	5	14	494	494
	590				19							16	12		57	104	104
	591				63		191		207	107		144	123	10	165	1,010	1,010
	593				4	9	8			66		68	21	27	22	225	225
	594				13	4		295	11	41		434	56	16	215	1,085	1,085
	595				31	6	10		128	141		506	37	3	110	972	972
	761				32	25	9		32	116	28		80	26	262	610	610
	763				40	5	4		60	76	3		46	10	128	372	372
	765				132	54	23		321	168		5	98	34	141	976	976
	768				23	16	1			71			17		38	166	166
	770				105	13	3		108	307			46	3	199	784	784
	774				248	42	67	7	74	346		2	93	49	248	1,176	1,176
	777				264	78	83	69	48	259	7		95	57	231	1,191	1,191
	784				161	27	10	8	133	389	18	117	51	27	164	1,105	1,105
	785				156	25	225	120	204	287		345	55	38	215	1,670	1,670
	794				28	3	25	56	300	30			40		59	541	541
	796				12	16	25	13	35	34			17	10	26	188	188
	1564												4		5	9	9
	1567				2					6			4		9	21	21
	1572									1			11		1	13	13
	1584				6					6			9			21	21

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

		Amtrak (Host)																	Amtrak (Non-Host)															Total Amtrak	
Route	Train	CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	DTR	FTI	PET	PSC	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	CTC	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Resp Delay Mins		
Pacific Surfliner	1761																												2			2	2		
	1768																		4						2				1	10	25	42	42		
	1774																							3				12			15	15			
	1777																		8			39			2				1	10		60	60		
	1784																							11						4	15	15			
	1785																						2					2			4	4			
	1793																										2			2	2				
	1796																							5							5	5			
Palmetto	89	64	21		22		15							52	15		216	405	255	14	4			303	197	58			275	187	424	1,717	2,122		
	90	14			35			4						13	94	17		177	242	67				328	152	138			334	116	399	1,776	1,953		
Pennsylvanian	42	30			29				12					298	96		35	500	157	60		81		167	130		24	13	216	66	566	1,480	1,980		
	43	11	2		16	8	45	21						5	70		45	223	126	46		18		172	107		3	44	198	54	674	1,442	1,665		
Pere Marquette	370				2											3		5	31					30	35				349		120	565	570		
	371	2			19						5				35			61	29					34	16				48		57	184	245		
Piedmont	73																		63					19	25				124		55	286	286		
	74																		149					39	27		133		127		54	529	529		
	75																		230			30		37	104	18			70		63	552	552		
	76																		179					9	82		54		43		201	568	568		
	77																		94					59	85		237		95		166	736	736		
	78																		35						10	36		296		51	3	55	486	486	
Richmond / New- port News / Norfolk	65				13	13	36	3						43		17	125	250	36					250	118				51	132	28	615	865		
	66	11			42		66	72	11					51	12	25	52	342	162	34		25		952	382	10	182		120	58	42	1,967	2,309		
	67	40	8		239		30	57	5	31				75			126	611	75	47				384	163		26		114	166	76	1,051	1,662		
	82	23	4		19									18	52		40	156	13						10				61	21	54	159	315		
	84	24			27			28	33					128	25		207	472	61	24				121	61				255	33	77	632	1,104		
	85	167	47		55			11						29	82	14	157	562	11					162	33				36	89	17	348	910		
	86	58	7		69	11	50	53	29			3		131	117		38	566	67	0			7	149	103		12	5	99	23	99	564	1,130		
	87	11		3										18	56		84	172	45	6				145	58	21	61		154	150	54	694	866		
	88	38			50		5	29	10					40	75		87	334	30	1				70	128			14	111	9	57	420	754		
	93	153	20		146			6	2		15			137	102	29	391	1,001	125	2		4		229	115	45	16	25	264	138	81	1,044	2,045		
	94	305	5		103	8		19	12					85	192	21	120	870	168	2				115	224			19	75	31	120	754	1,624		
	95	102	19	37	33	8	93	11	6					4	75	79	2	178	647	193	103		45	15	385	151			245	132	393	1,662	2,309		
96				3		6								7	7		36	59	50					32	164				28			274	333		

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Amtrak (Host)														Amtrak (Non-Host)														Total Amtrak Responsible Delay Minutes
		CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	FTI	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	CTC	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	
Richmond / New- port News / Norfolk	99	59			12		5		2		22	3		95	198	129	18				54	180			14	76	181	48	700	898
	125	28	13		11			9		249	20	16	7	112	465	132			5		61	172			12	161	13	119	675	1,140
	157				21						15	3		35	74	21	35				12	68				36	66	30	268	342
	164	16		11	19		2	5		6	16	12		126	213	37					51	119	8			19	11	42	287	500
	174	84			79		20	14	29		122	67	18	78	511	116					134	144				72	23	63	552	1,063
	194				12							16		9	37	24	15					69				14	6	2	130	167
	195	34	3		25				5		27	71		66	231	35	12				54	137			3	25	191	61	518	749
Roanoke	145	4			8						6	3		29	50	26						48				11		5	90	140
	147	7			14						22			36	79	45					63	35		4		8	21		176	255
	156	13			56				4		17	39		14	143	78	18				12	102				10	24	121	365	508
	171	112			131	18	13	71	2		50	166	15	104	682	189	273				257	402	36		14	53	23	131	1,378	2,060
	176	77	18	45	84			15	15		124	364		41	783	109	66				27	149			14	63	214	35	677	1,460
San Joaquins	702															31	17				51	38				84	7	64	292	292
	703															17	6		243		66	35		122		173		101	763	763
	710															224	8	12	26		31	79				83	33	108	604	604
	711															136	14		23		84	67				64	85	73	546	546
	712															70	4	105	32		357	55				81	12	132	848	848
	713															336					148	180				49	23	151	887	887
	714															59	27	131	41		56	101	31	14		68	28	199	755	755
	715															75	10	2	164		101	99	5			71	6	88	621	621
	716															68	10	98	82		89	57	17	43		94	37	117	712	712
	717															37	9		88		37	25	35			62	51	176	520	520
	718															231	18	11	84		56	146		274		73	110	86	1,089	1,089
	719															50	12	5	37		16	65	9	69		59	42	258	622	622
Silver Meteor	97	77	16		50			11	2		26	71	7	306	566	1,100	92		85		528	836	100		21	428	520	1,426	5,136	5,702
	98	18			31		69	26	4		51	244	45	103	591	1,208	87				570	1,088	57	23	7	195	331	906	4,472	5,063
Silver Star	91	57			6	15		60		270	36	264		195	903	928	130	11	83		1,012	974	124	4	5	344	990	2,103	6,708	7,611
	92	4			92			8		6		120	210	68	508	1,047	100		15	3	749	1,088	33	64	4	359	392	1,450	5,304	5,812
Southwest Chief	3															377	255		277		1,771	1,121	185	19		200	1,315	1,089	6,609	6,609
	4	21			4							2	23		50	450	175		154		738	1,372	46	63		243	1,681	1,127	6,049	6,099
Springfield Shuttles	400									110					110	5					60					160			225	335
	405				7								28		35						11	2				3			16	51
	409																					2							2	2
	412									12			2		14			58				5						2	65	79
	416	16										9	3		28			4	3		28			19					54	82

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		Amtrak (Host)												Amtrak (Non-Host)														Total Amtrak	
Route	Train	CTI	CTP	DCS	DET	DMW	DSR	FTI	PSR	PTI	RTE	SMW	Total	ADA	CAR	CCR	CON	ENG	HLD	INJ	ITI	MTI	OTH	SVS	SYS	Total	Responsible Delay Minutes		
Springfield Shuttles	417	9		2						92			103				45	44						15	30	134	237		
	432							14					14	2					5		35			6		48	62		
	450	26		16						31	2		75				66	12	2					46		126	201		
	451			7		3		18	19	10		27	84			30		96	2						52	180	264		
	460	27		16						4	2		49			19						0		38		57	106		
	461	16		11						8			35	1			16				68		182		5	272	307		
	463																	6								6	6		
	464	12	13	3						43	7		78				164		6					43		213	291		
	465			10						44	4		58						2						0	2	60		
	467			2				39		27			68	4				17	1							22	90		
	470	41								68	19		128	9			213	84	22		63			21	19	431	559		
	471			11			3	123	8	4			149	1		5	9	96	2				525			638	787		
	473			8						2			10			50		41									91	101	
	474	15		30					2	39			86				208		6								214	300	
	475	7		56						44			107		55			18							17		90	197	
	476			5							23		28	4			474	57						10	3	548	576		
	478			13				44			14	14		85				91	99	15		9	64	80	39		397	482	
	479	24									21			45				148	110			53					311	356	
	488			14							11	8		33				273	64	2		36		52	1	3	431	464	
	490										64	2		66		24		39	5			3			31	10	112	178	
	494	10									62	1		73	6		10	577	101	21		3		77		5	800	873	
	495	8		9			2	51	5	10	11	4	100	4		16		0				66	3	210			299	399	
	497	12									126			138					3								3	141	
	499	7		16								47		70				9	121	3		146		75	23	7	384	454	
Sunset Ltd	1						2						2	337	210		256	514	652	65	232		723	560	1,030	4,579	4,581		
	2			1			39			10	4		54	245	24		93	232	927	120	3		612	810	520	3,586	3,640		
Texas Eagle	21			20				8		23			51	247	40		27	808	740	46	20		372	1,007	1,338	4,645	4,696		
	22	3		10				14		9			36	339	114		205	159	948	106			140	1,278	997	4,286	4,322		
Vermonter	54	15		19	8	23	2		28	19		93	207	5	9			17	25	10			215	3		284	491		
	55	107		22		6		7	51	80	3	145	421	76	110			141	138			43	579	7	160	1,254	1,675		
	56	39	37	76	37	33	25	22	99	91	11	82	552	87	31			87	39	52		7	556	17	135	1,011	1,563		
	57	24		15	6				16	6		107	174	26		5		30	73				220	17	10	381	555		
Wolverine	350	29		23		54	72	16		1,046	15		1,255	119	19			203	78	16			487	494	302	1,718	2,973		
	351	4		14		7	69	14		300	19		427	104	11			147	56		85		541	242	808	1,994	2,421		
	352	11		18			30	12		52	17		140	246	325			268	78		51		409	284	1,454	3,115	3,255		
	353	8		10		7	53	34		12	7		131	163	13			132	104				427	215	256	1,310	1,441		
	354	20		50		10	4			144	9		237	90	50			377	89	8			1,047	527	738	2,926	3,163		
	355	9		51			4	8		192	10		274	54	14			54	73		126		614	245	708	1,888	2,162		

Table 27: Host Responsible Train Delay Minutes

Route	Delay Cause																Total
	Train	CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	DTR	FTI	PSC	PSR	PTI	RTE	SMW	
Acela Express	2103	58	4		26			3					80	4		136	311
	2109	60	9		20	2	4	9					29		4	202	339
	2122	14						13	22				36	13		118	216
	2126	24			7		21	5	12				123	4	3	130	329
	2150	90	11		53			32	643				69	27	31	81	1,037
	2153	99	6	56	50		53	12	406				150	4	21	112	969
	2154	304	36		52		41	197	535		7		215	8	27	147	1,569
	2155	80		62	49	28	42	30	214			1	56	127	28	193	910
	2158	146	39		48	13	29	322	381				234	36	74	104	1,426
	2159	170	15		182	10	12	33	419		8	1	18	41	12	117	1,038
	2163	136		6	118	4	19	23	322			28	121	73	28	229	1,107
	2166	315		54	73			16	451				159	39	5	197	1,309
	2169	273	7		50		115		248			2	42	42		234	1,013
	2170	79	13		15		25	9	379				185	83	51	148	987
	2172	167	11		63			31	284		6		69	30	3	236	900
	2173	212	9		40		7	22	403			1	42	16	68	168	988
	2203	3					6						24			32	65
	2205	8	14										4			39	65
	2213	8											18	2		44	72
	2218								3				30	3		17	53
	2222		6						1				16	2		20	45
	2224	7			7				3				28	3		36	84
	2248	129			6			45	31				17	14		56	298
	2249	11	11		19			7	73				22	5	6	30	184
	2250	35			41			26	62				17	22	2	46	251
	2251	24	3	8	29			11	57				11	6	23	48	220
	2252	33			46			29	162				45	13	3	89	420
	2253	12	2		60		16	9	192		8		52	67	2	91	511
	2254	36			85		11	12	184				57	23	17	73	498
	2255	40			6		19	4	30	10		2	40	33	3	40	227
	2256	7					5	2	54				38	15	3	23	147
	2257	11			8				74			6	15	3	5	22	144
	2259	24			12			2	69			5	28	17	3	23	183
Auto Train	52	10			470			83	2,208		5,775			2,484	590		11,620
	53	370			581			23	2,323		7,059			3,669	646		14,671
Blue Water	364	7			183				19		1,349			62	138		1,758
	365				152			167	99		1,849			547	85		2,899
California Zephyr	5	179			2,422			802	4,096	68	11,437			2,943	1,338		23,285
	6	326			2,478			793	3,865		11,230			2,007	2,157		22,856
Capitol Corridor	520				48				14		38			50	10		160
	521	70			79				36		122			36	16		359
	522				60			4	17		86			61	20		248
	523	18			108			4	54	0	65			218	51		518
	524	42			89			3	105		112			382	44		777
	525				59				21		26			106	43		255
	526				68			6	22		18			189	83		386
	527	251			133			12	34		200			298	78		1,006
	528	94			260			77	48		71			227	39		816
	531	25			210			13	45		9			166	52		520
	532	2			105			18	67		49			197	36		474
	535				38			7	8		50			83	30		216
	536				79			26	33		34			32	14		218
	537	108			79			41	43		43			100	119		533
	538	9			124			14	81	8	199			77	98		610
	541	178			150			126	68		27			330	71		950
	542	4			119				60		25			99	40		347
	544	24			110			3	83		64			134	54		472
	545				61				30		51			113	20		275
	546	6			87			2	66	0	39			144	59		403
	547	52			131			1	90		39			326	93		732

Route	Delay Cause														Total
	Train	CTI	CTP	DCS	DDA	DET	DMW	DSR	DTR	FTI	PSR	PTI	RTE	SMW	
Capitol Corridor	551			81			3	52		10		55	53		254
	552			4						11		5			20
	720			13				7		14		33	4		71
	723	6		260			10	23	6	41		58	20		424
	724			98			12	46		1		189	56		402
	727	58		152			9	39		7		245	14		524
	728	21		73			8	28		14		192	35		371
	729	3		49			9	69		36		283	86		535
	732	13		108			5	64		26		87	23		326
	736			55			20	30		94		49	17		265
	737	4		49			7	30		10		42	35		177
	741			65			2	20		3		118	26		234
	742			38				32		21		100	14		205
	743	50		65			4	31		13		161	9		333
	744	4		35			3	24		2		113	26		207
	745							12		12		57	10		91
	746			19				11		31		89	74		224
	747	36		121			12	32		20		196	84		501
	748	8		76				42		24		101	16		267
	751			26				7	4	21		76	20		154
Capitol Ltd	29	33		449			70	506		8,140		1,420	1,258		11,876
	30	47		533			130	736		7,069		725	2,065		11,305
Cardinal	50	206		496			153	665		1,293	6	399	481	19	3,718
	51	13	9	436		15	102	548		1,763	41	665	529	130	4,251
Carl Sandburg / Illinois Zephyr	380	71		108			32	139		373		45	164		932
	381	305		53			56	123	2	596		39	115		1,289
	382	127		125			97	181		851		34	250		1,665
	383	326		44			5	159		568		82	157		1,341
Carolinian	79	15		626	9	31	296	652		1,096	54	1,513	948	236	5,476
	80	178		588			283	713		1,807	13	1,550	551	51	5,734
Cascades	500	27		392			304	622		1,454		434	272		3,505
	503	137		508			215	867		2,092		620	246		4,685
	504	23		303			37	257		677		165	314		1,776
	505	39		299			53	864		1,699		1,273	313		4,540
	507	14		369			46	338	8	480		432	300		1,987
	508	11		491			64	752		1,688		1,084	206		4,296
City Of New Orleans	58	25		560			168	1,012		2,504		1,417	957		6,643
	59	10		441			98	915		2,485		924	782		5,655
Coast Starlight	11	260		2,512			270	2,666	339	6,205		4,565	388		17,205
	14	272		2,534			448	2,595		6,562		4,437	555		17,403
Crescent	19	271	5	1,690			133	1,147		14,074	24	1,644	1,129	143	20,260
	20	221		1,908			50	1,242		11,221	30	1,515	1,163	34	17,384
Downeaster	680	80		268				334		12		6	22		722
	681	106		126			161	205	16	26		411	39		1,090
	682	160		181			62	361		9		177	7		957
	683	105		125			98	251		37		298	9		923
	684	172		99			176	265		208		294	39		1,253
	685	96		113			9	189		190		146	2		745
	686	143		121			106	323		166		281	17		1,157
	687	133		133			36	329		52		141	4		828
	688	186		76				193		126		378	36		995
	689	54		127				181	4	70			5		441
	690			26			16	76		25					143
	691			36			26	62		14		109	17		264
	692	69		48			63	85		2		48	4		319
	693	78		45			5	81		51		195			455
	694	93		60			7	111		23		229	38		561
	695	12		47				137		24		41			261
	696	121		45				92		70		192			520
	697	89		104				86		59		56	13		407

Route	Delay Cause															Total
	Train	CTI	CTP	DCS	DET	DMW	DSR	DTR	FTI	PET	PSC	PSR	PTI	RTE	SMW	
Downeaster	698	20		61			64		26				216	20		407
	699	43		37			38		8							126
	1689	8		14			32									54
Empire Builder	7	43		1196		491	1999		8670				1829	645		14873
	8	472		1242		427	2834		13098				1235	420		19728
	27			233		522	548		2227				2	131		3663
	28			314		147	371		2572				28	41		3473
Ethan Allen Ex-press	290	230		96		21	229		103				55	182		916
	291	169		50		54	281		15				55	168		792
	292	77		21			36		8				10	7		159
	293	118		7			24		3					37		189
	295	43		13		12	80		24				13	14		199
	296	76		3			18						57	6		160
Heartland Flyer	821	10		80		68	1367		1194				2	48		2769
	822	14		92		8	1323		1100					29		2566
Hiawatha	329	34		27		16	38							7		122
	330	308		75		25	13						4			425
	331	113		76		67	52		1				19	7		335
	332	49		43		91	44		33				12	15		287
	333	382		100		61	39		57				36	7		682
	334	154		87		65	33		72				37	41		489
	335	344		112		69	41		49				29	17		661
	336	43		162		84	23		41				56	11		420
	337	16		81		25	55		5				42	2		226
	338	202		81		32	43		41				81	10		490
	339	402		50			27						4	2		485
	340	299		48		7	21		51				8	6		440
	341	131		46		1	49		20				10	10		267
	342	99		40		2	33		43				9	16		242
	343			4		3								44		51
Illini / Saluki	390	63		137		160	686		815				406	81		2348
	391	264		208		120	526		726				874	117		2835
	392	82		138		11	326	7	541				1377	44		2526
	393	64		206		208	645		836				273	75		2307
Keystone	600	4	33		14	11	9					133	12			216
	601			47								12			25	84
	605	7		9		30	4					13				63
	610											29				29
	611			5						3					16	24
	612											32				32
	615														33	33
	619														52	52
	620	12	12				7					240			7	278
	622	12					4					21				37
	637			7		13						19			25	64
	639	29	4		60	53						47		8	49	250
	640	214	74	50		51	8					173	20		25	615
	642	14	15	19	16	17	3					75	10			169
	643	49	20		26	8	10					4	6	8	59	190
	645	12	9						10					5		36
	646	14	5	41		17	42			5		210	41	6	5	386
	647	43										46	115		13	217
	650		18	6			40					159	24			247
	651	37	17	29		5						4	27	21	9	149
	652	59	13	16			13					185	27			313
	653	72	39	4							1	25	8	9	43	201
	654	19	8	16		15	4					207	12		6	287
	655	63	8	40					7			35	143	2	67	365
	660	6		7			3					127	23		21	187
	661					7	3			5		3			53	71

Route	Delay Cause															Total
	Train	CTI	CTP	DBB	DCS	DET	DMW	DSR	DTR	FTI	PSC	PSR	PTI	RTE	SMW	
Keystone	662	9			14			3				128			19	173
	663														34	34
	664	9			15							114	2		56	196
	665	15										3	13	5	27	63
	666	9						3				107	10		23	152
	667	2					3					16	34		14	69
	669	17				8	16					28	2		9	80
	670							6				64				70
	671	12	12				3					19	13		22	81
	672											17				17
Lake Shore Ltd	48	398			449		526	622		7,170			896	1,121		11,182
	49	733			379		282	523		4,973			2,461	700		10,051
	448	1,942			208		12	315		753			316	401		3,947
	449	1,001			218		73	396		296			255	306		2,545
Lincoln Service	300	2			112		71	134	26	1,675			391	311		2,722
	301	30			375		87	54	81	1,004			529	203		2,363
	302				377		116	109	42	2,083			954	61		3,742
	303				274		98	84	45	1,452			620	437		3,010
	304	4			235		61	48	22	1,024			480	82		1,956
	305	61			132		50	69	59	1,191			710	205		2,477
	306				376		74	66	38	1,361			778	103		2,796
	307	16			368		61	51	19	1,206			306	107		2,134
Maple Leaf	63	287	2		272		129	539		1,044			248	915	65	3,501
	64	261			249		100	481		1,164			364	674		3,293
Missouri	311				311		139	1,053		2,012			656	148		4,319
	313				144		32	995		2,159			661	47		4,038
	314				235		343	1,164		1,331			265	118		3,456
	316				210		89	945		1,949			410	255		3,858
New York - Albany	232	517			15			154		6				56		748
	233	370			28		213	232		2			103	396	10	1,354
	234	904			10			92					11	104		1,121
	236	79			27		1	131					40	145		423
	237	456		34	31			133		3				140		797
	238	303			6		26	160					149	114		758
	239	832	10	4	39			33					11	56	3	988
	241	299			57		118	156					36	142	2	810
	243	111	3		23			111		6				64		318
	244	1,256			93		37	128					239	63		1,816
	250	9			31		7	73					3	32		155
	253	104			16			63					7	46		236
	255	8						41					19	22		90
	256	52			9			35						4		100
	259	102						64						20	2	188
	260	227			23		8	41						16		315
	261	21												2		23
New York - Niagara Falls	280	548			223		102	574		714			58	608		2,827
	281	703	5		238		232	552		1,183			424	779		4,116
	283	371			361		306	507		1,296			115	896		3,852
	284	471			296		275	586		664			308	512		3,112
On Spine North-east Regional	123						19					24				43
	126											8			18	26
	129	120			19			1				104	22	5	117	388
	130	39	34			4	8	4		5		53	51		19	217
	132	16			31			176				13	12		8	256
	134	6	26					3				8	4		7	54
	135	50			26		13	256			2	21		24	108	500
	136	17			6		2	131					6	3	10	175
	137	644	15	22	41	45	13	190			3	88	276	7	195	1,539
	138	9			19	16	67	3				17	2		28	161
	139	38			11			99				24				172

Route	Delay Cause															Total
	Train	CTI	CTP	DBB	DCS	DET	DMW	DSR	DTR	FTI	PSC	PSR	PTI	RTE	SMW	
On Spine North-east Regional	140	93			7	12	11	183				48	24	8	78	464
	141	345	12		37	34	26	574				126	107	24	68	1,353
	143	221			58	17	24	103				36	19	15	58	551
	146	26			15		8	131				7	6	3	7	203
	148	279	11		10	25	7	469				34	40	4	83	962
	149	7			20			148				2	3		14	194
	150	37			7	25	8	204					19	13		313
	152				7			2				15	3		38	65
	153	33	2			7						30			35	107
	154				6							5			37	48
	155	4				17						16			11	48
	158	3						2				6			26	37
	159						2					14	5		6	27
	160	28				2	13	81						6		130
	161	274	4		4	8		131				36	25	9	85	576
	162	73			19	10	18	289				35	6	2	88	540
	163	17			7		34	120				6	8		14	206
	165	72			25		17	96				20	13	10	8	261
	166	28			9	7		95				7		6	12	164
	167							134					8			142
	168	25			12	25	7	142				6	4		18	239
	169	45			30			230		29			9			343
	170	855	44		335	3	37	223				30	30	21	67	1,645
	172	280	27		34	57	203	723				137	34	5	72	1,572
	173	455	10		102	9	10	487	7			26	71	27	124	1,328
	175	455	6		54		24	312				122	39	157	80	1,249
	177	402		17	3	136	36	607			19	181	10	7	297	1,715
	178	393			56	24		205		6		12	10	2	37	745
	179	88			7		3	551		12			8	51		720
	182	37			16	53	9	10				45	5	10	74	259
	183	48	27		16	3						19	6		194	313
	184	25	4		17		9	32				127			214	428
	185	165	11	3	43	30						84	11		153	500
	189	4										10			19	33
	190	412			75	2		571				8		23		1,091
	192											3				3
	193	101	12		30			4				38	93	5	266	549
	196	12			15	0	5	2				28	29		58	149
	1135	20											11			31
	1164	16														16
	1173	19														19
	1186		38				3	13						2		56
Pacific Surfliner	562	397			296		58	169		149			589	37		1,695
	564	436			177		12	127		94			239	19		1,104
	567	400			277		120	215		94			279	184		1,569
	569	46			76		8	69		8			98	19		324
	572	228			381		95	175		42			297	162		1,380
	573	278			294		71	141		42			145	8		979
	579	76			110		15	46		36			35	9		327
	580	347			160		75	243		63			435	139		1,462
	581	526			110		12	118		26			175	47		1,014
	583	309			162		49	106		96			362	4		1,088
	584	147			36		26	56		12			26	29		332
	586	237			115		18	120		43			682	48		1,263
	588	256			75		11	78		86			474	83		1,063
	590	37			36		5	52		17			40	12		199
	591	274			256		58	173		109			400	59		1,329
	593	87			64		18	83		3			17	32		304
	594	53			73		56	113		195			46	112		648
	595	46			133		83	198		265			245	74		1,044

Route	Delay Cause																	Total
	Train	CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	DTR	FTI	PET	PSC	PSR	PTI	RTE	SMW	
Pacific Surfliner	761	291			718			132	185		183				410	169		2,088
	763	193			230			54	84		3				239	81		884
	765	261			680			100	200		18				281	77		1,617
	768	100			225			37	54		53				97	33		599
	770	259			624			64	128		21				391	301		1,788
	774	305			1,271			44	410		96				880	70		3,076
	777	148			1,474			172	336		142				1,471	87		3,830
	784	729			669			43	203		78				517	157		2,396
	785	1,078			377			44	149		68				625	132		2,473
	794	68			989			6	130		57				1,254	46		2,550
	796	18			125			3	37		178				137	23		521
	1564	13			18				8		18				9	1		67
	1567	28			29			5	12	13	10				25	10		132
	1572	6			25			5	8							14		58
	1584	15			24				18		6				9	12		84
	1761	17			14				2						14	2		49
	1763	2			3													5
	1768				25			2										27
	1774				29				27									56
	1777	9			18				15						41			83
	1784				10						2							12
	1785	3			6													9
	1790	4																4
	1793	7																7
	1796				4										6			10
Palmetto	89	64	21		527		15	327	1,052		3,019			52	1,505	206	216	7,004
	90	75			437			160	881		2,580			13	1,463	157		5,766
Pennsylvanian	42	30			271			209	212		1,940			298	124	655	35	3,774
	43	11	2		265	8	45	142	119		2,670			5	70	441	45	3,823
Pere Marquette	370				80			18	45		816				97	51		1,107
	371	2			175			32	25		1,059				564	38		1,895
Piedmont	73				184			19	157		672				195	31		1,258
	74				317			19	304		437				44	75		1,196
	75				125			13	233		622				267	37		1,297
	76				297			7	151		309				514	7		1,285
	77				186			22	294		259				103	18		882
	78				113				144		95				84	61		497
Richmond / New- port News / Norfolk	65	84			31	13	36	7	348		218			43	142	164	125	1,211
	66	176			205		66	159	1,075		735			51	760	337	52	3,616
	67	229	8		462		30	451	464	313	453			75	185	445	126	3,241
	82	28	4		74			5	175		18			18	68	30	40	460
	84	24			169			92	123		106			128	141	190	207	1,180
	85	440	47		230			11	88		170			29	184	178	157	1,534
	86	422	7		308	11	122	217	597		490	3		131	239	178	38	2,763
	87	11		3	59			17	47		78			18	78	156	84	551
	88	112			145		5	31	115		113			40	132	118	87	898
	93	1,001	20		481			36	658	2	273			137	222	419	391	3,640
	94	457	5		377	8	5	175	648		489			85	316	517	120	3,202
	95	664	19	37	534	8	93	62	367		408		4	75	263	253	178	2,965
	96	13			19		6	7	162		135			7	116	52	36	553
	99	93			73		5	11	284		190			22	87	132	95	992
	125	367	13		173			12	148		804			20	566	419	112	2,634
	157	65			81		13	41	42		120			15	74	57	35	543
	164	37		11	78		12	9	131		100			16	69	38	126	627
	174	592			183		20	316	562		627			122	151	483	78	3,134
	194	13			19			26	100		30				138	38	9	373
	195	142	3		157		8		132		53			27	179	77	66	844
Roanoke	145	4			19				2		73			6	13		29	146
	147	75			17				114	21	61			22	2	1	36	349
	156	18			116				12		47			17	53	5	14	282

Route	Train	Delay Cause														Total
		CTI	CTP	DBB	DCS	DDA	DET	DMW	DSR	DTR	FTI	PSR	PTI	RTE	SMW	
Roanoke	171	459			292	18	15	78	608		632	50	238	38	104	2,532
	176	520	18	45	171			148	298		366	124	485	70	41	2,286
San Joaquins	702	78			222			107	410		1,315		434	29		2,595
	703	4			230			14	208		1,279		705	49		2,489
	710				475			147	374		1,120		1,477	65		3,658
	711				276			263	285		898		797	47		2,566
	712				260			37	348		1,380		1,125	47		3,197
	713				241			83	271		1,192		1,065	128		2,980
	714				335			120	306		1,409		1,544	64		3,778
	715				376			8	271		1,095		1,770	20		3,540
	716				249			446	284		1,093		1,332	16		3,420
	717				180			14	183		976		1,442	41		2,836
	718				262			161	185		1,044		1,221	68		2,941
	719				174			11	180		1,117		1,614	57		3,153
Silver Meteor	97	990	16		706			111	1,823		4,304	26	2,550	418	306	11,250
	98	1,218			657		69	182	1,951		5,490	51	2,515	688	103	12,924
Silver Star	91	966			1,017	15		163	2,506	0	3,816	36	2,978	562	195	12,254
	92	348			1,158			423	2,649		3,106		2,839	877	68	11,468
Southwest Chief	3	1,042			2,500			557	4,151		6,511		2,031	692		17,484
	4	917			2,779			382	4,263	0	7,295		2,280	534		18,450
Springfield Shuttles	400				5					2	120			2		129
	405				7									28		35
	412										12			2		14
	416	16											9	3		28
	417	9			2								92			103
	432										14					14
	450	26			16								31	2		75
	451				7			3			18	19	10		27	84
	460	27			16								4	2		49
	461	16			11				6		10		8	2		53
	464	12	13		3								43	7		78
	465				10								44	4		58
	467				2						39		27			68
	470	55											75	19		149
	471				22				23		123	8	4	6		186
	473				8								2			10
	474	15			30							2	39			86
	475	7			56								44			107
	476				5								23			28
	478				32				79		51		50	81		293
	479	24											21			45
	488				33				63				11	8		115
	490												64	2		66
	494	10			11				31		47		62	7		168
	495	8			9				31		253	5	25	17	4	352
	497	12											126			138
	499	7			16				65		20			61		169
Sunset Ltd	1	54			1,067			450	1,945		8,267		230	1,584		13,597
	2	9			839			169	1,778		7,510		186	2,392		12,883
Texas Eagle	21	78			1,363			290	3,098	58	12,397		1,455	1,218		19,957
	22	135			1,078			385	2,915	240	7,989		1,460	737		14,939
Vermonter	54	103			50		8	59	827		49	28	27	23	93	1,267
	55	216			199			6	2,180		10	51	268	103	145	3,178
	56	121	37		153		37	305	2,302	13	58	99	173	30	82	3,410
	57	59			67		6	10	865			16	6		107	1,136
Wolverine	350	103			329			127	368		1,787		2,089	234		5,037
	351	4			240			60	352		1,252		425	113		2,446
	352	46			251			80	355		1,331		599	133		2,795
	353	16			191			47	322		1,466		547	225		2,814
	354	20			194			10	315		1,065		553	65		2,222
	355	9			292			51	406		808		1,131	154		2,851

Table 28: Third-Party Responsible Train Delay Minutes

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Acela Express	2103						13	52	30	95
	2109	13		9			112	31	40	205
	2122	13					119		56	188
	2126	6	7			17	111		6	147
	2150	9		15	8	5	39		275	351
	2153	25		17	193	54		35	240	564
	2154	18		4		22	15		171	230
	2155	28		2	94	18	27	85	89	343
	2158	13		18	9	29	153	5	193	420
	2159	16	24	50	236	1	20	29	135	511
	2163	8		17	413	83	93	72	153	839
	2166	41		16	5	18	15	3	136	234
	2169	33		4	353	5	257	71	60	783
	2170	8	33		24	21	5		97	188
	2172	25		2	75	41	14		155	312
	2173	6	10		215	38	134	68	64	535
	2203				2			17		19
	2205					75		10		85
	2213				1	40		18		59
	2218						29		18	47
	2224		8							8
	2248	4		7	2				3	16
	2249				16	6	2	13	83	120
	2250				8	141		4	18	171
	2251		6		3	16		11	47	83
	2252	26		9	29	79	28	7	42	220
	2253			2	49	17	38	18	71	195
	2254			2	35	21	6		60	124
	2255			14	13	2		5	11	45
	2256				8	23			52	83
	2257				102			16	25	143
	2259				44			4	11	59
Auto Train	52		18			166	745		163	1,092
	53		41		523	145	1,058		303	2,070

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause						Total
		DBS	MBO	NOD	POL	TRS	WTR	
Blue Water	364	10	69	1,162	274	133	167	1,815
	365		113	2,159	16	186	99	2,573
California Zephyr	5	279	221	5,528	495	422	2,347	9,292
	6	303	192	3,885	564	1,701	2,098	8,743
Capitol Corridor	520	2	105	69	36	92		304
	521	18	57	184	63	122	10	454
	522		78	64	51	61	14	268
	523	2	154	103	94	71	13	437
	524		128	33	70	128	2	361
	525		73	12	115	145	16	361
	526		169	36	34	280	2	521
	527	20	55	220	238	92	78	703
	528		152	117	86	165	2	522
	531		244	102	71	236	9	662
	532		27	311	205	148	5	696
	535		182	26	22	90	6	326
	536		108	118	42	111		379
	537	13	88	29	115	155	20	420
	538	113	117	266	15	137		648
	541	2	80	19		34		135
	542		78	109	54	276	2	519
	544	23	60	70	27	425	2	607
	545		146	23		200		369
	546		14	106	79	78	2	279
	547	28	127	15	198	162		530
	551			61		261	4	326
	720		10	27		44		81
	723		17	13		112	1	143
	724		29	12	3	2	7	53
	727	8	17	22	45	20	1	113
	728	14	48	5		26	4	97
	729		46	113	5	113	3	280
	732		133	16	27	6	8	190
	736		80	31	33	60	9	213



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Capitol Corridor	737			59	34				3	96
	741			101	1	53	3		1	159
	742			19	43	92	107		55	316
	743			76	2	53			12	143
	744		45	16	41	89	18		7	216
	745			83	11		69		108	271
	746			4	3	2	208		17	234
	747			1	2	44	226			273
	748				58	53	158		28	297
	751		2		6		17		2	27
Capitol Ltd	29			80	2,181	267	165		66	2,759
	30		241	28	403	173	227		150	1,222
Cardinal	50		26	21	1,171	79	6		95	1,398
	51		204	10	826	283	223	4	296	1,846
Carl Sandburg / Illinois Zephyr	380				324	14			11	349
	381				301					301
	382				247		42		10	299
	383		21		247	61	31		27	387
Carolinian	79	4			1,063	459	32	22	98	1,678
	80	10	40		898	142	188		41	1,319
Cascades	500		146	69	524	78	95		276	1,188
	503		2	99	152	83	217		141	694
	504			68	13	20	59		229	389
	505			149	133	81	172		120	655
	507			88	5	77	100		192	462
	508		2	25	181	34	310		147	699
City Of New Orleans	58		130	83	3,972	309	187		1,224	5,905
	59		115		5,155	144	86		1,087	6,587
Coast Starlight	11		169	166	5,207	541	734		1,098	7,915
	14		35	203	2,631	942	1,482		1,295	6,588
Crescent	19		47	26	3,777	247	260	23	157	4,537
	20	11	12	92	3,262	188	710		140	4,415
Downeaster	680				273	4	7		79	363
	681				145		3		28	176
	682				291	4			20	315



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause						Total
		DBS	MBO	NOD	POL	TRS	WTR	
Downeaster	683			157			10	167
	684			220	96	4	27	347
	685	7		201		2	9	219
	686			89		67	20	176
	687			230	13	12	18	273
	688			333	282			615
	689			223	7			230
	690			124			19	143
	691			77			4	81
	692			105			13	118
	693			67		1	12	80
	694			20	2			22
	695	2		42				44
	696			36	63		8	107
	697			89			8	97
	698			91				91
	699			98	4		16	118
	1689			150				150
Empire Builder	7	7	60	8,110	137	328	1,084	9,726
	8	14	9	2,550	669	465	1,670	5,377
	27	72	98	56	111	2	30	369
	28		66	100	10	81	102	359
Ethan Allen Express	290			519	8		16	543
	291			195			40	235
	292			87			6	93
	293			22			3	25
	295			89			5	94
	296			121				121
Heartland Flyer	821			27	5	73		105
	822			54	6	81	72	213
Hiawatha	329			27			1	28
	330			485				485
	331		1	22			1	24
	332	1						1
	333			9	5			14



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Hiawatha	334			1			12			13
	335				34		1			35
	337				8		51			59
	338					4	2			6
	339				155		50			205
	340						16			16
	341				2		17			19
	342						17		1	18
Illini / Saluki	390			31	38	49	54		28	200
	391		10	6	13		50		75	154
	392			22	29	54	212		89	406
	393				13	21	188		46	268
Keystone	600								29	29
	601						18		27	45
	605								10	10
	610								21	21
	611								19	19
	612								25	25
	615								10	10
	619		15							15
	620	12							66	78
	622	9							53	62
	639	8							21	29
	640			16					167	183
	642							2	8	10
	643					31	3		17	51
	645								23	23
	646	10				10		4	124	148
	647		9					4	28	41
	650					19			11	30
	651	7				12			112	131
	652	3				4	3		35	45



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Keystone	653	27	4						49	80
	654	38				4	41		15	98
	655	28					47		45	120
	660		5			5			92	102
	661								57	57
	662								59	59
	663								3	3
	664	4				9			46	59
	665								9	9
	666					6			7	13
	667						15			15
	669					68		5	35	108
	670		3			6	43		8	60
	671								8	8
	672								12	12
Lake Shore Ltd	48		11	44	1,776	28	63	21	150	2,093
	49		36	91	1,595	245	78		112	2,157
	448				60				26	86
	449				225	44	28		25	322
Lincoln Service	300			31	1,109	13			32	1,185
	301			2	913				11	926
	302		10	15	1,476	29			14	1,544
	303			3	518	11			3	535
	304		3	2	1,602	61	150		30	1,848
	305				624	12	44		59	739
	306				1,891	18	119		196	2,224
	307			3	1,200	98			97	1,398
Maple Leaf	63		8		554	34	7		134	737
	64		3		1,231	117	174		106	1,631
Missouri	311				232				16	248
	313		27		446	30	3		88	594
	314		41		104	5	66		8	224
	316		12		158	5	95		222	492
New York - Albany	232				8		37		28	73
	233				120	79			10	209



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
New York - Albany	234				7				13	20
	236								6	6
	237				96			10	5	111
	238		3		32				12	47
	239				194	2		13	15	224
	241		6		194	15		13	38	266
	243				204	7			19	230
	244		14		8		4	21	4	51
	250								20	20
	253				63	4			6	73
	255				13	10				23
	256				2		2			4
	259				24				11	35
	260				22				5	27
	261				3					3
New York - Niagara Falls	280		4	8	629	5	66		166	878
	281		3	13	126	13	22		275	452
	283				101	7	144		222	474
	284				685	71	3		33	792
On Spine North-east Regional	123								18	18
	129	17				30	19	8	23	97
	130					12			8	20
	132				2	33			90	125
	134								20	20
	135		70		101	31	9	18	72	301
	136				23				156	179
	137	35	1	17	106	35	68	57	93	412
	138	4	11				76			91
	139				11				51	62
	140				26	36	139		125	326
	141	11		4	151	77	131	20	266	660
	143	6			3	78	101	3	300	491
	146				8		1		125	134
	148	12		5	215	26	46		379	683



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
On Spine North-east Regional	149			22	2				31	55
	150				7	11	66		207	291
	152					167		11		178
	153					111		13		124
	154					104				104
	155	9						4		13
	158	7							8	15
	159							12		12
	160			8					63	71
	161			3	2	67	72	3	98	245
	162			10	3	248	32	3	89	385
	163							12	52	64
	165					8			85	93
	166		156		17				195	368
	167				48				16	64
	168		54			2	17		33	106
	169				19	16			68	103
	170	6		17	10	21	22		168	244
	172	16		6	1	48	198	8	110	387
	173				176	62	50	3	232	523
	175	11	62	10	6	42	126	45	197	499
	177	13	12		496	78	44	15	39	697
	178	35	5	11	297	62	50		268	728
	179		9	4	301		40		158	512
	182	10							87	97
	183					11	21	22	6	60
	184					5			17	22
	185	7		3			9	55	50	124
	189					11				11
	190	5		5	77	2	38		324	451
	192					5				5
	193	42				7	3	26	27	105
	196	3				16	87		32	138
	1164						6			6



Route	Train	Delay Cause					Total
		DBS	NOD	POL	TRS	WTR	
Pacific Surfliner	562		267		3		270
	564	14	525	10	98	3	650
	567		86	23	3	11	123
	569		39	2	5		46
	572		285	5	146	4	440
	573		231		6	8	245
	579		85		80	4	169
	580		278	107	18	5	408
	581	11	248	8	2	6	275
	583		459	121	106	24	710
	584	2	27	96	83		208
	586		147	44	239	2	432
	588		372	205	384	16	977
	590		97			2	99
	591		50	389	43	12	494
	593	52	103	96		16	267
	594	19	294	207	32	21	573
	595	6	402	115	4	23	550
	761	124	1,586	53	2	71	1,836
	763	1	108	6	13	4	132
	765	19	738		24	14	795
	768		236	5			241
	770		1,285		4	46	1,335
	774		1,459	369	28	75	1,931
	777	12	1,004	153	299	27	1,495
	784	37	1,272	145	152	35	1,641
	785	25	647	420	762	97	1,951
	794	57	412	87	5	26	587
	796		439		5		444
	1564		17		7		24
	1572		14				14
	1584		7				7

FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Pacific Surfliner	1761				2					2
	1763				29					29
	1777				7	18				25
	1784				19					19
	1785		70		25					95
Palmetto	89	3	19		815	312	117	44	43	1,353
	90		21	5	508	53	388		47	1,022
Pennsylvanian	42		9		6	8	60		165	248
	43	2	205		28	58	76	9	78	456
Pere Marquette	370			10	83		114		108	315
	371			119	180		41		172	512
Piedmont	73				55	8			159	222
	74				152	171	3		10	336
	75		1		61	1	153		20	236
	76				253	4	217		8	482
	77		33		62	154	15		2	266
	78		34		263	42	264		14	617
Richmond / Newport News / Norfolk	65				35	35	44	6	102	222
	66	10		3	277	145	236		455	1,126
	67		15		380	15	115	9	65	599
	82	14			51		28		65	158
	84		21		1,042	32	9		68	1,172
	85	2	6		68	3	85	6	36	206
	86		117	37	321	24	68	14	309	890
	87			2	34	15	31	13	8	103
	88		11	16	218	57	24	4	75	405
	93	21	38	4	521	5	392	62	485	1,528
	94		15		356	114	14		205	704
	95	21		28	336	51	126	18	412	992
	96				22	18			27	67



FRA Quarterly Report | **Appendix 2: Delay Minutes by Train and Responsibility**

Route	Train	Delay Cause								Total
		BSP	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Richmond / Newport News / Norfolk	99			12	3	31	203	23	268	540
	125	8			723	31	7	15	14	798
	157				16	24	58	5	90	193
	164			7	327	192	15	3	83	627
	174	23		8	641	84	75	7	249	1,087
	194				71	11	6		22	110
	195			16	23	22	11	20	128	220
Roanoke	145				66	34	4		10	114
	147				50		48	3	73	174
	156		4		103	31	15	6	11	170
	171		15	17	530	17	49	17	429	1,074
	176	25	7	2	649	42	205	3	329	1,262
San Joaquins	702				411	75	10		44	540
	703		1		366	2	280		53	702
	710		9		404	240	76		46	775
	711		100		1,015	159	21		91	1,386
	712		12		590	70	176		172	1,020
	713		44		605	486	1		27	1,163
	714		45		438	319	33		32	867
	715				304	78	166		10	558
	716		57		515	768	83		23	1,446
	717		7		480	81	117		28	713
	718		3		362	55	438		8	866
	719		16		443	409	36		13	917
Silver Meteor	97	12	272		1,545	255	283	25	71	2,463
	98	11	119		1,472	447	56	3	92	2,200
Silver Star	91	16	74		668	399	985	3	134	2,279
	92	10	146	12	1,429	351	478		340	2,766
Southwest Chief	3		282	140	4,039	471	653		267	5,852
	4		41	54	3,047	363	208		213	3,926
Springfield Shuttles	400				49				7	56
	405				0		76		19	95
	409								52	52
	412						2		36	38
	416					77			21	98



FRA Quarterly Report | Appendix 2: Delay Minutes by Train and Responsibility

Route	Train	Delay Cause									Total
		BSP	CUI	DBS	MBO	NOD	POL	TRS	UTL	WTR	
Springfield Shuttles	417						47			36	83
	432						51			55	106
	450									33	33
	451						60			238	298
	460									9	9
	461					46				58	104
	463									21	21
	464									80	80
	465									20	20
	467									18	18
	470						9			222	231
	471					139				230	369
	473							12		79	91
	474						7	6		41	54
	475							179		75	254
	476						45			225	270
	478					100	4			160	264
	479									93	93
	488					83				71	154
	490					0				74	74
	494					212				109	321
	495					6	13	7		171	197
	497						70	4		16	90
	499					103				16	119
Sunset Ltd	1			53	14	1,161	136	419		73	1,856
	2		13	29	14	1,869	215	952		21	3,113
Texas Eagle	21			17	12	6,975	484	1,000		525	9,013
	22			25	65	7,499	364	117		446	8,516
Vermont	54	6			17	181	177		8	60	449
	55	23		27	3	138	115	272		135	713
	56	11		35		150	119	64	2	184	565
	57			8		34	6	3	10	90	151
Wolverine	350				62	240	465	12		200	979
	351				222	28	44	301		397	992
	352				92	222	74	67		152	607
	353			52	101	119	22	189		262	745
	354			40	73	77	118	897		351	1,556
	355			69	41	19	80	451		390	1,050



EXHIBIT 2

THE
NATIONAL RAILROAD PASSENGER CORPORATION
ARBITRATION AGREEMENT

X

THE
NATIONAL RAILROAD PASSENGER CORPORATION
ARBITRATION AGREEMENT

THIS AGREEMENT, dated as of April 16, 1971, among NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act of 1970 (hereinafter referred to as the "Act") and the laws of the District of Columbia (hereinafter referred to as "NRPC"), and each of the undersigned railroads executing this Agreement (hereinafter referred to individually as a "Participating Railroad" and collectively as the "Participating Railroads").

WHEREAS, NRPC was organized pursuant to the Act for the purpose of providing modern, efficient intercity rail passenger service within a national rail passenger system;

WHEREAS, in furtherance of that purpose, NRPC and each of the Participating Railroads are entering into separate agreements (Basic Agreements) dated the date hereof providing, among other things, for the acquisition or use by NRPC of equipment and facilities of such Participating Railroad and for the furnishing of services to NRPC by such Participating Railroad; and

WHEREAS, each Basic Agreement between NRPC and a Participating Railroad provides that certain claims or controversies between

X

NRPC and such Participating Railroad shall be submitted to arbitration in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, NRPC and each of the Participating Railroads, severally and not jointly, hereby agree as follows:

ARTICLE ONE

NATIONAL ARBITRATION PANEL

A panel to be known as the "National Arbitration Panel" is hereby created. The National Arbitration Panel shall consist of three individuals: (i) an individual to be designated within thirty (30) days of the date hereof by NRPC; (ii) an individual to be designated within thirty (30) days of the date hereof by a majority of the Participating Railroads, or if a majority of the Participating Railroads are unable to agree, within forty-five (45) days of the date hereof by the President of the Association of American Railroads (the "AAR"); and (iii) an individual, who shall be Chairman of the National Arbitration Panel (the "National Chairman") to be designated within sixty (60) days of the date hereof by the other two members of the National Arbitration Panel, or if they are unable to agree, by the Chief Justice of the United States of America. Vacancies in the membership of the National Arbitration Panel shall be filled in the same manner as original appointments. The National Chairman shall be

entitled to reimbursement for his actual and necessary expenses incurred in the performance of his duties under this Agreement and to a reasonable daily fee when rendering services. Each of the other members of the Panel shall be compensated as he and those responsible for his appointment may agree. For any arbitration proceeding before the National Arbitration Panel, the President of the AAR may, at the request of a Participating Railroad and by timely notice to the National Chairman, for good cause, designate a substitute for the individual previously designated in accordance with clause (ii) of this Article One; and NRPC may by timely notice to the National Chairman, for good cause, designate a substitute for the individual previously designated in accordance with clause (i) of this Article One. Any such designation by the President of the AAR shall be binding on all Participating Railroads.

ARTICLE TWO

LOCAL ARBITRATION PANELS

Except as otherwise provided in Sections 3.2 and 3.3 hereof, any claim or controversy between NRPC and any Participating Railroad which, in accordance with the provisions of a Basic Agreement, is to be submitted to arbitration under this Agreement shall, as provided in Section 3.1 hereof, be referred to an arbitration panel ("Local Arbitration Panel") which shall consist of three individuals: (i) an individual to be designated within ten (10) days of the date of such referral by NRPC; (ii) an individual to be designated within ten (10) days of the

date of such referral by such Participating Railroad; and (iii) an individual, who shall be Chairman of such Local Arbitration Panel, to be designated within ten (10) days of the date of such referral by the other two members of the Local Arbitration Panel, or if they are unable to agree, by the National Chairman. Vacancies in the membership of a Local Arbitration Panel shall be filled in the same manner as original appointments. The Chairman of a Local Arbitration Panel shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his duties under this Agreement and to a reasonable daily fee when rendering services. Each of the other members of the Local Arbitration Panel shall be compensated as he and the party or parties appointing him may agree.

ARTICLE THREE

SUBMISSION, REMOVAL AND REVIEW OF CLAIMS OR CONTROVERSIES

Section 3.1. Submission of Claims or Controversies.

Any submission of a claim or controversy to arbitration pursuant to this Agreement shall be made by notice to the National Arbitration Panel, notice to the other party to such claim or controversy and notice to the AAR, all in accordance with rules and regulations adopted by the National Arbitration Panel pursuant to Section 4.7 hereof. The AAR shall give the Participating Railroads not a party to such claim or

controversy notice of such submission. Subject to the provisions of Section 3.2 hereof, the National Arbitration Panel shall refer such claim or controversy to a Local Arbitration Panel established as provided in Article Two hereof.

Section 3.2. Removal of Claims or Controversies.

Within fifteen (15) days after the submission of a claim or controversy, NRPC or any Participating Railroad may make application to the National Arbitration Panel to have a claim or controversy settled by the National Arbitration Panel rather than by a Local Arbitration Panel. If, pursuant to such application, or upon its own review of the submission, the National Arbitration Panel determines that the claim or controversy involves significant issues applicable to more than one Basic Agreement or to more than one Participating Railroad, it may direct that such a claim or controversy be arbitrated by the National Arbitration Panel rather than by a Local Arbitration Panel.

Section 3.3. Review or Redetermination of Awards.

Notice of any arbitration award by a Local Arbitration Panel shall be given by the Chairman of such panel concurrently to the parties to the arbitration, to the National Arbitration Panel and to the AAR. Within thirty (30) days of such notice NRPC or any Participating Railroad may make application to the National Arbitration Panel to have

such award reviewed or redetermined by the National Arbitration Panel. If, pursuant to such application, the National Arbitration Panel determines that the award involves significant issues applicable to more than one Basic Agreement or to more than one Participating Railroad, it may stay the enforcement of such award and review or redetermine the matter which was the subject of such award in such manner and to such extent as it shall determine.

ARTICLE FOUR

GENERAL

Section 4.1. Additional National Arbitration Panel.

If, from time to time, in the unanimous opinion of the National Arbitration Panel, it becomes necessary to assure speedy resolution of claims or controversies by the National Arbitration Panel, an Additional National Arbitration Panel shall be constituted for such period as the National Arbitration Panel may determine, such Additional National Arbitration Panel to consist of three individuals, two to be designated as provided in clauses (i) and (ii), respectively, of Article One hereof, and the third to be designated by the National Chairman. The National Arbitration Panel may submit to such Additional National Arbitration Panel for arbitration any claim or controversy within the jurisdiction of the National Arbitration Panel. An award of the

Additional National Arbitration Panel shall be considered as an award by the National Arbitration Panel.

Section 4.2. Arbitration Awards.

Except as otherwise provided in this Agreement, any arbitration award hereunder made by a majority of the members of any Arbitration Panel shall be binding upon the parties thereto. Any arbitration award hereunder shall declare the rights of the parties thereto and may make awards of money, or enjoin or otherwise operate in such a way as to require specific performance by a party of any act or obligation.

Section 4.3. Enforcement of Awards; Recourse to Interstate
Commerce Commission

Judgment may be entered upon any arbitration award hereunder in any court of general jurisdiction of the District of Columbia or in any United States District Court. However, if NRPC or a Participating Railroad, party to an arbitration proceeding in which an award has been rendered, notifies the other party or parties thereto that compliance with the terms of the award or any part thereof would adversely affect its obligations as a common carrier under Part I of the Interstate Commerce Act or its ability to comply with then existing rail safety requirements promulgated by the United States Department of Transportation, and such notice is accompanied by an opinion of counsel to that effect, either NRPC or such Participating Railroad may within thirty (30) days after the date of such award, submit the matter in dispute to the Interstate Commerce Commission or the Depart-

ment, whichever is asserted to have jurisdiction, for determination under then applicable law and its rules and regulations; provided, that the submission shall be limited to that portion of the award which, it is asserted, adversely affects the notifying party's obligations as a common carrier or its ability to comply with such rail safety requirements. Upon such submission, such submitted portion of the award shall be suspended and either superseded by the order of the Commission or the Department entered upon final determination of the proceedings or become effective upon a final determination that the Commission or the Department is without jurisdiction of the matter submitted. The parties shall use their best efforts to obtain a prompt determination of any matter submitted to the Commission or the Department pursuant to this Section 4.3.

Section 4.4. Expenses.

Where in his reasonable judgment it shall be necessary to the sound and expeditious disposition of a particular claim or controversy submitted under this Agreement, the National Chairman or the Chairman of an Additional National Arbitration Panel may retain or employ, for the purpose of supplementing the official record in such proceeding, technical, professional or other experts. The fees and expenses of the National Chairman and the Chairman of an Additional National Arbitration Panel shall be borne one-half by NRPC and one-half by the Participating Railroads. The fees and expenses of the Chairman of a Local Arbitration Panel attributable to any claim or controversy arbitrated by such Panel shall be borne equally by

NRPC and the Participating Railroad which is a party to such claim or controversy. Each party to an arbitration hereunder shall bear its own costs incurred in connection therewith.

Section 4.5. Basic Agreements to Govern.

In any arbitration before the National Arbitration Panel, an Additional National Arbitration Panel or any Local Arbitration Panel, the arbitrators shall, in reaching a decision, be governed by the provisions and language of the applicable Basic Agreement or Agreements.

Section 4.6. Right to Intervene.

In any arbitration proceeding before the National Arbitration Panel or an Additional National Arbitration Panel, any Participating Railroad shall have the right to intervene and to present evidence and argument. Any such intervening Participating Railroad shall be subject to the same rules, including time limits, as are applicable to the other parties to the proceeding, except as may be otherwise ordered by the Panel.

Section 4.7. Rules and Regulations.

The National Arbitration Panel shall adopt rules of procedure and other rules and regulations governing all matters submitted to arbitration and all proceedings conducted pursuant to this Agreement. Any

claim or controversy covering the interpretation, application or implementation of this Agreement shall be submitted to the National Arbitration Panel for arbitration in accordance with the provisions hereof as interpreted and applied by the National Arbitration Panel.

Section 4.8. Successors and Assigns.

All the covenants and obligations of the parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns.

Section 4.9. Interpretation.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by NRPC and each Participating Railroad. Any railroad which shall, on or after March 1, 1973, but before January 1, 1975, enter into an agreement with NRPC providing for the acquisition or use by NRPC of equipment and facilities of such railroad and for the furnishing of services to NRPC by such railroad, and any railroad not named below which shall enter into such an agreement on or before May 1, 1971, shall, if such agreement so provides and if such railroad shall agree with NRPC to be bound by the terms hereof, thereby become a party to this Agreement and a Participating Railroad hereunder.

Section 4.10. Notices.

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement or by the Rules and Regulations adopted by the National Arbitration Panel shall be in writing and shall otherwise be given as provided in such Rules and Regulations.

Section 4.11. Counterparts.

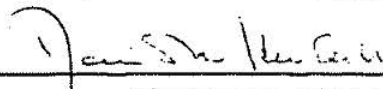
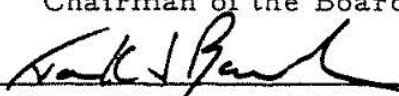
This Agreement may be executed in any number of identical counterparts and may be executed by different Participating Railroads on different counterparts, each of which counterparts shall be an original and all of which counterparts shall together constitute one and the same instrument.

Section 4.12. Term.

This Agreement shall become effective on May 1, 1971, among NRPC and all Participating Railroads executing this Agreement on or before that date (notwithstanding that this Agreement may not have been executed on or before that date by any other railroad or railroads named below) and shall remain in effect through and including April 30, 1996.

IN WITNESS WHEREOF, NRPC and each of the Participating Railroads have caused this Agreement to be duly executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION

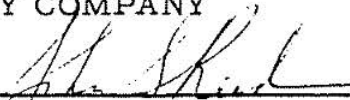
By 
Chairman of the Board

Vice Chairman of the Board

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

By _____
Title: _____

Title: _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By 
Title: _____
PRESIDENT

Title: _____

THE BALTIMORE AND OHIO RAILROAD COMPANY

By _____
Title: _____

Title: _____

BURLINGTON NORTHERN INC.

By _____
Title: _____

Title: _____

CANADIAN NATIONAL RAILWAYS

By _____
Title: _____

Title: _____

CANADIAN PACIFIC RAILWAY COMPANY

By _____
Title: _____

Title: _____

CENTRAL OF GEORGIA RAILWAY COMPANY

By _____
Title: _____

Title: _____

CHESAPEAKE AND OHIO RAILWAY COMPANY

By _____
Title: _____

Title: _____

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

By _____
Title: _____

Title: _____

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

By _____
Title: _____

Title: _____

DELAWARE AND HUDSON RAILWAY COMPANY

By _____
Title: _____

Title: _____

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

By _____
Title: _____

Title: _____

GRAND TRUNK WESTERN RAILROAD COMPANY

By _____
Title: _____

Title: _____

GULF, MOBILE AND OHIO RAILROAD COMPANY

By _____
Title: _____

Title: _____

ILLINOIS CENTRAL RAILROAD COMPANY

By _____
Title: _____

Title: _____

LOUISVILLE & NASHVILLE RAILROAD COMPANY

By _____

Title: _____

Title: _____

MISSOURI PACIFIC RAILROAD COMPANY

By _____

Title: _____

Title: _____

NORFOLK AND WESTERN RAILWAY COMPANY

By _____

Title: _____

Title: _____

WABASH RAILROAD COMPANY

By _____

Title: _____

Title: _____

NORTHWESTERN PACIFIC RAILROAD COMPANY

By _____

Title: _____

Title: _____

EXHIBIT 3

[CONFIDENTIAL INFORMATION
REDACTED]

PUBLIC VERSION - REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35743

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

**REBUTTAL JOINT VERIFIED STATEMENT OF
PAUL VILTER AND JASON MAGA**

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INTRODUCTION & SUMMARY

My name is Paul Vilter and I am the Assistant Vice President, Amtrak Services. From 2003 through January of 2017, I was Deputy Chief of the Host Railroads Group at Amtrak. I have over 31 years of railroad experience, including over 17 years at Amtrak and 14 years at Class I freight railroads (CSX and Conrail).¹

My name is Jason Maga and I am a Senior Manager in the Host Railroads Group at Amtrak. I have been with Amtrak's Host Railroads Group since 2006. In my current capacity, I am responsible for leading efforts to measure and improve the performance provided to Amtrak by host railroads.²

As explained in Amtrak's Opening Submission, the compensation framework of the current Operating Agreement has not been successful in motivating Canadian National ("CN") to provide quality service to Amtrak. It rewards CN for poor service to Amtrak and its customers. The numerous flaws of the existing checkpoint/relief-based system are described in the Vilter Verified Statement ("Vilter V.S.") that was filed with Amtrak's Opening Submission. The problems with the Operating Agreement can be rectified by replacing the existing checkpoint/relief-based system with a delay-based system for quality payments and penalties and by removing the "lookback" limitation on penalty payments.³

As further explained in Amtrak's Opening Submission, Amtrak paid CN nearly [REDACTED] in incentive payments in fiscal year 2014 for the four Amtrak services that operate over the Illinois Central lines ("IC Lines"). However, CN's performance as the host railroad for the Amtrak services on the IC Lines during that period resulted in Amtrak passengers arriving at

¹ A copy of my resume is attached as part of Exhibit 1.

² A copy of my resume is attached as part of Exhibit 1.

³ The delay-based quality payment and penalty system proposed by Amtrak is designed to motivate CN to minimize delays to Amtrak trains for which CN is responsible, thereby promoting improved on-time performance for Amtrak passengers. See Amtrak's Opening Statement, 11-18.

their stations in a timely manner only 33.3% to 60.7% of the time.⁴ Since the filing of Amtrak's Opening Submission in September 2015, as shown in Table 1 below and Exhibit 2 attached hereto, Amtrak has continued to pay substantial incentive payments to CN for poor on-time performance.⁵ Clearly, the current Operating Agreement is broken.

Table 1

	Fiscal Year 2016			
Service ⁶	CN HRDs per 10K TM	All Stations OTP ⁷	Contract OTP (CN Only) ⁸	Incentive Paid to CN ⁹
City of New Orleans	1028	62.6%	██████████%	\$ ██████████
Illini/Saluki	1669	38.2%	██████████%	\$ ██████████
Lincoln Service	1292	72.5%	██████████%	\$ ██████████
Texas Eagle	1817	41.4%	██████████%	\$ ██████████
Total:				\$ ██████████

The purpose of this Rebuttal Verified Statement is to provide Amtrak's response to certain aspects of CN's proposed compensation and terms as described in CN's Opening

⁴ Vilter V.S., 4. Amtrak's fiscal year runs from October 1 through September 30 of the following calendar year.

⁵ See Exhibit 2, which shows Amtrak incentives paid to CN (or, with respect to the Illini/Saluki service, invoiced by CN) for poor performance on the relevant Amtrak services over the IC Lines for fiscal year 2015, fiscal year 2016 (as reflected in Table 1 above) and for fiscal year 2017 year to date (from October 1, 2016 through May 31, 2017).

6 [REDACTED]

[REDACTED]

However, even on the GTW Lines, CN's performance as host railroad for the Wolverine service has resulted in high levels of host responsible delay ("HRD") minutes and low levels of ASOTP. For fiscal year 2016, the Wolverine service had annual HRD minutes per 10,000 train miles of 1887 and ASOTP of 69.9%; the Blue Water service had annual HRD minutes per 10,000 train miles of 700 and ASOTP of 85.4%. The corresponding figures for fiscal year 2015 and fiscal year 2017 year to date are reflected in Exhibit 2.

⁷ The All-Stations On-Time Performance (“ASOTP”) calculation is for the entire Amtrak route.

⁸ The Contract OTP (“KOTP”) calculation applies only to CN’s portion of the applicable route and is based on CN’s methodology for making the calculation. Amtrak uses a different methodology, which results in a lower KOTP for the Illini/Saluki service, because of a continuing dispute between the parties about responsibility for grade crossing activation failures on that route.

⁹ These figures reflect the incentives that Amtrak has paid to CN during the applicable period. CN has invoiced Amtrak for \$[REDACTED] in incentive payments for the Illini/Saluki service for fiscal year 2016. Amtrak has not paid this invoiced amount due to the continuing dispute referenced above about the proper methodology for calculating KOTP for the Illini/Saluki service.

Submission.¹⁰ Generally, CN proposes (1) additional base compensation for freight train delay costs that CN claims are due to Amtrak's presence, (2) vastly expanded relief for CN from its responsibility for causing delay to Amtrak trains, and (3) binding model-driven reviews of Amtrak schedules. None of these CN proposals addresses the fundamental problem that the current Operating Agreement does not motivate CN to provide quality service to Amtrak, and in fact will make the failings of the current Operating Agreement worse.

CN's Request for Freight Train Delay Costs. CN proposes an addition to the base compensation that it receives under the Operating Agreement to cover purported freight train delay costs that CN claims are due to Amtrak's presence.¹¹ CN proposes to use CN's Service, Reliability & Strategy ("SRS") database to quantify delay minutes allegedly caused by Amtrak and then use the delay minutes to estimate the claimed delay costs (labor, fuel, and equipment costs).¹²

CN's proposed addition to base compensation for its alleged "delay costs" should be rejected. Assuming for the sake of discussion only¹³ that Amtrak were legally obligated to pay CN for freight train delay costs caused by Amtrak's presence, CN has not demonstrated that the freight train delays in question were caused by Amtrak. The delays are attributable to CN's

¹⁰ Amtrak's response to other aspects of CN's proposed compensation and terms are contained in other verified statements filed today.

¹¹ Joint Verified Statement of Paul Ladue and Scott Kuxmann ("Ladue/Kuxmann V.S."), 52.

¹² Ladue/Kuxmann V.S., 51. The methodology for this two-step process is described in the Joint Verified Statement of Michael Baranowski and Benton Fisher ("Baranowski/Fisher V.S."). CN estimates that the labor, fuel and equipment costs of delay incurred by CN's freight trains due to the presence of Amtrak from August 1, 2013 through January 31, 2015 were \$4,690,089. Baranowski/Fisher V.S., 26. The period covered by Baranowski/Fisher's analysis is herein referred to as the "Analysis Period." CN proposes to use the same process to estimate delay costs for the remainder of the pre-decision period in this proceeding and on a monthly basis going forward after the effective date of the Board's decision. Ladue/Kuxmann V.S., 51-52.

¹³ The numerous reasons why CN is not entitled as a matter of law to recover such delay costs from Amtrak under the applicable statute will be explained in Amtrak's opening brief in this proceeding.

unilateral choices about: (1) how much railroad infrastructure to retain in its network, and (2) how to operate its railroad. These points are described in detail below on pages 10 - 21.

Even if CN could prove that the freight train delays in question were caused by Amtrak instead of CN's own infrastructure and operating decisions or other non-Amtrak factors, CN has failed to present a reliable system for measuring the duration and allocating responsibility for any such delays. CN's SRS database does not accurately measure [REDACTED]

[REDACTED] It was designed for other purposes, [REDACTED]
[REDACTED]

and cannot be used in any reliable way to determine with any degree of accuracy the minutes of freight train delay allegedly caused by Amtrak. These points are described in detail below on pages 23 - 33.

CN has attempted to overcome the inaccuracies of the SRS system by reverse-engineering delay minutes and arbitrarily allocating those minutes to Amtrak.¹⁴ This actually made CN's delay calculations even less reliable, as is explained in the Rebuttal Verified Statement of Thomas Crowley and Robert Mulholland (the "Crowley/Mulholland R.V.S."). To make matters worse, the methods and assumptions CN used to estimate labor, fuel and equipment costs (which are derived from the inaccurate delay minute calculations in SRS) grossly overstate the costs that CN asserts are attributable to Amtrak service. CN's failure in this respect also is explained in the Crowley/Mulholland R.V.S.

As an alternative to its proposed addition to the base compensation for purported delay costs, CN proposes that the Board order Amtrak to pay for substantial capital improvements on CN's lines which (according to CN) would restore capacity that CN asserts Amtrak consumes. This alternative proposal is based on CN capacity modeling studies described in the Joint

¹⁴ See Baranowski/Fisher V.S. generally.

Verified Statement of Harald Krueger, Brian Doyle and Nikola Rank (“Krueger/Doyle/Rank V.S.”).¹⁵

This alternative proposal should be rejected as well. CN’s capital improvements proposal is an alternative form of relief for alleged delay costs it has failed to prove.¹⁶ Moreover, the additional infrastructure identified in the capacity modeling studies conducted by CN would add track capacity to the CN rail network with no apparent operational relationship to the locations where Amtrak trains meet or pass other trains. CN has failed to prove that the proposed capital improvements are supported by its modeling studies or would restore the capacity that CN asserts Amtrak consumes, for the reasons described in the Rebuttal Verified Statement of John Williams and Judith Roberts (the “Williams/Roberts R.V.S”).

CN’s Request for Expanded Relief from Responsibility for Amtrak Train Delays. CN proposes continuation of the checkpoint/relief-based penalty and quality payment compensation [REDACTED], but with (1) so-called “root cause” delay attribution, (2) numerous new relief provisions, and (3) continuation of numerous relief provisions in the current Operating Agreement.¹⁷ All of these CN elements (existing and new) would work together to vastly expand CN’s relief from responsibility for causing delays to Amtrak trains, allow CN to earn even more in incentives for poor Amtrak on-time performance, and insulate CN from the possibility that poor CN handling of Amtrak trains could trigger the assessment of actual monetary penalties against CN. Even if the Board orders the parties to retain the current checkpoint/relief-based system, despite its substantial flaws that were highlighted in the Vilter Verified Statement submitted as part of Amtrak’s Opening

¹⁵ Ladue/Kuxmann V.S., 52-53.

¹⁶ This assumes, again for purposes of discussion only, that CN would be entitled to delay cost payments at all under the applicable statute.

¹⁷ Ladue/Kuxmann V.S., 19-21, 64, 56-62.

Submission, there are numerous changes which would need to be made to CN's proposal with respect to that system that are discussed in further detail below on pages 37 - 61.

CN's Request for Binding Model-Driven Reviews of Amtrak Schedules. Finally, CN proposes that the Board require the parties to engage in binding, model-driven reviews of Amtrak schedules.¹⁸ The Board should not adopt CN's proposal. CN presents no evidence of inaccuracies in the Amtrak schedules on CN lines, other than alleged pure running time ("PRT") shortfalls on the Illini/Saluki and City of New Orleans services – allegations based entirely on unreliable modeling conducted by CN.¹⁹ While CN complains that Amtrak is unwilling to modify its schedules,²⁰ CN has never initiated the schedule adjustment procedure in the current Operating Agreement and therefore has no basis to claim it would not work.

In any case, it would not be reasonable for the Board to require a "binding" schedule review process driven entirely by unreliable modeling conducted unilaterally by CN. Even when appropriate, modeling is merely a simulation tool producing theoretical results that can be used as an input in the schedule development process. Neither side should be bound to automatically implement those theoretical results. Moreover, the specific assumptions and objectives of the modeling exercise would need to be established and agreed upon by the parties, not prescribed by the Board or determined unilaterally by CN. Amtrak has been and continues to be willing to conduct field studies with CN of the pure running time on the CN lines used for the Illini/Saluki and City of New Orleans services. Such field studies are quick, inexpensive and easily understood. This would allow for resolution of any disagreement between the parties about the

¹⁸ Ladue/Kuxmann V.S., 10 and 66-67.

¹⁹ The unreliability of CN's modeling of the PRT on the City of New Orleans and Illini/Saluki service is described in the Williams/Roberts R.V.S. PRT is the travel time of a given train between two points at maximum authorized speed, without delays. Vilter V.S., 15. CN refers to this same concept as minimum run time or "MRT." See Exhibit 3, Deposition of Harald Krueger on July 7, 2017 ("Krueger Dep.") 45: 21 - 46:9.

²⁰ Ladue/Kuxmann V.S., 10.

appropriate pure running time on these two routes based on real-world data, without the expenditure of the substantial time and resources that would be necessary to conduct detailed modeling using mutually acceptable parameters to develop theoretical simulation results which would require field verification in any event. All of these points are discussed below on pages 62 - 73.

DETAILED TESTIMONY²¹

I. It Would Not Be Reasonable for the Board to Require Amtrak to Pay for Alleged Freight Train Delay Costs That CN Seeks to Attribute to Amtrak

It would not be reasonable for the Board to require Amtrak to pay for alleged freight train delay costs that CN seeks to attribute to Amtrak because CN makes all capital and operating decisions regarding its railroad and those decisions trigger the freight train delay that CN experiences and for which it now seeks compensation from Amtrak.²² In addition, even if Amtrak was the cause of some CN freight train delays, and even if CN incurred additional costs associated with such delays, and even if CN could prove that Amtrak should be held financially responsible for such additional costs, CN would have no incentive – if delay costs were simply paid for by Amtrak - to use its control over the capacity of and operations on its rail network to avoid or minimize freight train delays. CN could choose to incur such freight train delays, even if they could be avoided by CN, knowing that it could extract cash payments from Amtrak for those delays.

²¹ The INTRODUCTION & SUMMARY section is a part of our testimony.

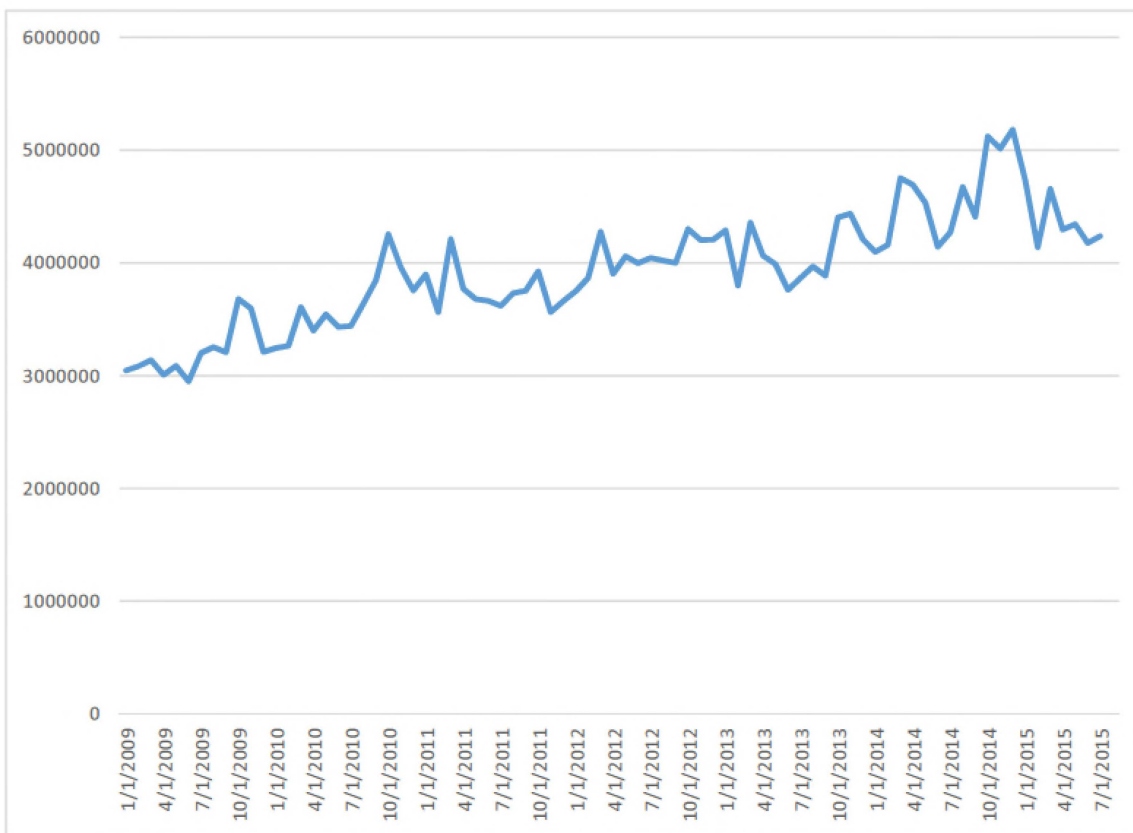
²² Throughout this Verified Statement, we assume only for the sake of discussion that Amtrak could be legally obligated to pay CN for freight train delay costs caused by Amtrak's presence.

A. CN Freight Train Delays are Caused Predominantly by CN Freight Traffic Growth and CN's Capital Expenditure and Operating Decisions

CN freight train delays are caused predominantly by the dramatic growth in CN's freight business and by CN's decisions regarding capital investment and freight operations.²³

Freight Traffic Growth. CN and its predecessors have enjoyed dramatic freight traffic growth. As the chart below from the Verified Statement of Anne Morehouse ("Morehouse V.S.") demonstrates, total gross ton miles for freight trains over the CN Subdivisions on which Amtrak operates have increased by over one-third since 2009.²⁴

Total GTMs on CN Subdivisions on which Amtrak Operates



²³ CN witness Harald Krueger testified in his deposition that some level of delay on any rail network is inevitable. Exhibit 3, Krueger Dep. 306:5-7.

²⁴ Morehouse V.S., 3-4.

Amtrak service on CN lines has grown only modestly since the creation of Amtrak. The City of New Orleans Service has operated just one northbound and one southbound train since Amtrak took over passenger train operations on the IC on May 1, 1971.

On the Chicago – Carbondale route (excluding the City of New Orleans service discussed above), Amtrak currently operates two round trips per day. For portions of time between May of 1971 through October of 1973, Amtrak ran as many as four round trips per day on all or some parts of this route. By 1973, two of those round trips were moved to other non-CN lines. Amtrak continued to run two daily round trips over the CN route (one Chicago-Carbondale and one Chicago-Champaign) until 1986. From 1986-2006, Amtrak ran only one round trip per day on the route. Then in 2006, Amtrak restored the second round trip, running the entire distance to Carbondale.

On CN's relevant GTW corridor in Michigan, Amtrak currently operates three daily round trips over two short segments of CN totaling 26.7 miles, and one daily round trip over a 158.7 mile segment of CN. In the early 1970s, Amtrak operated two Chicago-Detroit round trips that crossed CN at a diamond in Battle Creek, Michigan. A round trip was added on CN between Battle Creek and Port Huron, Michigan in 1974. In 1982, the Detroit trains were rerouted so that instead of crossing CN at a diamond they used a one-mile segment of CN within Battle Creek. In 1994, these trains were extended from Detroit to Pontiac, Michigan along a lightly-used CN line. In 1995, a third round trip was added on this route. Each of the aforementioned Amtrak service changes on the IC Lines and GTW Lines, most of which were just a few miles long, was made with CN's approval.

The modest growth in Amtrak service also pales in comparison to the number of passenger trains that were operated on the CN lines just prior to Amtrak's establishment.

Immediately prior to Amtrak's creation, CN predecessors Illinois Central and Grand Trunk operated 32 passenger trains and 10,746 passenger train miles per day – almost three times the daily train miles that Amtrak operates on CN today. This included 8 daily round trip passenger trains that the Illinois Central operated on all or part of the Chicago-Carbondale-New Orleans route (versus the 3 daily round trips that Amtrak operates on that route today).

CN Makes Its Own Capital Decisions, Including Track Removal. CN unilaterally decides the level of railroad infrastructure to build and retain, including deciding to remove railroad infrastructure and reduce the capacity on its rail network when doing so suits CN (as long as the continuity of Amtrak's route is retained).²⁵

The Illinois Central main line is a good example of this. Until the 1980s, the IC main line between Chicago and Memphis was mostly double track. In 1989, IC decided to remove one main track, converting from double track to single track along most of the main line.²⁶ IC made its decision based on how it would impact IC financially and operationally.²⁷

South of Memphis, IC had two parallel routes for approximately 220 miles between Memphis, TN and Jackson, MS. Amtrak's City of New Orleans service used the route via the Grenada Subdivision. Then in the 1990s, IC downgraded the Grenada Subdivision and consolidated most traffic, including Amtrak, onto the single-track Yazoo Subdivision.

²⁵ CN also makes its own decisions regarding when to conduct track maintenance. Although track maintenance is essential, decisions about when to take track out of service for maintenance and how long to do so (i.e., how many maintenance personnel to assign to a maintenance project, which impacts the duration of a work block) have a temporary impact on railroad capacity much like the longer term impact of track construction and track removal decisions.

²⁶ Exhibit 4, Frank Malone, *Why IC is Single-Tracking*, 191 RAILWAY AGE 2, Feb. 1990, at 32 – 34 (explaining that the IC determined that greater efficiency would allow network capacity to be reduced without affecting freight service).

²⁷ Exhibit 5, Paul D. Schneider, *The Double-Track Dilemma – Is Single-Tracking a Sound Strategy?* TRAINS, July 1991 at 27 (IC noting that after project, it would still have 45% extra capacity and expressing the view that if there were “flaws in the plan,” IC would be “ready to deal with them;” article also stating that Amtrak was “less than thrilled” with the IC's single-tracking project).

IC's single tracking project between Chicago and Memphis also had significant impact on the access to and capacity of Champaign Yard. In 1991, the segment between Champaign and Du Quoin was converted to single track with sidings. IC removed the second main track north and south of Champaign and multiple tracks from the south end of the Champaign yard.²⁸ In 1989, even before the single track conversion had reached the main line adjacent to Champaign Yard, IC closed the freight classification humps at Markham Yard (south of Chicago) and transferred some of the work to Champaign Yard. Thus, IC significantly reduced main line infrastructure while it expanded its freight activity at locations along the corridor such as Champaign Yard.

In her Verified Statement, CN witness Anne Morehouse²⁹ describes the impact of these decisions around Champaign Yard.³⁰ She notes that:

[t]here is also limited infrastructure in the area: the yard is located off the single main line and includes a 16,000-foot siding that allows trains to pass when the main line is occupied. Because the yard lead is off the main line, freight trains that are too long to fit in the yard must occupy the main line to switch cars in and out of the yard. Frequently this means that if there is a train working the yard any trains passing the yard must use the siding.³¹

Anne Morehouse testifies that CN freight and Amtrak operations in and around Champaign Yard “illustrate the major impact *Amtrak* trains can have on rail traffic over a track segment with capacity constraints.”³²

²⁸ See Exhibit 6, 1979 Illinois Central Gulf Railroad Champaign Yard Track Charts and Exhibit 7, 1995 Champaign Yard Track Charts.

²⁹ Anne Morehouse is CN's Superintendent of the Regional Operations Center for CN's Southern Region, which includes Champaign Yard.

³⁰ Morehouse V.S., 8 (explaining that “most freight trains operating through that area perform work” at Champaign Yard, and that pursuant to “CN's current schedule, there is at least one freight train scheduled to be working in Champaign at any one time between 2 a.m. and 1:30 p.m., and from 2 p.m. until 10 p.m.” each day).

³¹ Morehouse V.S., 8-9.

³² Morehouse V.S., 8 (emphasis added).

We disagree with Ms. Morehouse's conclusion. She makes no mention in her Verified Statement of the significant track reduction undertaken by the IC since 1989, which included the removal of main tracks and shortening of yard leads that previously would have enabled freight trains to remain off the main line(s) during switching. Nor does she acknowledge that Amtrak train operations near Champaign Yard have changed very little since 1971.³³ Nor does she acknowledge that it is CN, not Amtrak, that has scheduled freight trains to work Champaign Yard knowing that such trains must occupy the main track while other trains are operating through the area. Champaign Yard illustrates the major impact on freight train delays that CN's infrastructure reduction decisions, freight traffic growth, and operational decisions have had on CN's operations.³⁴

At Champaign Yard and everywhere else on CN lines, CN decides for itself the level of railroad infrastructure to build and retain, makes decisions to remove railroad infrastructure and reduce the capacity on its rail network, and unilaterally decides what freight trains it will operate on that infrastructure and when to operate those trains. Since CN makes decisions about its own infrastructure and operations unilaterally, it is not reasonable for the Board to then allow CN to transfer any costs of such decisions onto Amtrak.

CN Sets its Own Performance Priorities and Makes its Own Operating and Asset

Utilization Decisions. CN establishes its own performance priorities and makes numerous operating decisions that have a substantial impact on the level of delay experienced by CN trains.

³³ Amtrak's City of New Orleans, the Illini trains, and Chicago-Champaign trains have operated on the IC line since 1971. Amtrak's Saluki service began in 2006, before the dramatic growth in freight traffic on the IC main line cited by Ms. Morehouse. Between November 1971 and March 1972, and then again from December 1973 through January 1986, Amtrak operated one additional round-trip per day between Chicago and Champaign in addition to its round-trip service between Chicago and Carbondale.

³⁴ As part of its alternative capital expenditure proposal, CN is seeking Amtrak-funded capital improvements that would re-install some of the same infrastructure adjacent to Champaign Yard that IC removed beginning in 1989. See Williams/Roberts R.V.S, 18 n.36.

CN makes its own decisions regarding when to run freight trains. CN's freight train schedules and CN's variable adherence to those schedules, which itself depends on a number of other CN operating decisions discussed in this section, determines whether, where and to what extent CN's trains meet or pass other freight trains, commuter trains and Amtrak trains. Thus, CN's scheduling decisions have a significant impact on freight train delay. For example, suppose CN has a freight train that it wants to schedule to operate between Point A and Point B and has a choice between the freight train leaving Point A at 1:00 PM or at 5:00 PM. Suppose further that if the freight train leaves at 1:00 PM, it will not encounter any Amtrak trains during its trip, but that if it leaves at 5:00 PM, it will encounter three Amtrak trains in single-track territory during its trip and experience delay. CN may have other reasons to want to run this freight train at 1:00 PM or at 5:00 PM, but the important point is that CN *can* schedule the freight train to minimize encounters with Amtrak trains, and that Amtrak does not participate in CN's decision of when to schedule the freight train.

CN decides the number and the horsepower of locomotives used on all of its trains, which (all else being equal) determines the acceleration rate of CN trains. Higher acceleration allows CN trains to reach their maximum speeds faster and thereby reduces delay. CN also makes its own decisions regarding track maintenance. CN maintains its rail lines to the level it chooses for its business objectives, balancing the advantage of increased capacity gained from operation of faster freight trains and reduced slow orders against any increased capital and track maintenance expenses.

CN also establishes its own performance priorities and these priorities have an impact on the level of delays experienced by CN trains. For example, CN's witnesses have explained in

this proceeding that its operational priorities are train and freight car velocity.³⁵ It is Amtrak's understanding that CN measures velocity based on the average speed at which a freight train or freight car moves between two given points. On the other hand, CN measures freight train delay as the time (in minutes) that it takes a freight train to move between two given points in excess of the specified time set forth in CN's schedule for that train.

Importantly, higher overall velocity does not always result in lower train delay. Higher velocity can require the trade-off of more train delay. For example, suppose that CN has a block of freight cars parked in a siding and that CN's operating plan has Freight Train X scheduled to pick up these cars and move them to a yard further down the line. However, sometime before Train X is scheduled to pick up these cars, Freight Train Y is passing the same siding headed to the same yard for which the cars are bound. If Train Y stops to pick up the cars, all else being equal, the block of cars will have higher velocity than they would have if they remained on the siding waiting for Train X, but Train Y will be delayed by the amount of time it takes to pick up the cars (and the cars already in Train Y will have lower velocity). One possible consequence of Train Y picking up the extra cars is that higher aggregate velocity comes with higher individual and aggregate freight train delay.

CN's operational priority relating to velocity has other delay trade-offs besides the impact of time taken for extra stops to pick up extra cars. Running longer trains for the benefit of velocity can mean that trains are longer than sidings, reducing capacity for meets and passes at sidings and increasing delays.³⁶ [REDACTED]

³⁵ Train and car velocity are "the two most important metrics by which [CN] measure[s] the success of [its] operations." Joint Verified Statement of John Summerfield, Gregg Girard and Anne Morehouse ("Summerfield/Girard/Morehouse V.S."), 20.

³⁶ In addition, all else being equal, longer trains are slower to accelerate to maximum operating speed and may not even be able to reach maximum operating speed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CN's priority on velocity causes significant delays to CN freight trains. We understand that Exhibit 4 in the Crowley/Mulholland R.V.S. contains numerous examples from SRS during the 18-month Analysis Period of situations involving [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁷ See Exhibit 8, [REDACTED]

³⁸ Id. [REDACTED]

³⁹ Id. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁰

CN has not addressed any of these points. CN has not explained how freight train delay can reasonably be attributed to Amtrak given CN's freight traffic growth, its unilateral control of capital investment (and disinvestment) for infrastructure, and its performance priorities, asset utilization and operating decisions (such as prioritizing velocity and increasing train lengths). It is particularly important to consider CN's operational priorities in light of CN's proposal. In our view, it is not reasonable for CN to propose a compensation system based on a metric (freight train delay) that is at odds with what CN describes as its operational priorities (velocity and train length).

B. Amtrak's Presence Does Not Prevent CN From Operating its Freight Trains At or Close to CN Schedules

CN runs what it refers to as a "scheduled railroad." This means that CN measures its performance (at least in part) against adherence to its freight train schedules.⁴¹ It does not mean that CN's trains adhere to their schedules or even come close to doing so. In fact, CN's freight train operations vary considerably from their schedules, and the vast majority of CN freight train delay is attributable to non-Amtrak causes. In addition, CN constantly changes its schedules,

[REDACTED]

[REDACTED]

CN's operational variance of its own trains from their schedules, high-level of self-inflicted delays and constant changes to the schedules of its own trains dispel any impression that it is Amtrak's presence that prevents CN from running a precision railroad.

⁴⁰ Crowley/Mulholland R.V.S., 33.

⁴¹ Although CN describes its operational priorities as train and freight car velocity, CN measures freight train delay against [REDACTED]

i. CN Actual Freight Train Operations Vary Considerably from CN Schedules Due to Self-Inflicted Delays

CN's actual freight train operations vary considerably from their schedules and the vast majority of CN freight train delay is attributable to non-Amtrak causes. Amtrak's expert witnesses Crowley and Mulholland have determined, based on CN's own SRS data, that CN freight trains operated at considerable variance from schedule during the Analysis Period and that most delays to CN freight trains on the subdivisions where Amtrak operates were attributable to non-Amtrak causes.⁴² CN's own witnesses in this proceeding have confirmed these observations.⁴³

ii.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It would not be reasonable for the Board to allow CN to charge Amtrak for alleged freight train delays measured against freight train schedules that are modified by CN in this manner and to this degree.

[REDACTED]

[REDACTED]

[REDACTED]

⁴² See Crowley/Mulholland R.V.S., 34.

⁴³ See Baranowski/Fisher V.S., 10 ([REDACTED]); see also Krueger/Doyle/Rank V.S., 38 (explaining that CN's capacity modeling studies for this proceeding assumed a standard deviation of CN freight train variability from schedule to resemble real-world conditions)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

████████████████████

[REDACTED]

[REDACTED] For example, [REDACTED]

[REDACTED]

[REDACTED] Among other things,

[REDACTED]

[REDACTED]

[REDACTED]

iv. Amtrak's Presence Does Not Prevent CN from Operating a Railroad That Adheres to its Own Schedules

As noted above, CN runs what it refers to as a “scheduled railroad.”⁵⁵ CN explains that by “running its trains to a schedule, CN helps maximize its utilization of crews, locomotives, and equipment, and produces faster and more consistent transit times for its shippers.”⁵⁶ CN further states that it “brought the ‘scheduled railroad’ model to the U.S. freight market, and [CN’s] ability to run efficiently and reliably on schedule remains critical to [CN’s] competitiveness.”⁵⁷

Reading these explanations from CN’s witnesses, one could not be blamed for having the impression that Amtrak’s operations throw a monkey wrench into CN’s well-oiled railroad machine. However, CN’s frequent schedule changes, the considerable variance from schedule of CN’s actual freight train operations and the predominance of CN’s self-inflicted freight train

⁵³ See Exhibit 16, Deposition of Scott Kuxmann on June 7, 2017 (“Kuxmann Dep.”) [REDACTED]

⁵⁴ See Exhibit 17, [REDACTED]

⁵⁵ Summerfield/Girard/Morehouse V.S., 11.

⁵⁶ Id.

⁵⁷ Verified Statement of Fiona Murray, 2.

delays should dispel any such impression. Amtrak's presence does not prevent CN from running a railroad that adheres to its own schedules.

C. If the Board Ordered Amtrak to Pay Costs of Delays to CN Allegedly Caused by Amtrak, CN Would Have No Incentive to Avoid or Minimize Those Delays

Even if Amtrak was the cause of certain CN freight train delays and was held financially responsible for additional costs that CN could prove were attributable to Amtrak, CN would have no incentive to use its control over the capacity of and operations on its rail network to avoid or minimize those delays if the associated costs were simply paid for by Amtrak. CN could choose to incur such freight train delays, even if they could be avoided by CN, knowing that it could extract cash payments from Amtrak for delay costs.

Perhaps even worse, CN could make operational changes with indifference to the potential costs of the resulting delays, which costs would simply be funded by Amtrak.⁵⁸ CN could change when it runs freight trains without regard for the costs of resulting additional delays and just charge them to Amtrak. CN's freight train schedules (regardless of whether CN modifies or adheres to those schedules) determine (all else being equal) whether, where and to what extent CN's trains meet or pass other Amtrak trains and thus have a significant impact on freight train delay.

CN also could run longer freight trains (as advocated by CN senior management) to increase velocity.⁵⁹ To the extent the resulting delay costs could be attributed to and charged to Amtrak, CN would be indifferent to the additional delay costs and pleased with the increased velocity. CN could even shift operating costs it knows it will incur anyway from itself to

⁵⁸ CN establishes its own performance priorities and makes numerous operating decisions that have an impact on the level of delay experienced by CN trains. See Section I.A above.

⁵⁹ As noted above, CN's first operational priority is train and freight car velocity and higher velocity does not always correlate with lower delay.

Amtrak. For example, suppose a CN train is bound for one of its freight yards and CN knows that if the train gets to the yard without delay it will wait in the yard anyway until it can be switched. Suppose further there also is an Amtrak train approaching the area, but it is far enough away that if CN chose to do so it could advance the freight train into the yard without delay to either the approaching Amtrak train or the freight train. In this situation, CN could either advance the freight train into the yard (where it would wait anyway), or hold it at a siding outside the yard (where it would meet the Amtrak train) with no overall effect on freight or Amtrak performance. However, if CN chooses to hold the freight train at a siding outside the yard to meet the Amtrak train, CN would code the delay to the freight train “FP” and therefore charge Amtrak for the delay that CN would have incurred anyway. CN would have every incentive to make decisions that allow it to attribute to Amtrak freight train delays for which CN would receive compensation, especially with respect to delays that CN knows its trains will incur anyway.

Also recall the previous example in which CN has a choice between operating a freight train at 1:00 PM when it will not encounter any Amtrak trains, or at 5:00 PM when it will encounter several Amtrak trains. If CN was able to charge Amtrak for any delays meeting Amtrak trains, then CN would have no incentive to schedule the freight train to operate at 1:00 PM and avoid the meets with Amtrak. Even worse, suppose that CN expects the 1:00 PM departure to result in the freight train being delayed one hour meeting other freight trains (delays for which CN would not be reimbursed), whereas the 5:00 PM departure would instead result in the same amount of delay to the freight train, except instead due to meeting Amtrak trains (delays for which CN could send Amtrak a bill). All else being equal, CN would be *better off* choosing the freight train schedule that resulted in delays meeting Amtrak trains.

In addition, CN could reduce the capacity of its rail network without regard to the costs of additional delays ostensibly caused by the presence of Amtrak. For example, CN could reduce its track maintenance standards, allowing slow orders to increase (e.g., if the benefit of lower track maintenance expenses outweighed the disadvantage of lower capacity from slower freight trains) and then send Amtrak an invoice for any associated delay costs that CN claims to have incurred.

II. CN Has Not Submitted Any Reliable Evidence to Prove That Amtrak Caused the Delays for Which It Seeks Compensation or Any Reliable Evidence Establishing the Purported Costs of Such Delays

Even assuming Amtrak could be legally obligated to pay CN for freight train delay costs allegedly caused by Amtrak, and the Board somehow concluded that it was reasonable to order such payments, CN has provided no reliable evidence that Amtrak caused the delays for which CN seeks compensation for the Analysis Period, no reliable evidence that CN incurred any additional costs as a result of the alleged delays during the Analysis Period and no reasonable system for accurately measuring the delay or quantifying the purported additional costs of such delays after the Analysis Period or prospectively.

CN proposes to use its SRS database to quantify freight train delay minutes allegedly caused by Amtrak.⁶⁰ However, the SRS System was not designed to measure the cause of freight train delay with the accuracy necessary to serve as the basis for assessing financial costs against Amtrak. Thus, CN's SRS-based calculation of the minutes of delay to CN freight trains allegedly caused by Amtrak for the Analysis Period must be rejected.⁶¹

CN's expert witnesses, Messrs. Baranowski and Fisher, took the already unreliable minutes of delay calculations from SRS and made them even less reliable by adding delay

⁶⁰ See *Ladue/Kuxmann V.S.*, 50-51.

⁶¹ For the same reasons, SRS cannot be used to reasonably measure alleged minutes of delay after the Analysis Period or prospectively.

minutes not attributed to Amtrak in the SRS system to their delay estimate. In addition, Baranowski and Fisher estimated purported labor, fuel and equipment costs that CN allegedly incurred as a result of delays that they attributed to Amtrak for the Analysis Period. However, their cost estimates are not substantiated by specific evidence that such costs are attributable to delays caused by Amtrak and include numerous types of costs which are not short-run avoidable costs.⁶² Thus, even apart from CN's reliance on the unreliable calculations from SRS of the delay minutes that CN seeks to attribute to Amtrak, CN's labor, fuel and equipment cost projections also must be rejected.

A. The SRS System was Designed for Managing Freight Rail Operations and Cannot be Repurposed to Accurately Measure Freight Train Delays That CN Seeks to Attribute to Amtrak

CN proposes additions to its base compensation under the Operating Agreement to cover what it claims are the direct and “practicably quantifiable” labor, fuel and equipment costs of delay incurred by CN's freight trains due to Amtrak. CN proposes that these costs be determined using CN's SRS database to identify and quantify CN freight delay minutes caused by Amtrak.⁶³ The SRS database itself, CN's business processes for using the database, and the resulting data (collectively, the “SRS System”) were designed to help CN operate and manage its freight rail network.⁶⁴ The SRS System does not and cannot measure freight train delay with the accuracy necessary to serve as the basis for assessing financial costs against Amtrak. Thus, even if the Board determines that Congress intended Amtrak to pay CN for freight train delay costs attributable to Amtrak, the SRS System does not provide an accurate measure of such delays.

⁶² The Crowley/Mulholland R.V.S. describes both the unreliability of CN's delay minute calculations and the flawed nature of CN's cost projections.

⁶³ See Ladue/Kuxmann V.S., 50-51.

⁶⁴ See Exhibit 18, Deposition of Paul Ladue on June 7, 2017 (“Ladue Dep.”) 62:6 (describing SRS as CN's “tool for managing rail traffic”).

Therefore, CN's delay evidence for the Analysis Period, all of which is based on SRS reports, must be disregarded.⁶⁵

There are several reasons why the SRS System cannot be used as the basis for measuring freight train delays that CN seeks to attribute financially to Amtrak. The first problem with SRS

[REDACTED]

[REDACTED] Another problem is that the SRS System [REDACTED]

[REDACTED] As a result, the SRS System does not account for all freight train delays. Any delay accounting system that does not measure all delays introduces unnecessary subjectivity into the process of deciding which delays to include and thus makes the process unreliable. The third problem with SRS is that the system [REDACTED]

[REDACTED]

Moreover, SRS delays are recorded by CN dispatchers, [REDACTED]

[REDACTED]

[REDACTED] The fourth problem with SRS is how it purports to measure the cause of freight train delay. SRS purports to measure the so-called "root cause" of the delay (rather than the direct cause). However, this concept of "root cause" attribution cannot be determined with any degree of objectivity. The fifth problem with the SRS System is that it [REDACTED] The sixth problem is that [REDACTED]

[REDACTED] We will discuss each of these problems in more detail below.

⁶⁵ Baranowski/Fisher V.S., 4-10.

i. **SRS Cannot Be Used to Accurately Measure Freight Train Delay Because** [REDACTED]

CN's variance from schedule, self-inflicted delays and pervasive schedule changes demonstrate that CN's schedules cannot be used as a reliable baseline from which to measure freight train delays allegedly caused by Amtrak. This shifting schedule baseline is exacerbated by the ambiguous manner in which CN freight train schedules are created – Mr. Krueger testified that there is “no hard detailed scientific or consistent approach to the freight schedule” - which further undermines the reliability of measuring freight train delays against such schedules.⁶⁶ It is not reasonable for CN to send Amtrak an invoice for freight train delay that is calculated relative to a schedule that was (i) established by CN pursuant to unspecified standards and without any input from Amtrak,⁶⁷ (ii) [REDACTED] and (iii) thereafter not followed anyway by CN's freight trains due to the prevalence of operating delays caused by reasons other than Amtrak.⁶⁸ CN's moving-target schedules are an unreliable basis upon which to measure and charge Amtrak for freight train delays.

⁶⁶ See Exhibit 3, Krueger Dep. 299: 13 – 300:4 (“The majority of [freight train] schedules at CN are generated either through using [the Intelligent Train Scheduling software] recognizing all of the crudeness of it and errors of it. Mixed with various or the high number of measures that we have of how long are these trains taking to get off the road and/or the management's ... who has authority over the territory of how much time will they allot for this train. Sothere is no hard detailed scientific or consistent approach to the freight schedule. There is a basis of the TPC as a start indication but then that will adjust or be adjusted to the specific objectives and demands and realities of what they see.”).

⁶⁷ As noted on pages 12 - 16 above, CN makes its own decisions regarding freight train schedules, with no input from Amtrak. CN's scheduling decisions have a significant impact on freight train delay and on the frequency and location of planned Amtrak meets and passes. CN *could* schedule freight trains to avoid or minimize encounters with Amtrak trains.

⁶⁸ See discussion on pages 16 to 21 above about CN's freight train variance from schedule, the prevalence of freight train delay attributable to non-Amtrak causes, and CN's constantly changing schedules.

ii. **SRS Cannot Be Used to Accurately Measure Freight Train Delay Because** [REDACTED]

The second problem with SRS as a delay measurement system is that [REDACTED]

[REDACTED]

[REDACTED] ⁶⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thus, SRS does not record all freight train delays. Under SRS, the CN dispatcher (who might have incentive to make their own performance look better) [REDACTED]

[REDACTED]

[REDACTED] ⁷⁰ Any delay accounting system that does not measure all delays introduces unnecessary subjectivity into the process, which makes it unreliable.

⁶⁹ Baranowski/Fisher V.S., 3.

⁷⁰ It is worth noting that under Amtrak's eDR delay coding system for Amtrak trains, delay is measured against pure running time (excluding recovery time and miscellaneous time that is incorporated into the Amtrak schedules) and thus all delays to Amtrak trains are recorded without subjective selection.

iii. **SRS Cannot Be Used to Accurately Measure Freight Train Delay Because**

The third problem with SRS as a freight train delay measurement system is that it relies on CN dispatchers,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iv. SRS Cannot Be Used to Accurately Measure Freight Train Delay Because CN Uses So-Called “Root Causes” To Assign Delay Responsibility

The fourth problem with SRS is how CN purports to determine the cause of freight train delay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As we explain in further detail in Section IV.G below, any number of events, acts, or omissions arguably could be the “root cause” of a given delay. Because there are many possible starting points and causal chains leading to a given delay, a system which allows CN to select one of them as the “root cause” is far too subjective a methodology to use in delay attribution.

⁷³ See Summerfield/Girard/Morehouse V.S., 18 (“[REDACTED]”
[REDACTED]
[REDACTED]

See Baranowski/Fisher V.S., 7 - 8.

⁷⁴ See Morehouse V.S., 17.

Another important problem with root cause is that the information that would be necessary to make these subjective root cause determinations regarding delays to CN freight trains – including information about CN dispatching decisions; CN maintenance practices for equipment, track and signals; how CN establishes its freight train schedules; or the SRS data that CN proposes to rely upon for determining the so-called “root cause” of freight train delay - is not equally available to Amtrak and CN and thus could not be effectively verified or audited. Since root cause depends on a chain of events and subjective judgments about which links in the chain to follow in order to determine causation, there is no “right answer.” This makes verification and audit of root cause delay attributions practically impossible. For these reasons, root cause must be rejected as the means for assigning responsibility for freight train delays under CN’s proposal, where it would be the basis for demanding payment from Amtrak.

v. SRS Cannot Be Used to Accurately Measure Freight Train Delay Because [REDACTED]

The fifth problem with the SRS system is that [REDACTED]

[REDACTED]

[REDACTED]

r [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vi. **SRS Cannot Be Used to Accurately Measure Freight Train Delay Because** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The prevalence of [REDACTED] is reflected by the contorted analysis that CN expert witnesses Baranowski and Fisher conducted in their effort to attribute freight train delay minutes in SRS to Amtrak. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vii. Summary of Numerous Flaws in CN’s Proposal to Use SRS as the Basis for Measuring Freight Train Delays That CN Seeks to Attribute to Amtrak

In summary, CN proposes the following system as the basis for charging Amtrak for alleged delays to CN freight trains: (i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁷ The frequency of these coding errors also raises questions about the sufficiency of the SRS training provided to CN dispatchers. See Exhibit 16, Kuxmann Dep., 56:12 - 13 (stating that the SRS training he received as a CN dispatcher “was very minimal and it was pick up as you go.”)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (v) CN dispatchers make subjective determinations about the so-called “root cause” of the freight train delays reflected in SRS. For all of the reasons described in this Section II of our Rebuttal Verified Statement, CN’s proposal to use SRS as the basis for extracting cash payments from Amtrak for each minute of freight train delay that CN seeks to attribute to Amtrak under the system described above should be rejected.

B. Even If the SRS System Could Somehow Be Used To Accurately Measure Freight Train Delay That CN Seeks To Attribute to Amtrak, CN Has Not Submitted Any Reliable Evidence on Purported Costs Incurred by CN As A Result of the Alleged Delays During the Analysis Period

The numerous deficiencies in attempting to use SRS as the basis for measuring freight train delays that CN seeks to attribute to Amtrak are described in detail above. Even assuming that SRS could be used in a reliable manner to measure such freight train delays, CN’s claim for delay costs is based on a flawed analysis of the delay minutes reflected in SRS that CN seeks to attribute to Amtrak during the Analysis Period. As explained by Amtrak’s expert witnesses, Messrs. Crowley and Mulholland, CN’s delay minute estimate is both overstated and unsupported because of the flawed methodologies used by CN’s expert witnesses to develop that estimate from the data in SRS. Moreover, CN has failed to substantiate the purported additional labor, fuel and equipment costs that it claims to have incurred during the Analysis Period as a result of such alleged delays that it blames on Amtrak. Messrs. Crowley and Mulholland explain why CN’s cost projections are not substantiated by any specific evidence that such costs

are attributable to delays caused by Amtrak and include numerous types of costs which are not short-run avoidable costs under railroad accounting standards.⁸⁸ Thus, even apart from CN's reliance on the unreliable calculations from SRS of the delay minutes that CN seeks to attribute to Amtrak, CN's labor, fuel and equipment cost projections also must be rejected.

III. The Board Should Not Order Amtrak-Funded Capital Improvements as Alternative Relief

As an alternative to being compensated through Amtrak's base payments for alleged Amtrak-caused delays to freight trains, CN says it would accept a capital investment from Amtrak ranging between \$377 - \$534 million to be used for capital improvements to the CN lines used for the Blue Water, Wolverine, City of New Orleans, and Illini/Saluki services.⁸⁹

CN bases this proposed alternative relief range (\$377 - \$534 million)⁹⁰ on capacity modeling studies conducted by CN as described in the Krueger/Doyle/Rank V.S. As explained by Amtrak's expert witnesses John Williams and Judith Roberts, CN's capacity modeling studies fail to support CN's proposed alternative relief.⁹¹ The capacity modeling studies are based on a number of flawed or unsupported assumptions. Moreover, CN's own studies fail to establish that the proposed capacity improvements are designed to alleviate conflicts between Amtrak trains and other trains. CN's proposed capacity improvements also would, in many cases, simply put back infrastructure in the Chicago-Memphis corridor that used to exist and that CN itself chose to remove years ago. The Williams/Roberts R.V.S. details the many flaws in CN's capacity

⁸⁸ The Crowley/Mulholland R.V.S. describes in detail both the unreliability of Baranowski/Fisher's delay minute estimates and the flawed nature of their cost projections. The Crowley/Mulholland R.V.S. also explains why many of the alleged costs included by Baranowski/Fisher in their estimate are not short-run avoidable costs under the applicable standard for "incremental costs" under 49 USC 24308(a).

⁸⁹ Ladue/Kuxmann V.S., 8 at n.15 and 52-53. We assume for the sake of discussion only that the STB has the legal authority in this proceeding to grant CN's alternative relief request for this infrastructure contribution.

⁹⁰ The range is based on different target levels of Amtrak service that were used in CN's capacity modeling studies.

⁹¹ See generally Williams/Roberts R.V.S.

modeling analysis. We will point out two additional problems with CN's alternative relief request.

First, CN says it would accept funding from Amtrak for the proposed infrastructure improvements as "fully discharging Amtrak from further responsibility for the incremental costs of CN freight train delays due to Amtrak's *existing* services."⁹² We can only assume that CN's explicit reference to Amtrak's "existing" services means that if Amtrak made these capital investments in CN's rail network and later sought to change some aspect of its service over CN, CN could seek additional compensation from Amtrak. In other words, after Amtrak's capital contribution for the infrastructure, CN could change the capacity of its rail lines or the way it operates its freight service⁹³ and thereafter, when Amtrak sought any change to its existing service which CN deemed to be material, CN would seek additional compensation (or additional capital investment) from Amtrak.

Second, the capacity modeling underlying CN's alternative relief proposal is based on target levels of Amtrak on-time performance that CN does not even meet today.⁹⁴ Even setting aside all of the problems with CN's modeling that are identified in the Williams/Roberts R.V.S., it is important to note that CN makes no commitment to meet the on-time performance levels used in CN's capacity modeling (or any other performance standard) in connection with the proposed capital contribution. CN appears to view the capital investment as compensation CN is owed and it would come with no commitments from CN. Thus, CN would have Amtrak make a

⁹² Ladue/Kuxmann V.S., 53. (Emphasis added).

⁹³ For example, CN could reduce the capacity of other parts of its rail network; CN could change when it runs freight trains; CN could run longer freight trains; and CN could reduce its freight train operating speeds. See Section I.A, above. In fact, there are indications that CN has been increasing the length of its freight trains generally on its network, in order to move more tonnage per train, without any corresponding increase in siding length on the lines where Amtrak runs. See Exhibit 27, Bill Stephens, *Leading the Way*, TRAINS, Mar. 2017 at 52-59.

⁹⁴ For the reasons described in the Rebuttal Verified Statement of Benjamin Sacks ("Sacks R.V.S."), CN's methodology for determining those target on-time performance levels was flawed.

\$377 - \$534 million capital investment in CN's network for Amtrak's existing services with no assurance of improved performance.

IV. Even If the Board Orders the Parties to Retain the Current Checkpoint/Relief-Based System, the Board Should Make Significant Changes in the Checkpoint/Relief-Based System to Account for its Numerous Flaws

As discussed in Amtrak's Opening Submission, the checkpoint/relief-based system has failed to motivate CN to provide Amtrak with adequate service, let alone quality service worthy of compensation above incremental cost reimbursement.⁹⁵ However, if the STB ordered the parties to continue using a checkpoint/relief-based system despite its substantial flaws, Amtrak proposes the revisions to the system discussed in this Section, which include some aspects of CN's proposal (in some cases with Amtrak's modifications).⁹⁶ This alternative set of terms would not resolve the inherent problems with a checkpoint/relief-based system. However, these alternative terms are presented here in the interest of creating a complete evidentiary record.

In any continued checkpoint/relief-based system, there are seven essential elements that must be included if there is to be any chance that the system will motivate CN sufficiently to provide Amtrak with adequate service: (i) [REDACTED] (ii) the system should measure CN performance and penalties at all Amtrak stations and exit points on CN; (iii) Amtrak should be permitted to use its share of the available recovery time to account for station dwell delays and lateness from origin; (iv) CN should not be permitted to earn additional incentive payment due to circumstances beyond its control; (v) the penalty provision should be triggered when CN's monthly on-time performance drops below 80

⁹⁵ See Table 1 above and Exhibit 2 (reflecting recent on-time performance and incentive payment data).

⁹⁶ CN's proposed changes to the checkpoint/relief-based system were shown in a mark-up of Appendix V to the current Operating Agreement. Ladue/Kuxmann V.S., Exhibit 15. In order to show Amtrak's proposed changes (and to show which CN changes Amtrak could incorporate if the checkpoint/relief-based system is retained), we have included a version of Appendix V with all CN proposed changes "accepted" and then marked to show all proposed Amtrak changes. See Exhibit 28, Amtrak's Proposed Changes to Appendix V of the Current Operating Agreement.

percent; (vi) the penalty should increase the later Amtrak trains are due to CN responsible delays; and (vii) the system should continue to determine attribution for Amtrak train delays based on direct cause, rather than so-called “root” cause.

Amtrak has additional concerns about CN’s proposal to add several new relief items to Appendix V of the existing Operating Agreement. If the checkpoint/relief-based system is retained, these new relief items should not be added because they would unreasonably shift responsibility for Amtrak train delays from CN to Amtrak. CN also proposes to adopt Amtrak’s delay coding, revise certain relief items and apply the changes to the IC and GTW Lines.⁹⁷ If the checkpoint/relief-based system is retained despite its substantial flaws, some of the changes proposed by CN would be appropriate with certain modifications. However, several of the Amtrak delay codes that CN proposes to use as relief items are inapplicable and many of CN’s proposed new relief items and many existing relief items would be (or become) redundant and therefore should not be added (or retained). Other refinements and conforming changes to Appendix V and other parts of the Operating Agreement also would be necessary if the checkpoint/relief-based system is retained. All of these items are discussed further below in Sections IV. F and G.

A. The Lookback Provision Should be Removed

If the checkpoint/relief-based system is retained, the Board should eliminate the “lookback” provision. As explained in the Vilter Verified Statement, during periods of sustained poor performance by CN in handling Amtrak trains⁹⁸ the lookback provision precludes the penalty provision in the current Operating Agreement from functioning. The same would be true in a continued checkpoint/relief-based system with a lookback provision. As stated in the Vilter

⁹⁷ Ladue/Kuxmann V.S., 56.

⁹⁸ See Exhibit 28, Section E.

Verified Statement, “[a] penalty payment that does not cost CN anything is not motivating CN to minimize CN [Host Responsible Delay] on Amtrak trains.”⁹⁹

B. CN’s Performance Should be Measured at All Amtrak Stations and Exit Points on CN Lines

If the checkpoint/relief-based system is retained, the Board should increase the number of checkpoints so that CN’s performance is measured at all stations as well as all exit points on CN. This improves (within the significant limitations of a checkpoint/relief-based system) the chance that CN would be motivated to provide adequate service to all Amtrak passengers and not just to those passengers traveling to the end station of a route or the endpoint on CN’s rail lines.¹⁰⁰ As shown in the Table below, for the relevant Amtrak services over CN, the vast majority of passengers ride to and/or from intermediate stations.¹⁰¹

Service	Percentage of Passengers Traveling Endpoint to Endpoint	Percentage of Passengers Traveling To or From Intermediate Stations
Blue Water	8.4%	91.6%
City of New Orleans	7.9%	92.1%
Illini/Saluki	17.8%	82.2%
Lincoln	25.5%	74.5%
Texas Eagle	4.5%	95.5%
Wolverine	2.6%	97.6%

As demonstrated by the above statistics, CN on-time performance at intermediate stations is important to more Amtrak passengers than on-time performance at endpoint stations. The

⁹⁹ See Vilter V.S., 10; Amtrak Opening Statement, 10; Rebuttal Verified Statement of Alan Frankel (“Frankel R.V.S.”).

¹⁰⁰ [REDACTED]

¹⁰¹ These statistics are for fiscal year 2016 (October 1, 2015 through September 30, 2016).

current checkpoint/relief-based system, with one exception, only measures CN performance at the endpoints of CN's portion of the route.

[REDACTED]

C. Amtrak Should Be Permitted to Use Its Share of Available Recovery Time for Station Dwell Delays and Lateness from Origin

[REDACTED]

¹⁰² [REDACTED]

¹⁰⁴ See Exhibit 28, Section A.1. 49 U.S.C. 24101 establishes that one of the statutory goals is “to operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables.” [REDACTED]

¹⁰⁵ Current Operating Agreement, Appendix V, Table 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. CN Should Not Be Permitted To Earn Additional Incentive Payments Due To Circumstances Beyond Its Control

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰⁶ See Exhibit 28, Section A.2 and Appendix II.

¹⁰⁷ See Exhibit 28, Sections A.3, B.1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁰ See Sacks R.V.S., 8.

E. The Penalties Should Increase the Later Amtrak Trains Are Due to CN-Responsible Delays

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹²

F. The Penalties Should Begin to Increase When Monthly Average Lateness Exceeds 15 Minutes

Extremely late trains present particular hardships to Amtrak passengers. As explained in the Vilter Opening Verified Statement, when an Amtrak train cannot arrive at a checkpoint within tolerance under the current Operating Agreement, additional CN responsible delay minutes do not harm CN for incentive/penalty purposes and CN therefore has no incentive to try to minimize further delays. However, further delays have a significant impact on Amtrak passengers and Amtrak operations.¹¹³ Therefore, [REDACTED]

[REDACTED]

[REDACTED]

¹¹¹ Current Operating Agreement, Sections B, C.

¹¹² See Exhibit 28, Sections C, D.

¹¹³ Vilter V.S., 8-9.

¹¹⁴ See Exhibit 28, Section D.2.

G. Delay Attribution for Amtrak Trains Should Continue to be Based on Direct Cause, Not So-Called “Root Cause”

CN makes a distinction between what it calls the “root cause” of a delay and what it calls the “proximate cause” of a delay, and proposes that delays to Amtrak trains should be attributed to their “root cause” wherever possible.¹¹⁵ For the reasons explained below, the system Amtrak currently uses to attribute cause – what Amtrak calls “direct cause”¹¹⁶ and what CN presumably means by “proximate cause” -- is the only reasonable way to attribute the cause of delay to Amtrak trains, and CN’s proposal should be rejected.

Before discussing the advantages of Amtrak’s current method of coding the “direct cause” of Amtrak train delays, it is important to note the deficiency in CN’s evidence. That is, CN asks the Board to require Amtrak to create an entirely new method of categorizing delays based on what CN calls “root cause,” but nowhere in its submission does CN define for the Board (or Amtrak) what it means by the phrase “root cause” or how delay attribution under a “root cause” principle would actually function.¹¹⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁵ Ladue/Kuxmann V.S., 23, 62, and 65. Accordingly, CN proposes to amend section A.3 of Appendix V to provide that “In determining the cause of a particular delay, evidence of root cause, as opposed to proximate cause, shall be taken as the best evidence of the cause of a delay.” CN Exhibit 15, Appendix V, Section A.3.

¹¹⁶ Although CN’s proposal differentiates “root cause” from “proximate cause,” Amtrak’s delay reporting is based on “direct cause.” We presume that CN’s use of the term “proximate cause” in its proposal is synonymous with Amtrak’s “direct cause” methodology.

¹¹⁷ While CN claims that its incentive/penalty proposal would “provid[e] for a methodology to determine responsibility for the root causes of delay,” Willig V.S., 12, such methodology is not provided anywhere in the CN submission.

[REDACTED]

[REDACTED]

Apart from these deficiencies in the evidence CN has provided to support its “root cause” argument, the Board should reject CN’s proposal on its merits, as it would substitute an uncertain, subjective, and unworkable standard for the clear causation standard Amtrak uses today.

i. The Direct Cause is the Only Event that Conclusively Causes the Delay to the Amtrak Train

The “direct cause” is that immediate event or condition that can conclusively be said to have resulted in a delay to an Amtrak train. When Amtrak records a delay to its train in the eDR system, it records the event or condition that actually caused the Amtrak train to slow down or stop – that is, the event or condition that directly led to the delay occurring. Although there may be a myriad of environmental, operational, decisional and other factors that individually, or together in some unknown proportion, may eventually have contributed to the opportunity for a delay, the “direct cause” of the delay is the reason that the Amtrak train is being slowed or stopped (and removal of the direct cause would permit the Amtrak train to move or regain speed). Therefore, only the direct cause can conclusively be said to have resulted in the delay to the Amtrak train.

For example, suppose a CN freight train slows down because it encounters slow orders due to CN track conditions, and then is pulled into a siding to permit a commuter train to pass. Absent either of these conditions and events, the freight train would already have been in a yard when the Amtrak train passes. Instead, the freight train and the Amtrak train arrive at a location at the same time, and CN chooses to dispatch the freight train ahead of the Amtrak train, resulting in Amtrak having to reduce its speed and incurring a delay. The direct cause of the

delay to the Amtrak train is interference from the freight train which CN dispatched in front of the Amtrak train. It is possible that had the slow orders not existed, the meet with the commuter train would not have occurred, the freight train and the Amtrak train would not have been in the same place at the same time, and the CN dispatcher would not have had to make the choice between letting the Amtrak train or the freight train go first. But it would be virtually if not literally impossible to determine whether the slow orders, the commuter train, or the dispatcher's decision-making "caused" the Amtrak train to run behind the CN freight train and in what proportion the delay minutes should be allocated. In contrast, the fact that Amtrak was delayed by a freight train (the "direct cause" of the delay) is not in doubt and not a subjective determination.

ii. CN Has Not Demonstrated That Amtrak's Currently Used "Direct Cause" System of Delay Coding Is Flawed or Inadequate

Before imposing a new delay coding scheme on the parties, the Board should be convinced that there is a good reason for doing so. CN does not supply that reason.

It is important to note that Amtrak's current method of coding delays by their direct cause can work in favor of either the host railroad or Amtrak. For example, if an Amtrak train is delayed by CN freight train interference or CN slow orders, and therefore Amtrak has to re-crew the train and incurs additional delays in doing so, Amtrak codes the additional delay as a re-crew (code "SYS" for "system"), which is an Amtrak-responsible (not CN-responsible) delay because Amtrak is responsible for managing its re-crews in a manner that avoids or minimizes Amtrak crew-related delay. Conversely, under CN's "root cause" proposal as we understand it, Amtrak would code the re-crew delay as a CN-responsible delay (either Freight Train Interference or Slow Orders), because the re-crew would not have been necessary absent the earlier CN freight

train interference or slow orders (that is, the freight train interference or slow orders could be considered a “root cause” of the re-crew delay).

Similarly, suppose an Amtrak train out of Chicago is forced to wait for connecting passengers from an inbound Amtrak train that was delayed by CN freight train interference. Amtrak would code the delay to the waiting outbound train as holding for connecting passengers (code “CON”), which is an Amtrak-responsible delay. Under a “root cause” concept as seemingly suggested by CN, the delay to the outbound train waiting for connecting passengers would be coded as CN-responsible Freight Train Interference.

CN has supplied two hypothetical examples that imply that Amtrak’s “direct cause” delay coding is unfair to CN, but it provides no data or argument to support that implication. However, even these hypothetical “root cause” examples do not illustrate that the current system is unfair. In one example, CN argues that if Amtrak is delayed behind a CN freight train because the freight train struck a trespasser, the delay should be attributed to the trespasser strike and not the freight train delay. What CN does not reveal is that this is already how Amtrak would code such a delay.¹¹⁸

Finally, the direct cause is reported by Amtrak using a uniform set of written, published coding rules and practices applied across all Amtrak trains on all host railroad lines nationwide.¹¹⁹ [REDACTED]

[REDACTED] The rules also provide CN an opportunity to receive, review, and request changes to delay data for every run of every train

¹¹⁸ See Amtrak Service Standards Manual (Version 10, effective April 30, 2017), Instruction 30 of Section K of Chapter 7, attached hereto as Exhibit 29.

¹¹⁹ Id. (Section K of Chapter 7).

before that data becomes final.¹²⁰ Amtrak's rules provide a system that is not biased toward any result but rather is based on the application of known and clear standards.

iii. The Determination of "Root Cause" Is Entirely Subjective and Would Lead to Frequent Disputes

As a practical matter it would be difficult, if not impossible, to untangle which of any number of interwoven factors played a part – and to what extent – in the circumstances surrounding each and every delay, and to choose which among them to designate as the "root cause." For each delay to an Amtrak train, one would have to arbitrarily choose how far back in time to look for contributing factors; how far away in distance to look for contributing factors; whether to include unconnected contributing factors or only those in a direct chain; to what extent the host railroad could have prevented the delay by responding differently to each contributing factor; and how much each contributing factor may have ultimately been related to the delay.

The difficulty in determining the extent to which a multitude of potential factors may have contributed to an Amtrak delay is illustrated by the following example. Suppose an Amtrak train must wait for a CN freight train that has been routed ahead of it. The reason the freight train was present at that specific time and location could be assigned to many and multiple "root" causes. Imagine a scenario where the CN freight train's original crew had "expired" under the Hours of Service Act due to a combination of the crew's schedule being very tight, meets with other freight trains, other crews not being available, and delays the freight train previously incurred at a grade crossing accident 100 miles away involving another CN freight train. Further suppose that the grade crossing accident was caused by malfunctioning gates, perhaps in part due

¹²⁰ [REDACTED]

to an electrical storm in the area the night before. It is possible that had any of these events not occurred, or had occurred differently or at different times, or if CN had or had not taken different actions in response to any of these events, the freight train and the Amtrak train would not have been in the same place at the same time, and the CN dispatcher would not have had to make the choice between letting the Amtrak train or the freight train go first. It would be virtually if not literally impossible to accurately choose, among the myriad of factors, which (if any) of them was the “root cause” of the delay to the Amtrak train. Amtrak might argue that out of all these factors, the CN dispatcher’s choice to allow the freight train to go first was the “root cause.” In any event, the fact that the Amtrak train was delayed by the CN freight train (the direct cause) is not in doubt and not subjective.

Determinations of so-called “root cause” would be entirely subjective, and as such likely would be the subject of negotiation and dispute between Amtrak and CN. During calendar year 2016, there were over [REDACTED] individual incidents of delay to Amtrak trains on CN; it would be beyond impractical for Amtrak and CN to conduct subjective negotiations each year to attempt to determine the so-called “root cause” of each such delay, and with little hope of doing so successfully since assigning a “root cause” is inherently subjective with no “right answer.”¹²¹

iv. Relying on “Root Cause” for Delay Attribution Would Relieve CN of Responsibility to Avoid or Minimize Delays

CN appears to argue that delays should not be coded to “freight train interference” in situations where CN can provide an excuse for why the freight train ended up in a position where CN allowed it to delay an Amtrak train. But this type of scheme ignores the extensive control CN has over its tracks and trains operating over those tracks, including the ability to respond to

¹²¹ CN claims, without support, that recent advances in train tracking technology have made it possible to track the root causes of freight train delays. *Ladue/Kuxmann V.S.*, 15. We are not aware of any technology that can sort through the multitude of factors that may contribute to an Amtrak delay to subjectively identify a so-called “root cause”.

the many events and conditions that such trains encounter every day. It is CN, not Amtrak or any third party, that has the greatest ability to control whether an unplanned event will result in a freight train ahead of and delaying an Amtrak train. For example, a weather event might be a factor contributing to an unplanned meet between a CN freight train and an Amtrak train; but regardless of why the trains are where they are, it is up to CN to decide which train will be allowed to go first. Coding Amtrak delays based on so-called “root cause” would not give an accurate picture of how or whether CN handles and resolves the events that occur every day on every railroad, by, for example, ameliorating a contributing factor before it contributes to a delay, and dispatching trains so as to avoid freight interference when it is likely to occur for whatever reason. If the parties were required to use “root cause” to code Amtrak delays, CN would have the ability to “shut off the clock” and allow Amtrak delays to occur even when CN could have taken action to minimize or avoid the Amtrak delays in spite of unexpected events.

Relieving CN from responsibility for delaying Amtrak trains by adopting a “root cause” system would also allow CN to effectively expand the amount of recovery time available to it in the agreed-upon Amtrak schedules. That is, every Amtrak schedule has built into it a certain amount of time in addition to the time it takes a train to traverse the route at speed with no delays. The amount of recovery time in each schedule is negotiated between the parties, and is intended to account for the very types of occurrences that CN uses as examples of “root causes,” such as bad weather and third-party interference on the tracks. (Similarly, Amtrak’s delay-based quality payment and penalty proposal includes allowances for certain amounts of delay; it does not penalize CN just because delays exceed zero.) By relieving itself of responsibility for managing its railroad and dispatching Amtrak trains to avoid or minimize the delays resulting

from such events, CN would get a “double dip” in which it is able to obtain relief for delays that would have been absorbed by recovery time.

v. CN’s “Root Cause” Proposal Would Enable CN Dispatchers to “Self-Report” on Their Own Performance

Under the current delay reporting system, delays to an Amtrak train are recorded by the conductor of the train. The Amtrak conductor is in the best position to determine the direct cause of delays to his or her train. The conductor is in charge of the train, is the epicenter of activity on the train, and has access to information from multiple sources. Contrary to CN’s suggestion that the conductor codes delays based simply on his or her “windshield view,”¹²² the Amtrak conductor utilizes multiple sources of information, including (1) direct observation, (2) train bulletins, (3) radio traffic, and (4) information relayed by engineers, dispatchers, maintenance of way employees, signal maintainers, and other train crew members.¹²³ On the other hand, CN’s proposal to rely on the host railroad dispatcher to determine the so-called “root cause” of delays could involve “self-reporting” on the performance of their job function, to the extent that delays (including freight train interference, which is the most prevalent type of delay on CN) are the direct result of their dispatching decisions. By contrast, with the possible exception of delays due to station dwells (which are not Host Responsible Delays), the Amtrak conductor is not “self-reporting” when recording the direct cause of delays and therefore is likely to be more

¹²² Ladue/Kuxmann, 64-65.

¹²³ The Amtrak conductor typically will also have more information relating specifically to the direct causes of delays than the host railroad dispatcher, including but not limited to: (i) actual signal aspects at all wayside signals; (ii) arrival and departure times at stations, and the amount of delay (if any) that occurs at a station (where the host railroad dispatching system only captures passing times at certain interlockings and other control points as trains move between blocks of track that normally are miles long); (iii) passing times at locations that are not control points; (iv) signal indications at signals not controlled by the host railroad dispatcher; (v) causes of delays at stations; (vi) delays due to equipment failures; and (vii) exact mileposts of delays.

objective than the host railroad dispatcher. Thus, the Amtrak system of using conductors to determine direct cause does not suffer from this same risk of bias.

H. CN's Proposed New Relief Items for the Checkpoint/Relief-Based System Should Be Rejected Because They Would Unreasonably Shift Delay Responsibility from CN to Amtrak

CN proposes to add four new relief items to Appendix V, all of which should be denied because they would unreasonably shift responsibility for delays from CN to Amtrak.¹²⁴

CN seeks relief for a “[d]elay of more than two minutes for each instance of delay caused by movement of an Amtrak train over a crossover between tracks.”¹²⁵ If a crossover is the only possible physical move, then that move is included in the pure running time and is not a delay.¹²⁶ But if the CN dispatcher elects to cross over an Amtrak train (*e.g.*, to avoid a conflict with another train) and that Amtrak train incurs a delay, the delay should be attributed to CN and not Amtrak.¹²⁷ Since Appendix V already addresses both scenarios, the Board should reject this proposed relief item.

CN proposes a new relief item for delays caused when Amtrak arrives late and unannounced at an entry point to CN's line and is unable to move onto that line due to freight operations.¹²⁸ CN claims it is not privy to Amtrak operations off of CN lines and cannot tell

¹²⁴ In addition to the four proposed relief items discussed in this section, CN's proposed relief item for delays due to movement of maintenance of way trains applies only to Amtrak maintenance of way trains moving on CN between Baron and Gord and Amtrak has proposed changes to clarify this point. See Exhibit 28, B.1.b.4.

¹²⁵ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.11.

¹²⁶ Pure Running Time (“PRT”) is the travel time of a given train between two points at maximum authorized speed, without delays. Vilter V.S., 15. A crossover could be the only possible physical move in a situation where the location of the Amtrak station requires the Amtrak train to cross over from one track to a parallel track in order to access the station.

¹²⁷ CN's proposal appears to be based on a claim in the Krueger/Doyle/Rank V.S. that CN's modeling studies indicated that Amtrak cross-overs should not take more than 2 minutes. Krueger/Doyle/Rank V.S., 37. However, as explained in the Williams/Roberts R.V.S., CN failed to provide any supporting workpapers or other evidence for this assertion. Williams/Roberts R.V.S., 78.

¹²⁸ Ladue/Kuxmann V.S., 59-60; Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.13.

when the Amtrak train is likely to arrive on CN's lines.¹²⁹ CN also claims that Amtrak does not regularly inform CN of when late trains are likely to arrive.¹³⁰ Accordingly, CN seeks relief for:

Delays caused by freight train interference that prevents Amtrak from entering CN's line when an Amtrak train arrives at an entry point to a CN line more than 15 minutes after its scheduled arrival without having provided CN with notification of such arrival at least 30 minutes in advance.¹³¹

The responsibility for communications regarding the status and location of Amtrak trains (including trains running behind schedule by any amount of time or distance) must rest with the host railroads. When an Amtrak train is operating on the line of a host railroad, the train relies on the host for dispatching.¹³² Host railroads routinely hand off freight and Amtrak trains from one railroad to another and work out such movements by communicating with each other and by providing reciprocal access to each other's dispatching screens. There is no reason why CN cannot do the same when handing off or receiving Amtrak trains.

CN can establish or use existing communication channels with other hosts to find out when the Amtrak train is likely to arrive on CN's lines. When an Amtrak train is running behind schedule, CN's dispatchers and other host dispatchers are in the best position to discuss likely hand-off times, the location of other trains in the area and other factors relating to successful and timely hand-off of Amtrak trains.¹³³ Host railroad dispatchers routinely communicate with each other regarding freight traffic interchange, crossing of interlockings, use of trackage rights on

¹²⁹ Ladue/Kuxmann V.S., 59.

¹³⁰ Id.

¹³¹ Ladue/Kuxmann V.S., Exhibit 15, Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.13.

¹³² When Amtrak trains are on Amtrak lines (which are dispatched by Amtrak), Amtrak communicates with connecting railroads regarding the status and location of its trains (including trains running behind schedule).

¹³³ In addition, Amtrak's dispatchers are unlikely to have the most current or accurate information about the time that the Amtrak train is likely to arrive on CN's line (because other host railroad dispatchers have direct control over that train's authority to move over their territory). Thus, any information that Amtrak could provide to CN's dispatchers about the location and anticipated arrival of that train would be based on speculation.

each other's lines and numerous other matters. CN's proposal would insert Amtrak as a third party in this process, which would make communication less effective.¹³⁴

In summary, CN's proposal to ignore existing communication protocols and resources and instead require Amtrak to act as an intermediary between CN's and other host railroads' dispatchers is impractical, inefficient and inconsistent with industry practice. Thus, CN's proposed relief item for late-arriving Amtrak trains should be rejected.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³⁴ CN's proposal increases the risk that CN's dispatcher might hear potentially conflicting information about Amtrak trains from multiple parties. If CN's dispatcher needs additional information besides what it can easily obtain by communicating with other host railroad dispatchers or viewing their dispatching screens, Amtrak already makes available to CN (and all host railroads) virtual private network ("VPN") access to Amtrak train status data.

¹³⁵ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.9. [REDACTED]

[REDACTED] This is not immediately apparent from Exhibit 15 of the Ladue/Kuxmann V.S. because CN omitted the existing provision from its redlined proposal.

¹³⁶ Ladue/Kuxmann V.S., 10, 67.

¹³⁷ Current Operating Agreement, Appendix V, Section A.2.

¹³⁸ Even apart from the program maintenance provision, Amtrak has agreed to 17 temporary schedule changes to accommodate various CN track work projects between 2010 - 2016, including canceling Amtrak trains, running buses in place of trains, truncating Amtrak service, lengthening train schedules and changing start times. See Exhibit 30.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CN also seeks relief for [REDACTED]

[REDACTED]

[REDACTED]¹³⁹ Amtrak is entirely dependent on its host railroads to dispatch Amtrak's trains across their rail lines. This includes situations where the host railroad's line crosses the line of another railroad at interlockings controlled by the other railroad. It is the host railroad (not Amtrak) whose operating relationship with the other railroad governs the operations of the crossing. It is the host railroad whose dispatcher needs to notify the other railroad what trains are approaching the crossing and in what order, which track each train will occupy, and which [REDACTED] are for which trains.

[REDACTED]

[REDACTED] However, Amtrak does not know when the CN dispatcher plans to have Amtrak arrive at the crossing, what freight trains the CN dispatcher may route ahead of Amtrak at the crossing, when the CN dispatcher will be ready to line Amtrak across the crossing, or what [REDACTED] the CN dispatcher has or has not sent the controlling railroad's dispatcher. It is the CN dispatcher

¹³⁹ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.15.g.

who, for both efficiency and safety reasons, needs to coordinate with the dispatcher of the controlling railroad. Amtrak cannot dispatch itself across CN's railroad.¹⁴⁰

I. Adopting Amtrak Delay Codes As Relief Items Would Necessitate Certain Refinements and Conforming Changes

[REDACTED]

¹⁴⁰ [REDACTED]

¹⁴¹ [REDACTED]

¹⁴¹ Ladue/Kuxmann V.S., 56.

i. CN Proposes Adoption of Amtrak Delay Codes that are Inapplicable

CN proposes for inclusion in Appendix V the following five relief items based on Amtrak delay codes:¹⁴²

Code	Code Description	Explanation
CTC	CETC System	Failure of CETC train control system.
UTL	Utility Company Failure	Failure due to utility company issue.
MTI	Disabled Train Ahead	Disabled train ahead due to mechanical failure.
BSP	Bridge Strike	Under grade bridge strikes by vehicle or boat
NOD	Unused Recovery Time	Wait for departure time

The Board should reject CN's proposed use of these five delay codes as relief items, the first four of which are used only on the Amtrak Northeast Corridor ("NEC"). The CTC code applies to failure of the Consolidated Electrification and Train Control System ("CETC") on the NEC. The UTL code is used for electric power failure on the NEC. The CN lines used for Amtrak services do not use Amtrak's CETC system or a catenary system. Likewise, MTI and BSP are used only as Amtrak delay codes on the NEC. Off the NEC, Amtrak delays due to a CN train ahead (whether or not it is disabled) are coded as FTI, delays due to a disabled commuter train are coded as CTI, and delays due to a disabled Amtrak train ahead are coded as SYS. Similarly, Amtrak delays due to a vehicle or boat striking a bridge off the NEC (whether undergrade or not) are coded as TRS.¹⁴³

¹⁴² Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.1; CN Appendix IX, "Definitions of Delay Codes."

¹⁴³ TRS covers several things that do not literally involve trespassers, including road crossing accidents and vehicles stuck on tracks.

Code NOD represents time spent at a station because a train has arrived early and therefore must wait for its scheduled departure time. Incorporating NOD as a relief item would mean that early arrival at one station would allow CN to deliver the Amtrak train that many minutes later at all subsequent stations.

ii. CN's Proposal to Adopt Amtrak Delay Codes As Relief Items Makes Retention and Addition of Certain Other Relief Items Redundant

CN has retained or proposed to add certain relief items that are made redundant by its proposal to formalize the use of Amtrak's delay coding for relief. Exhibit 31 to this Rebuttal Verified Statement is a Table showing these relief items and the specific Amtrak codes that already address relief items that CN is proposing. One of these items requires additional explanation, beyond Exhibit 31, as described below.

[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

iii. The Addition of Checkpoints and the Adoption of Delay Coding Make Many Provisions for Not Counting Trains in Quality Payment and Penalty Calculations Obsolete

Adding checkpoints and adopting delay codes would render obsolete a number of provisions in the current Operating Agreement that cause a train trip to not be counted for purposes of quality payments and penalty calculations. While CN may be granted additional

¹⁴⁴ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.15.

minutes through delay coding, CN should remain accountable for otherwise minimizing delay in such situations as on any other train. Table 2 below shows these obsolete provisions and the delay codes that would apply.

Table 2			
Obsolete Items¹⁴⁵	Delay Code	Description	Explanation
“The train has struck a pedestrian, animal or vehicle or is blocked by a vehicle (other than vehicles owned or operated by CN or its employees, agents, contractors, acting in their capacities as employees, agents, or contractors of CN, and which are not responding to an emergency).” ¹⁴⁶	TRS	Trespasser	Trespasser Incidents (includes crossing accidents, trespasser or animal strikes, vehicle on track ahead; “near-miss” delays; bridge strikes by vehicle or boat)
“The train is blocked by an emergency vehicle (including a vehicle owned or operated by CN or any of its employees, agents, contractors, acting in their capacities as employees, agents, or contractors of CN, and which are responding to an emergency) or fire hoses, or is held by civil authorities.” ¹⁴⁷	POL	Police-Related	Police Related (DEA; police/fire department holds on right-of-way, bomb threat delays; can include on-train police activity)
“The trip of the train is delayed due to broken rails where the broken rail occurred in connection with severe weather and CN provides Amtrak with CN incident reports confirming same.” ¹⁴⁸	WTR	Weather-Related	Weather (includes heat/cold orders; storms, floods, fallen trees, washouts, landslides; earthquake-related delays; slippery rail due to leaves; burning leaves caught under truck of car; snow-removal equipment working ahead; ice or snow under equipment, including wayside defect-detector actuations caused by ice;

¹⁴⁵ CN proposed utilizing Amtrak delay codes that were defined and in effect as of September 2015. For clarity, Amtrak describes the delay codes referenced above based on the definitions currently in effect.

¹⁴⁶ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.1.

¹⁴⁷ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.2.

¹⁴⁸ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.4.

Table 2			
Obsolete Items¹⁴⁵	Delay Code	Description	Explanation
			flash-flood warnings; high-wind restrictions)
“The trip of the train arrives late due to being delayed by another Amtrak train experiencing delays from any of the foregoing two items or a force majeure event.” ¹⁴⁹	Various	Various	Amtrak’s delay reporting procedures specify that where the rail line ahead is completely blocked or closed due to a specific debris, drawbridge-opening, police/fire department hold, trespasser, or severe-weather incident, the delay will be coded based on the blockage (e.g., DBS, MBO, POL, TRS, or WTR) up until the time when the rail line is re-opened, even if there is another train between the Amtrak train and the rail line blockage.
“The trip of the train is delayed by more than 10 minutes due to acts of vandalism on the Rail Lines which require the Amtrak passenger train to stop or be operated at reduced speed for a portion of its trip.” ¹⁵⁰	TRS	Trespasser	Trespasser Incidents (includes crossing accidents, trespasser or animal strikes, vehicle on track ahead; “near-miss” delays; bridge strikes by vehicle or boat)
“The trip of the train is delayed by (i) heat orders reducing the maximum speed of the train to 60 mph as a result of ambient temperatures at or above 95 degrees; (ii) cold orders reducing the maximum speed of the train to 60 mph as a result of ambient temperatures between minus 10 and minus 25 degrees F; or (iii) cold orders reducing the maximum speed of the train to 50 mph when the temperature is less than minus 25 degrees F; provided, however, that relief will not be granted	WTR	Weather-Related	Weather (includes heat/cold orders; storms, floods, fallen trees, washouts, landslides; earthquake-related delays; slippery rail due to leaves; burning leaves caught under truck of car; snow-removal equipment working ahead; ice or snow under equipment, including wayside defect-detector

¹⁴⁹ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.5.

¹⁵⁰ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.6.

Table 2			
Obsolete Items ¹⁴⁵	Delay Code	Description	Explanation
under this paragraph for delays resulting from a more restrictive heat or cold order, or from failure of CN to remove heat or cold restrictions once temperatures leave the temperature ranges in which restrictions are required, and that CN shall carefully monitor temperatures to minimize delays.” ¹⁵¹			actuators caused by ice; flash-flood warnings; high-wind restrictions)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iv. Relief for Westbound Amtrak Trains at Joliet is Not Necessary

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁵¹ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.7.

¹⁵² Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.3.

¹⁵³ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.4.c.3.

¹⁵⁴ Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.d.

v. CN's Proposed Provision for Consistent Failure to Meet Base Performance Standards Is No Substitute for an Effective Penalty System

CN proposes to develop a new provision for the Operating Agreement to assure that if CN performance under the Operating Agreement is so poor that it incurs performance penalties for six consecutive months for any train group (as categorized for purposes of performance payments and incentives), the parties would be required to work together to determine why and develop remedial measures to address the issue. The parties would be bound to use their best efforts and work in good faith to “determine if there are impediments to CN achieving the base level of performance and, if so, how those could be reduced or eliminated and what changes could be made to the Agreement to do so.”¹⁵⁵

In Amtrak's view, this proposed provision is not an adequate substitute for a penalty provision that motivates CN to minimize delays to Amtrak trains. The purpose of the penalty provision itself is to motivate CN to improve on-time performance in order to avoid incurring penalties.¹⁵⁶ There is no need for CN's proposal to change the Operating Agreement if CN starts incurring penalties. Similar to CN's position on the lookback provision, this proposal by CN would render the idea of a performance penalty meaningless if the host is not obligated to pay penalties when its performance handling Amtrak trains is poor.

¹⁵⁵ Ladue/Kuxmann V.S., 66.

¹⁵⁶ See Section IV.A., above.

V. The STB Should Deny CN's Binding Schedule Review Proposal

A. Summary of CN Schedule Review Proposal and Reasons It Should Be Denied

CN proposes that the Board require the parties to engage in binding, model-driven reviews of Amtrak schedules.¹⁵⁷ In support of this proposal, CN claims the Amtrak schedules have not been jointly examined for many years, have key elements that are inaccurate, have year-round application (lacking flexibility for seasonal events), that Amtrak refuses to lengthen the schedules and that the schedule adjustment process in the Operating Agreement is not conducive to schedule modification.¹⁵⁸

There are several reasons why the Board should not adopt CN's proposal for binding and model-driven reviews of all Amtrak schedules. First, if the schedules are not inaccurate, then it is not important whether or not they have been jointly examined recently. However, CN has not submitted any reliable evidence of any inaccuracies in Amtrak's schedules. Even though CN's modeling proposal covers Amtrak schedules on all six of the relevant Amtrak services on CN, CN presents no evidence of inaccuracies in the schedules for four of the services and the purported evidence on the other two (the Illini/Saluki and City of New Orleans) is limited to a single issue of an alleged pure running time shortfall. The alleged shortfall is based on unreliable modeling conducted by CN.¹⁵⁹

CN has never initiated the schedule adjustment procedure in the current Operating Agreement, but nevertheless says it "is not conducive to a productive joint process of schedule development" because the proposing party must include a proposed schedule at the outset.¹⁶⁰

¹⁵⁷ Ladue/Kuxmann V.S., 10 and 66-67.

¹⁵⁸ Ladue/Kuxmann V.S., 9-10.

¹⁵⁹ See Williams/Roberts R.V.S., 72.

¹⁶⁰ Ladue/Kuxmann V.S., 66.

Never having initiated the process, CN has no basis to claim that submitting a schedule in advance is not conducive to schedule development.

CN also says it can be “difficult or impossible” to win Amtrak’s agreement to a longer schedule.¹⁶¹ Amtrak does not lightly agree to the lengthening of a schedule, because longer schedules generally make Amtrak service less attractive to passengers, increase Amtrak’s costs and conflict with Congressional policy goals of fast and reliable Amtrak service.¹⁶² In addition, the concession of a longer schedule comes with no assurance from CN that the longer schedule will lead to better on-time performance.¹⁶³ CN says its annual modeling and schedule review with Via Rail Canada (“VIA Rail”) has improved VIA Rail’s performance.¹⁶⁴ As explained below,¹⁶⁵ the facts tell a different story.

If the Board does decide to order any schedule review, it would not be reasonable for modeling to “drive” the schedule review process. Even when appropriate, modeling is merely a tool and neither side should be bound to automatically implement the results. In addition, the specific objectives of the modeling should be set by the parties, not prescribed by the Board.

¹⁶¹ Id. Amtrak has made at least two proposals to CN to redistribute recovery time in the schedules for the Illini/Saluki and City of New Orleans services. One Amtrak proposal was sent to CN in January 2011. CN indicated that the proposed reallocation did not work with CN freight train schedules. Amtrak followed up numerous times over the next five months seeking to discuss any CN concerns and reach resolution. However, CN did not respond to Amtrak’s requests. Amtrak made another proposal in February 2017. See Exhibit 32, February 13, 2017 emails from Amtrak’s Michael Azen to CN’s Scott Kuxmann. Approximately six months later (after some back and forth between the parties), CN responded on August 18, 2017 with a proposal to lengthen the Illini/Saluki schedules by 32 to 54 minutes.”

¹⁶² See 49 USC 24101 (c)(6) (specifying that one of Amtrak’s goals is to “implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort”).

¹⁶³ This is especially true given the considerable variance from freight schedules of CN’s actual operations.

¹⁶⁴ Ladue/Kuxmann V.S., 65-66.

¹⁶⁵ See 70-72.

Modeling is time consuming, expensive and, in this instance, unjustified. Amtrak is willing to conduct a field study with CN of the pure running time on the CN lines used for the Illini/Saluki and City of New Orleans services. This would allow resolution of any disputes about the pure running time on these two routes without the expenditure of time and money necessary for modeling. In addition, such field studies would be necessary even if modeling were conducted in order to validate any modeling-based PRT's before they were considered as an input to the schedule evaluation process.

B. CN's Only Support for its Binding Schedule Review Proposal is Unreliable Evidence of Alleged PRT Shortfalls on Two of Amtrak's Six Services on CN Lines

CN says schedule review is necessary because the schedules for certain Amtrak services “have not been jointly examined by the parties in many years, and CN’s evidence shows that at least some key elements of those schedules are outdated and inaccurate.”¹⁶⁶ Despite this broad claim, CN provides no evidence whatsoever regarding alleged inaccuracies with respect to four out of the six relevant Amtrak services operating on CN’s lines.¹⁶⁷ Therefore, CN’s scheduling proposal should be examined by the Board only with respect to the Illini/Saluki and City of New Orleans services. Even with respect to the schedules for the Illini/Saluki and the City of New Orleans services, CN makes only the single assertion that PRT’s in the existing schedules for those specific services are too short. However, CN’s evidence regarding PRT shortfalls is based on unreliable modeling.¹⁶⁸

¹⁶⁶ Ladue/Kuxmann V.S., 66.

¹⁶⁷ Ladue/Kuxmann V.S., 33-34, summarizing the results of certain TPC simulations conducted by CN on the City of New Orleans and Illini/Saluki services only as described in the Krueger/Doyle/Rank V.S.

¹⁶⁸ See Williams/Roberts R.V.S., 70.

i. CN's PRT Modeling on the City of New Orleans Service is Unreliable

On the City of New Orleans service, CN claims that the PRT in Amtrak's schedule is deficient by 19 minutes on the northbound train and 36 minutes on the southbound train.¹⁶⁹ This alleged deficiency is based on the Train Performance Calculator ("TPC") simulations conducted by CN as summarized in the Krueger/Doyle/Rank V.S. For the reasons explained in the Williams/Roberts R.V.S., CN's TPC simulations with respect to PRT on the City of New Orleans service are not reliable.¹⁷⁰

For example, the CN modelers used 1 locomotive and 9 passenger cars as the Amtrak consist size for the TPC simulations they ran to model the PRT's for the City of New Orleans service. However, they a different Amtrak consist size for the City of New Orleans service in their capacity modeling studies. The Kruger/Doyle/Rank V.S. does not contain any explanation for this discrepancy.¹⁷¹ The CN modelers also replaced an actual 17-mile section of track used by Amtrak to access Memphis station with a fictitious Amtrak operation on a longer freight route around Memphis and through CN's Harrison Yard, and assumed a "station" stop inside Harrison Yard, due to limitations in CN's TPC model.¹⁷² For these and other reasons specified in the Williams/Roberts R.V.S, CN's PRT modeling on the City of New Orleans service is unreliable.¹⁷³

¹⁶⁹ Ladue/Kuxmann V.S., 36-7, Table 4; Krueger/Doyle/Rank V.S., 36, Table 13.

¹⁷⁰ See Williams/Roberts R.V.S., 71.

¹⁷¹

[REDACTED]

¹⁷² Krueger/Doyle/Rank V.S., 21.

¹⁷³ See Williams/Roberts R.V.S., 71.

ii. CN's PRT Modeling on the Illini/Saluki Service is Unreliable

CN claims that the PRT in Amtrak's schedule is low by 15.5 minutes on the northbound Illini/Saluki service and 14.1 minutes on the southbound Illini/Saluki service.¹⁷⁴ This alleged deficiency is based on the TPC simulations conducted by CN as summarized in the Krueger/Doyle/Rank V.S. The 15.5 minute and 14.1 minute PRT shortfalls alleged by CN are based on TPC simulations using an Amtrak train consist of 1 locomotive and 7 passenger cars.¹⁷⁵ This consist used by the CN modelers in the TPC simulations for the Illini/Saluki trains incorporated minimum axle-count requirements imposed by CN to address a potential activation failure associated with CN's grade crossing equipment.¹⁷⁶ In other words, CN's PRT calculations inappropriately incorporated this delay factor as a component of PRT, which makes them inaccurate. For the reasons further explained in the Williams/Roberts R.V.S., CN's TPC simulation modeling for the Illini/Saluki service is unreliable as well.¹⁷⁷

¹⁷⁴ Ladue/Kuxmann V.S., 38, Table 6. The table heading says City of New Orleans Schedules, but the table shows the Illini/Saluki service endpoints.

¹⁷⁵ Krueger/Doyle/Rank V.S., 36 n.33.

¹⁷⁶ Since approximately 2009, CN has imposed speed restrictions on Amtrak trains operating through CN grade crossings on the CN lines used for the Illini/Saluki service; and since approximately 2010, CN has required Amtrak trains to have a minimum of 30 axles on the line used for the Illini/Saluki service. See Exhibit 33, 15. To meet CN's axle requirement, Amtrak's train consist on the Illini/Saluki is one locomotive and seven passenger cars. Absent the axle requirement, Amtrak would run one locomotive and four passenger cars. These requirements were imposed by CN in order to address an activation failure issue on CN's grade crossing signal system. Amtrak and CN are working with the Federal Railroad Administration to determine whether the activation failures were caused by Amtrak's equipment or by CN's signal system. Depending on the outcome of that analysis by the FRA, the speed restriction and the axle requirement will be appropriately accounted for in the performance payment/penalty calculations. In either case, the restrictions should not be factored into the measurement of PRT. However, CN's TPC simulation modeling with respect to the Illini/Saluki incorporated the minimum axle count requirement by using an Amtrak train consist of seven passenger cars.

¹⁷⁷ See Williams/Roberts R.V.S., 73 - 75.

iii. CN's Average Schedule Speed Comparisons Provide No Credible Evidence that Amtrak's Illini/Saluki PRT is Insufficient

CN says a comparison of the average scheduled speed of other Amtrak services to that of the Illini/Saluki service demonstrates the “poor design” of the Illini/Saluki schedule.¹⁷⁸

However, CN's comparison is not valid because each territory, track structure, and hosts' speed limits vary. The Illini/Saluki route on CN, for example, is a comparatively straight, flat railroad with a maximum passenger speed of 79 mph for most of the route.¹⁷⁹ Nevertheless, CN compares the Illini/Saluki to The Pennsylvanian service,¹⁸⁰ which operates through mountainous terrain for much of its route, with many curves and steep grades. The Pennsylvanian is home to the Horseshoe Curve famous for its climb up the Allegheny Mountains. Based on terrain, one would expect The Pennsylvanian to have a lower average speed than the Illini/Saluki, regardless of how their schedules are built.

CN also compares the Illini/Saluki to the Capitol Corridor and the Pacific Surfliner.¹⁸¹ The Capitol Corridor and the Pacific Surfliner both have many more passenger stops than the Illini/Saluki. The Illini/Saluki has 10 stops in 307 miles between Chicago and Carbondale. The Capitol Corridor trains make 13 stops in only 134 miles between San Jose and Sacramento, and the Pacific Surfliner makes 9 stops in only 129 miles between Los Angeles and San Diego.

¹⁷⁸ Ladue/Kuxmann V.S., 39-43. The discussion makes it clear that CN is presenting this as another way to evaluate allegedly insufficient PRT. *Id.* at 39.

¹⁷⁹ Illinois Central passenger trains at one time operated at speeds of up to 100 mph on portions of this route. The IC ran trains up to 100 mph from around 1950 through 1970 and continued at 90 mph after Amtrak was formed. The higher speeds were suspended when IC single tracked its main line and removed the Automatic Train Stop system in the late 1980s.

¹⁸⁰ See Ladue/Kuxmann V.S., 41-E, Table 8.

¹⁸¹ *Id.* Although CN states that it excluded dwell in their calculation of the scheduled miles per hour figures reflected in Table 8 of the Ladue/Kuxmann V.S., it is not clear that CN made any adjustments for acceleration and deceleration at station stops.

Based on these factors, one would expect the Capitol Corridor and Pacific Surfliner to have a lower average speed than the Illini/Saluki, regardless of how their schedules are built.¹⁸²

CN's attempt to represent the Illini/Saluki service as having an insufficient schedule by comparing its average speed to other dissimilar Amtrak trains is an apples-to-oranges comparison and should be disregarded.

iv. Amtrak Has Every Incentive For the PRT's In Its Schedules To Be Accurate and CN Would Not Be Prejudiced Under Amtrak's Delay-Based System or CN's Checkpoint/Relief-Based System For Any PRT Shortfalls

Even assuming that CN had provided reliable evidence that there were any inaccuracies in the PRT's reflected in Amtrak's schedules for the City of New Orleans or Illini/Saluki services, to the extent that Amtrak schedules did not include sufficient PRT any such shortfall would be accounted for under delay code OTH, which is an Amtrak Responsible Delay. Thus, Amtrak would have every incentive under both its delay-based system and CN's checkpoint/relief-based system to ensure that the PRT's in Amtrak's schedules are correct since Amtrak (and not CN) would be responsible for any delays resulting from PRT shortfalls, and under neither system would CN be penalized for such delays.

C. CN Has Not Invoked the Current Schedule Adjustment Procedure and Therefore Has No Basis to Claim It Does Not Work or Criticize Amtrak for Failing to Agree to Every Schedule Change Proposed Informally by CN

CN acknowledges that the current Operating Agreement allows either party to propose a schedule change, but CN says the proposing party must provide a "full revised schedule at the outset" and complains that doing so "is not conducive to a productive joint process of schedule

¹⁸² The Ethan Allen route includes mileage on the Vermont Railway, a short line with maximum passenger train speeds between 30 and 59 mph due to curvature, track class, and a lack of automatic signals. See Ladue/Kuxmann V.S., 41. The Adirondack and Maple Leaf services must cross the U.S.-Canadian border and their schedules include time for Customs work at the border. The Adirondack, moreover, includes 70 miles in which the trains wind through mountainous territory along the edge of Lake Champlain generally between Ticonderoga, NY and Plattsburgh, NY. The maximum speeds on this segment range from 30 to 50 mph. Ladue/Kuxmann V.S., 41.

development.”¹⁸³ This requirement to provide a full schedule (reflecting the proposed Amtrak arrival and departure times at all stations along the route, including those stations on other hosts) with any schedule change request was negotiated by the parties and added to the Operating Agreement in 2011. CN has not explained why submitting a full revised schedule at the outset of the process is burdensome.¹⁸⁴

CN also has never tried to use the current Operating Agreement’s schedule change procedure. Never having invoked the process, CN has no basis to claim that submitting a full schedule at the outset is not conducive to schedule development. Nonetheless, Amtrak is amenable to removing the requirement to provide, in conjunction with any schedule change request under the new Operating Agreement, a full revised schedule applicable to the portions of the Amtrak service that operates over the lines of other host railroads.

CN also says it “has learned from experience that it can be difficult or impossible to win Amtrak’s agreement to a schedule modification that calls for any lengthening of the schedule.”¹⁸⁵ Schedule lengthening proposals must be evaluated for the risk that Amtrak service will become less competitive than the other travel options available to Amtrak customers, such as automobile and intercity bus on our regional services and air travel on our longer routes.

Besides ridership risk, the concession of a longer schedule comes with no assurance or contractual commitment from CN that the longer schedule will lead to better on-time performance. As noted in the *Crowley/Mulholland R.V.S.*, during the Analysis Period, CN actual freight train operations varied considerably from their schedules.¹⁸⁶ If Amtrak were to

¹⁸³ *Ladue/Kuxmann V.S.*, 66.

¹⁸⁴ In fact, such a practice can save time during the schedule negotiation process because the party receiving the proposed schedule can begin to analyze it from the outset.

¹⁸⁵ *Ladue/Kuxmann V.S.*, 66.

¹⁸⁶ See *Crowley/Mulholland R.V.S.*, 34.

agree to accept a longer schedule in any particular situation, the considerable variance from freight schedule of CN's actual operations helps illustrate that there is no assurance of improved on-time performance or assurance that Amtrak trains would meet or pass CN trains at planned locations.

In particular, Amtrak has not agreed to CN's informal requests to lengthen Amtrak's schedules to account for seasonal increases in freight traffic and seasonal weather impacts.¹⁸⁷ Amtrak schedules on CN already include generous amounts of recovery time *all year* that are more than sufficient to account for any seasonal issues. For example, the United States has two wheat product harvest periods. To add additional time to Amtrak schedules to facilitate both harvests, Amtrak schedules would be lengthened even further from mid-May through mid-September. Combined with CN's request for longer schedules to account for seasonal heat and cold impacts, schedule adjustments for the harvest seasons would mean Amtrak would run longer "seasonal" schedules for eight out of twelve months in the year. Amtrak has been willing from time to time to implement schedule adjustments that were proposed by CN outside of the formal process set forth in the existing Operating Agreement.¹⁸⁸ The fact that Amtrak has not agreed to all proposed schedule changes does not justify CN's elaborate and expensive proposal to require the parties to engage in binding model-driven reviews of Amtrak's schedules.

D. Any Modeling Conducted in Connection with Schedule Review Should Be Based on Assumptions and Objectives Established by the Parties

If the Board does decide to order any schedule review, the objectives of the schedule review and the extent and uses of modeling should be determined by the parties, not prescribed by the Board. Modeling is merely a tool to provide information and neither side should be bound

¹⁸⁷ CN says Amtrak schedules lack flexibility for seasonal events. Ladue/Kuxmann V.S., 10.

¹⁸⁸ Amtrak and CN informally have agreed to implement permanent and temporary schedules changes approximately 60 times between 2010 and 2016. See Exhibit 30.

to automatically implement the theoretical output from modeling without conducting field verification.

CN proposes that the modeling “can and should take into account such things as (1) the specific Amtrak consists proposed to operate on the route; (2) the specific infrastructure and capacity constraints that exist on the route; and (3) the level of existing and projected freight and passenger traffic on the route.” In addition, CN says “the parties may wish to consider seasonal factors, anticipated construction of new railroad capacity, and cyclical maintenance of way work.”¹⁸⁹

To the extent that the factors mentioned above by CN (such as train consist size and the applicable track infrastructure on the route) are appropriate inputs to PRT calculations, they would be reasonable inputs for the parties to discuss and agree upon prior to the initiation of any modeling studies. However, the other factors mentioned by CN (including passenger and freight traffic growth) would need to be considered only after the parties had determined the objectives of the modeling. If modeling were ordered, Amtrak would want to consider inexpensive operational and schedule changes that would improve the quality of service CN provides to Amtrak before addressing items such as construction of new railroad capacity, which even if modeled could not be mandated by the Board.

CN notes that CN and VIA Rail jointly review VIA Rail’s schedules annually and that by employing modeling techniques with respect to VIA Rail trains, CN has had “great success improving their performance.”¹⁹⁰ Although it is unclear which modeling techniques CN and

¹⁸⁹ Ladue/Kuxmann V.S., 67.

¹⁹⁰ Ladue/Kuxmann V.S., 65-66.

VIA Rail use or whether the modeling results are binding on both parties,¹⁹¹ a VIA Rail 5-year plan summary¹⁹² and published accounts of VIA Rail on-time performance challenges¹⁹³ tell a different story. The VIA Rail 5-year plan summary states that in 2009 VIA Rail added half a day to the schedule of the *Canadian* Service that operates almost exclusively on CN between Toronto and Vancouver. However, VIA Rail also reported that the on-time performance results on the *Canadian* service in the next six and one half years after lengthening the schedule declined precipitously, as shown in Table 3 below:

Table 3							
On-Time Performance – Canadian							
Year	2009	2010	2011	2012	2013	2014	2015 (first 6 months)
OTP	84%	84%	74%	70%	60%	33%	24%

This information demonstrates that CN’s modeling and scheduling lengthening process with VIA Rail did not improve performance on the *Canadian* service. CN has not offered any evidence supporting its claim that modeling has been successful in improving VIA’s performance.

E. Amtrak is Amenable to Joint PRT Field Checks on the Illini/Saluki and City of New Orleans Routes

In addition to the schedule review procedure in the current Operating Agreement, Amtrak is amenable to field checks of the Pure Running Times on the Illini/Saluki and City of New

¹⁹¹ CN lists all of its suggestions for binding modeling (Ladue/Kuxmann V.S., 65) and then says “[b]y employing such techniques with respect to VIA trains, CN has had great success improving their performance.” Id. at 66. We do not take this to mean CN uses all of the listed suggestions with VIA Rail.

¹⁹² See Exhibit 34, VIA RAIL CANADA, SUMMARY OF THE 2016 – 2020 CORPORATE PLAN AND 2016 OPERATING AND CAPITAL BUDGETS, 15 (2016)(published to the VIA Rail website on or about May 5, 2016).

¹⁹³ “Travelers from Australia and England... are baffled at the inability of VIA Rail to stick to the [*Canadian*’s] schedule, even its lengthened one.” See Exhibit 35, Glenn Cartwright, Op-Ed., *Passenger-Train Service Falling Off the Rails*, VANCOUVER SUN, Aug. 28, 2016.

Orleans routes.¹⁹⁴ Field checks can be completed quickly and inexpensively. Field checks also incorporate real-world conditions – a real train operating over the actual route.¹⁹⁵ Field checks are performed by an Amtrak or host railroad representative, or both, riding in the locomotive cab on one or more real trips and taking detailed notes about actual events and speeds at each location. If the Board decides to order field checks of the PRT on the Illini/Saluki and City of New Orleans routes, the field checks should not delay implementation of a delay based quality payment/penalty system.

Amtrak has used the field check process successfully to evaluate the schedules for Amtrak services on lines of other host railroads. Recent joint field studies conducted by Amtrak with other Class I railroads have generated adjustments to the schedules on various Amtrak services. The field check process is inexpensive, easily understood by Amtrak and the other host railroads, devoid of controversy over modeling assumptions, and can be implemented quickly.

¹⁹⁴ Amtrak also would be willing to conduct field checks with CN of the pure running times for the other Amtrak services over CN. However, if the Board requires the parties to conduct field checks or modeling in conjunction with field checks, these procedures should not delay implementation of the delay-based quality payment and penalty system.

¹⁹⁵ See Exhibit 3, Krueger Dep. 260:10-25 (explaining that the TPC is just a computer simulation that does not replicate all real-world parameters).

[Insert Verification page]

VERIFICATION

I, Jason Maga, verify under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this Rebuttal Verified
Statement.

Executed on September 14, 2017



Jason Maga

LIST OF EXHIBITS

Exhibit 1	Paul Vilter and Jason Maga Resumes
Exhibit 2	Incentives Paid to CN Fiscal Year 2015 - 2017
Exhibit 3	Excerpts from Harald Krueger Deposition, July 7, 2017
Exhibit 4	Frank Malone, Why IC is Single-Tracking, 191 RAILWAY AGE 2, Feb. 1990
Exhibit 5	Paul D. Schneider, The Double-Track Dilemma – Is Single-Tracking a Sound Strategy? TRAINS, July 1991
Exhibit 6	1979 Illinois Central Gulf Railroad Champaign Yard Track Charts
Exhibit 7	1995 Champaign Yard Track Charts
Exhibit 8	[REDACTED]
Exhibit 9	[REDACTED]
Exhibit 10	[REDACTED]
Exhibit 11	[REDACTED]
Exhibit 12	[REDACTED]
Exhibit 13	[REDACTED]
Exhibit 14	[REDACTED]
Exhibit 15	[REDACTED]
Exhibit 16	Excerpt from Scott Kuxmann Deposition, June 7, 2017
Exhibit 17	[REDACTED]

Exhibit 18	Excerpt from Paul Ladue Deposition, June 7, 2017
Exhibit 19	[REDACTED]
Exhibit 20	[REDACTED]
Exhibit 21	[REDACTED]
Exhibit 22	[REDACTED]
Exhibit 23	[REDACTED]
Exhibit 24	[REDACTED]
Exhibit 25	[REDACTED]
Exhibit 26	[REDACTED]
Exhibit 27	Bill Stephens, Leading the Way, TRAINS, Mar. 2017.
Exhibit 28	Amtrak's Proposed Changes to Appendix V of the Current Operating Agreement
Exhibit 29	Amtrak Service Standards Manual (Version 10, effective April 30, 2017), Section K of Chapter 7
Exhibit 30	[REDACTED]
Exhibit 31	Redundant Relief Items
Exhibit 32	Amtrak Proposal to Redistribute Recovery Time for the Illini/Saluki and the City of New Orleans Services
Exhibit 33	[REDACTED]
Exhibit 34	VIA RAIL CANADA, SUMMARY OF THE 2016 – 2020 CORPORATE PLAN AND 2016 OPERATING AND CAPITAL BUDGETS, 15 <i>available at</i> http://www.viarail.ca/sites/all/files/media/pdfs/About_VIA/our-company/corporate-plan/Summary%20of%20the%202016-2020%20Corporate%20Plan.pdf
Exhibit 35	Glenn Cartwright, Op-Ed., <i>Passenger-Train Service Falling Off the Rails</i> , VANCOUVER SUN, Aug. 28, 2016.

[CONTAINS HIGHLY CONFIDENTIAL INFORMATION]

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

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

REPLY VERIFIED STATEMENT

of

Thomas D. Crowley
President

and

Robert D. Mulholland
Senior Vice President

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

On Behalf Of

The National Railroad Passenger Corporation

Date: July 26, 2022

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5	Examples of Baranowski not Considering CN Schedule Adherence
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8	Examples of Idle Time Calculation Inconsistencies – G89971-30
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11	Examples of Duplicate Crew Usage and Rounding of Crew Costs – G89971-30
12	Example of Date Disconnects Between Crews Assigned to Delays

¹ Exhibit Nos. 1 through 4 were included in our Rebuttal Verified Statement filed September 14, 2017.

A. INTRODUCTION

1. We are Thomas D. Crowley and Robert D. Mulholland, the President and a Senior Vice President, respectively, of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. We previously submitted a Rebuttal Verified Statement in Surface Transportation Board (“STB” or “Board”) Docket No. FD 35743, *Application of The National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian Pacific Railway Company* on September 14, 2017 (“Crowley/Mulholland RVS”). A copy of our credentials was included as Exhibit No. 1 and Exhibit No. 2, respectively, to our RVS.

2. We reviewed the Verified Statement of Michael Baranowski (“Baranowski VS”), which was filed by Canadian National Railway Company (“CN”) in this proceeding on May 27, 2022.² We also reviewed the Verified Statements relied upon by Baranowski, including those submitted by Simon Lizotte, Michael Matteucci and Scott Kuxmann, Stephen Peterson, John Summerfield, et. al., Timothy Robinson, and Catherine Whiteman.³

3. We were tasked with evaluating:

² STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Verified Statement of Michael Baranowski, filed May 27, 2022 (“Baranowski VS”).

³ STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Verified Statement of Simon Lizotte, filed May 27, 2022 (“Lizotte VS”). STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Post-Interim Decision Joint Verified Statement of Michael Matteucci and Scott Kuxmann, filed May 27, 2022 (“Matteucci/Kuxmann VS”). STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Verified Statement of Steven R. Peterson, Ph. D., filed May 27, 2022 (“Peterson VS”). STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Joint Verified Statement of John Summerfield, My-Thanh Nguyen-Hung and Craig Zarembka, filed May 27, 2022 (“Summerfield, et. al. VS”). STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Joint Verified Statement of Timothy Robinson, filed May 27, 2022 (“Robinson VS”). STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Joint Verified Statement of Catherine Whiteman, filed May 27, 2022 (“Whiteman VS”).

- a. Baranowski's methodology for identifying delays in December 2019 ("the Testing Period") to freight trains allegedly caused by Amtrak, including his methodology for quantifying the length of those delays;
- b. Baranowski's calculation of additional crew expenses CN allegedly incurred during the Testing Period;
- c. Baranowski's calculation of additional fuel expenses CN allegedly incurred during the Testing Period; and
- d. Baranowski's calculations of additional equipment costs CN allegedly incurred during the Testing Period.

4. Part of our evaluation also included comparing Baranowski's current calculations to the calculations previously performed by Baranowski and Benton Fisher.⁴

5. We did not attempt to restate Baranowski's flawed analysis to reflect corrections to his inputs, assumptions, and procedures. The data provided in support of Baranowski's analysis is insufficient and does not allow for a complete restatement. The data deficiencies include, but are not limited to, the following:

- a. Incomplete Wi-Tronix data⁵ production: (1) Wi-Tronix data related to non-FA delays⁶ that were not concurrent with "FA" delays was not provided; and (2) Wi-Tronix fuel level data was not included in the data in the record;
- b. Insufficient data fields to allow definitive linking between crew data and Service Reliability Strategy ("SRS") delay and event data⁷;

⁴ STB Finance Docket No. 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, Joint Verified Statement of Michael Baranowski and Benton Fisher, filed September 3, 2015 ("Baranowski-Fisher Analysis").

⁵ Wi-Tronix is "a third-party technology widely employed by freight railroads... [which is] CN's primary system for recording and monitoring real-time locomotive operational data... including location, movement, and status of its locomotives." See: Lizotte VS at pp. 1-2.

⁶ According to CN, "FA" coded delays (and only "FA" coded delays) identify delays to freight trains caused by Amtrak.

⁷

[REDACTED]

- c. Absence of data required to determine whether Amtrak trains involved in “FA” delays were operating on schedule, or whether they had been delayed prior to the reported “FA” delays;
- d. Absence of engineering data (e.g., track charts) required to determine whether delayed CN freight trains were longer than available sidings on the routes, which results in reduced operating and dispatch flexibility; and
- e. Absence of information regarding the “baseline” level of delay built into CN freight train schedules, or the process used to quantify and account for that baseline level of delay in developing the schedules.

6. Below we discuss a number of issues that render Baranowski’s analytical framework and the resulting expense estimates invalid.

**B. IDENTIFYING AND
QUANTIFYING DELAYS
ALLEGEDLY DUE TO AMTRAK**

7. In its prior analysis, CN sought to identify delays “caused by” Amtrak by using multiple delay codes and dispatcher comments.

8. Regarding delay codes, the Baranowski-Fisher Analysis used, among others, delays coded by CN as “FP” and “AO.” The problem was neither code directly addressed whether the delay would not have occurred “but for” Amtrak. Indeed, CN dispatchers used the “FP” code for “delays to freight trains caused by passenger trains” *generally* (i.e., not just limited to Amtrak). And, the “AO” was used for “delays caused *to* Amtrak trains.” Essentially, the Baranowski-Fisher Analysis assumed, without justification, that any delay *to* an Amtrak train also involved a freight delay *caused by* Amtrak.

9. Regarding dispatcher comments, the Baranowski-Fisher Analysis assigned Amtrak responsibility for any delay where Amtrak was mentioned *in any capacity*.

10. We previously explained that this data collection methodology was flawed and resulted in overstated and unsupported damages.⁸

11. Nevertheless, Baranowski, despite his claims to the contrary, *continues to overstate* CN's damages due, in part, to his flawed data collection methodology.

**1. Baranowski Speculates About the
Efficacy of CN Data**

12. In 2017, CN implemented a new delay code, "FA," that allegedly allows CN to identify delays *to* freight trains *caused by* Amtrak.⁹ Because CN's SRS system¹⁰ only generates delay records when a train loses a "threshold number of minutes against its schedule," Baranowski claims this threshold results in "Amtrak responsible delays" being "understated." He further claims that his estimate of incremental costs is understated because it excludes "cascading delays that may occur to other freight trains down the line" that would not have occurred "but for that Amtrak-caused direct delay."¹¹

13. Baranowski's confidence in the "FA" code is based entirely on comments contained in the Summerfield, et. al. VS. Baranowski made no attempt to independently corroborate or verify those comments.

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ See, Crowley/Mulholland RVS at pp. 4-11.

⁹ See, Baranowski VS at p. 2.

¹⁰ Defined above in footnote 7.

¹¹ *Id.* at p. 3.

¹² [REDACTED]

[REDACTED]

15. CN did not provide any documentation relating to the efficacy of the “FA” code, so it is not possible for Amtrak to fully evaluate the practices taught to CN employees or the employees’ adherence to the governing standards. Nor does Baranowski mention reviewing any such documents.¹⁴ As such, there is no basis to conclude that Baranowski has conducted any review or audit of the procedures or processes used to develop the data that underpins his analysis. Without examining the procedures and protocols that control the development of the data upon which Baranowski relied in his analysis, he (as well as CN and the Board) can only speculate about the effectiveness of the materials, including how accurately and reliably the “FA” code allows CN to capture delays “caused by” Amtrak.

2. The Number of Delays Assigned to Amtrak is Overstated

16. Baranowski’s argument that the threshold for reporting in SRS results in Amtrak-caused delays being “understated” is baseless. Indeed, CN freight trains could experience delays that are under the SRS reporting threshold due to *any number* of reasons including signal issues (CN’s responsibility) or police holds (third-party responsibility). Because CN does not track these short delays, Baranowski’s statements are simply speculative.

17. Baranowski *overstates* the number of delays he attributes to Amtrak (based on SRS reporting) because of his flawed methodology. For example, Baranowski fails to account for: (a) out-of-slot¹⁵ CN trains; (b) out-of-slot Amtrak trains; and (c) CN trains that are longer than

¹³ [REDACTED]

¹⁴ For example, the alleged efficacy of the “FA” delay code might be demonstrated via tests given to dispatchers, performance evaluations, “spot checks,” and data reflecting the frequency with which supervisors changed the coding originally entered by CN dispatchers, etc.

¹⁵ Defined as trains operating behind their original schedule.

available sidings. For the reasons stated below, Baranowski should have excluded from his analysis any trains falling into these categories.

**a. Delays to Out-of-Slot CN Trains
Should be Excluded**

**i. Baranowski did not Consider CN
Schedule Adherence**

18. Baranowski claims he considers “cascading delays” to have only occurred “but for” an original delay.¹⁶ In other words, any delay that a train incurs will necessarily alter the downstream operations of that train, such that any downstream delay event is a function of all delays that occurred before it along the train’s route. Based on this principle, Baranowski must also agree that a CN freight train meet with an Amtrak train *cannot* be deemed attributable to Amtrak *if* the CN train was not adhering closely to its schedule (i.e., the CN train was “out-of-slot”).¹⁷ In other words, “but for” the CN freight train operating out-of-slot, it would not have met the Amtrak train when and where it did (or perhaps not even at all) and thus fault for the train meet cannot be attributed to Amtrak.

19. CN cannot claim as “incremental,” the costs allegedly incurred when an Amtrak train met a CN train that was not adhering closely to its schedule because the delay was not caused by Amtrak. Rather, it was caused by CN (or some other third-party), neither of which are in Amtrak’s control.

20. [REDACTED]

[REDACTED]

[REDACTED]

¹⁶ See, Baranowski VS at p. 3.

¹⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is quite possible, and even likely, that the CN and Amtrak schedules were established such that the train meets would occur where they would cause the least amount of disruption for both carriers. However, the significant delay to the CN train in Fulton ensured that the eventual meets with the Amtrak trains could not occur in the planned location at the planned time. Through no fault of Amtrak, its train encountered the previously delayed CN train at a location that was inconvenient for both parties. Yet, Baranowski still wrongly claims CN incurred incremental costs from these “FA” delays that should be attributed to Amtrak.¹⁸

21. In short, Baranowski did not consider CN schedule adherence in his analysis. Therefore, despite claims to the contrary, CN’s analysis was not “highly conservative” in calculating incremental costs.¹⁹ Indeed, a truly conservative approach would have eliminated from the analysis conflicts to out-of-slot CN trains, because the meets with Amtrak would not have occurred when and where they did (if they occurred at all) if the CN trains were closely adhering to their schedules.

22. As shown in Figure 1 below, according to the schedule deviation data included in the provided SRS train event data, well over half of the 1,067 “FA” delay events included by

¹⁸ See, Exhibit No. 5.

¹⁹ See, Baranowski VS at p. 1. See also, Peterson at p. 3, ¶ 7.

Baranowski in his analysis involved instances in which the involved CN freight was operating significantly behind schedule.

[REDACTED] 65 percent²⁰ of the “FA” delays included in Baranowski’s analysis occurred when the involved CN train was more than 30 minutes behind schedule when the delay occurred, and for roughly half of those delays,²¹ the CN train was operating more than three (3) hours behind schedule.²²

²⁰ [REDACTED]

²¹ [REDACTED]

²² We took the SRS train event data at face value in our review of the CN analysis. However, CN freight train schedules were not provided *anywhere* in CN’s submission. We understand that CN dispatchers have the ability to make changes to scheduled arrival times *even after* the freight train in question has departed on its route. This

b. Out-of-Slot Amtrak Trains Should be Excluded

23. In addition to excluding out-of-slot CN trains, “FA” delays occurring *after* the Amtrak train involved was itself delayed should also be excluded from the analysis. For example, an Amtrak train may have been delayed earlier in its route by Freight Train Interference (CN responsible) or a police-hold due to an auto accident on a crossing (third-party responsible). In either scenario, the downstream meet that affected CN, for which it now seeks reimbursement, was not caused by Amtrak *but* by the prior delay *to* Amtrak.

24. Exhibit No. 6 is an example of such a situation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is nonsensical. Amtrak should not be held accountable when CN-caused delays result in Amtrak trains running behind schedule and/or on an altered schedule and then encountering other CN trains along their route (cascading delays).

25. There is no evidence that Baranowski analyzed any Amtrak delay data for Amtrak trains that allegedly caused delays to CN freight trains during the Testing Period. He simply failed to consider whether Amtrak trains were operating on schedule when the train meets occurred, and

practice appears to continue today. [REDACTED]

[REDACTED]

Accordingly, without the original CN freight train schedule data, it is not possible for the Board (or CN) to specify, verify and quantify the number of delays that should be *excluded* from the analysis due to train meets that occur when CN freight trains are operating behind schedule.

therefore made no effort to control for situations in which prior delays to Amtrak trains led to downstream (cascading) train meets that interfered with CN freight train operations. This, of course, lacks reason because CN controls all dispatching decisions on its rails. In fact, the starting point of his analysis should be that CN schedules trains to avoid inefficient train meets, and when lengthy delays occur, CN's inability to dispatch trains according to their schedule is the cause. Baranowski's analytical framework shifts CN's responsibility for efficient dispatching to Amtrak, and seeks to impose monetary penalties on Amtrak for CN's own failure to keep Amtrak trains operating on schedule.

26. In short, Baranowski should have excluded meets with out-of-slot Amtrak trains where the Amtrak train had been delayed by CN or third parties. Because the data supporting his methodology lacks information regarding Amtrak schedule adherence, it is impossible to specify, verify and quantify the number of delay events that should be excluded from the analysis.

c. Long CN Trains Should Potentially be Excluded

27. Delays to CN trains longer than the available sidings on a route segment should be excluded from the analysis because the delays occurred due to CN's operational decisions that are completely within its control (and completely outside of Amtrak's control). If CN's trains could be sided in more places, CN dispatchers would have more flexibility to accommodate train meets.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Nonetheless, Baranowski assigned damages "caused by" Amtrak for this train.

Although we raised this issue in our previous verified statement,²⁴ CN has not changed its operational decision to operate longer trains, which is CN's prerogative. However, this decision does not give CN the right to claim that Amtrak is responsible for all resulting delays. CN continues to seek compensation from Amtrak for dispatching inefficiencies resulting from CN's own operational decisions.

28. Indeed, CN, like other railroads, has increased the length of many of its unit, manifest and intermodal trains in order to wring efficiencies out of its operations (saving on the number of locomotives and crews required to move the same number of railcars). However, as trains increase in length, the number of sidings capable of holding them is reduced over certain line segments.²⁵ As there are fewer sidings available to hold long trains, long trains must sometimes stop well down the line to accommodate a train meet, which creates more (and longer) freight delays. Amtrak cannot be forced to compensate CN for its operational decisions regarding the length of its trains relative to the length of its sidings.

29. The supporting information filed by CN does not include any data (e.g., track charts) that would allow for a comparison of train lengths to siding lengths over the subject line segments.

* * *

30. In sum, Baranowski overstates the number of delays for which he assigns Amtrak responsibility because of his flawed methodology. Indeed, Baranowski did not consider or scrutinize: 1) whether, and to what degree, the CN freight train in question was out-of-slot; 2) whether the Amtrak train in question had been previously delayed by CN or a third party; or 3) if the CN train was too long to fit in available sidings. Instead, Baranowski took the simple and

²⁴ See, Crowley/Mulholland RVS at p. 33.

²⁵ For example, an 8,500-foot siding cannot hold a 9,000-foot train.

flawed approach and assigned Amtrak responsibility whenever a CN train experienced an “Amtrak-related” delay. But, without even considering the above-stated factors, it is impossible for Baranowski, CN, or the Board to specify, verify or quantify the number of delay events that occurred because of Amtrak.

C. FLAWS IN DELAY TIME CALCULATION

31. As a threshold matter, Matteucci/Kuxmann claim that:

CN’s freight schedules are designed to allow for a baseline level of delay to CN’s trains due to ‘meets’ with other trains... and meets with Amtrak *contribute disproportionately* to such delays to provide preference to Amtrak...²⁶ (emphasis added).

CN provided no proof to support any of these statements.

32. Specifically, CN provided no detail (or corroborating documents) about CN’s methodology for developing this “baseline level of delay,” the total number of minutes in the baseline, *nor* the amount of the baseline apportioned to Amtrak delays (if any). It also does not explain (nor does it provide corroborating documents on) how it incorporates that baseline into its schedules. Finally, CN provides no proof that Amtrak meets “contribute disproportionately” to such delays.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁶ See, Matteucci/Kuxmann VS at p. 75.

²⁷ A CN train “could have” experienced an “FA” delay if the portion of CN’s system on which it was operating is also used by Amtrak.

²⁸ The counts discussed in this paragraph assume that all of the trains for which CN provided data should have remained in the analysis. In other words, it includes, among other things, out-of-slot CN trains.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED] CN insists Amtrak delays “contribute disproportionately” to the total delays on its system. This suggests either: 1) the baseline level of delay CN allegedly developed is inadequate; and/or 2) CN has not apportioned any part of the baseline to Amtrak delays. Because CN has not provided any documentation on the issue, it is impossible to tell which conclusion to reach.

29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]

33 This number would be even lower if CN excluded trains for the reasons discussed in Section B, above.

1. Baranowski's Calculation of Idle Time

35.

[REDACTED]

36.

[REDACTED]

37.

[REDACTED]

38.

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

35
36
37
38

[REDACTED]

[REDACTED]

41. Peterson explained that:

a reasonable mode of quantification is to include that cost but value it conservatively [using the lower bound of a possible range] if the risk of overcompensation is a major policy concern.³⁹

[REDACTED]

42. [REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

³⁹ See, Peterson VS at ¶ 14.

⁴⁰ [REDACTED]

[REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴¹ This assumes that the CN train was not out-of-slot, that the Amtrak train had not experienced CN or third-party responsible delays before the meet, and that the CN train was not too long to fit into the CN sidings.

⁴² [REDACTED]

[REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

[REDACTED]

46. T [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

[REDACTED]

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

46 [REDACTED]
47 [REDACTED]
48 [REDACTED]

50.

51.

2. Baranowski's Calculation of V-Time

52.

49
50
51
52
53
54

V-Time is "the additional time attributable to the freight train slowing to a stop and then accelerating back to its regular speed as compared to the time that would have elapsed if the train had continued at its regular speed." See, Baranowski VS at p. 2.

[REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. [REDACTED]

⁵⁵ See, Summerfield, et. al. VS at p. 19.

⁵⁶ [REDACTED]

⁵⁷ See, Lizotte VS and Robinson VS.

“representative” trains that were modeled in the analysis are often grossly underpowered.⁶² [REDACTED]

[REDACTED] Even for the trains that did manage to eventually get up to speed while being underpowered, the trains will take longer to accelerate to the target speed *and consume more fuel in the process*.

60. In sum, CN’s attempt to calculate V-Time is unreliable and flawed and results in an overstatement of time that is “due to” Amtrak. The overstated time not only impacts CN’s statement of fuel consumption, but it also impacts other classes of costs, namely crew and equipment-related expenses.

**D. BARANOWSKI’S CALCULATIONS
FOR CREW EXPENSES ARE
FLAWED**

61. CN previously sought reimbursement for multiple components of what it referred to as crew expenses. Specifically, CN sought reimbursement for the following crew expenses: wages (including overtime) for all delay minutes allegedly due to Amtrak, constructive wages, and fringe benefits. Using its previous delay identification and quantification methodology, CN claimed it was owed: [REDACTED] for crew wages for the 18-month time period (approximately [REDACTED] per month); [REDACTED] for constructive allowances (approximately [REDACTED] per month); and [REDACTED] for fringe benefits (approximately [REDACTED] per month).

⁶² See, Lizotte at p. 6. CN itself understands this concept. Indeed, Lizotte acknowledged: “Trains must be adequately powered – have sufficient locomotive horsepower to operate safely and serve freight customers efficiently given the train consist and weight being pulled, and the terrain and planned time between stations.”

⁶³ [REDACTED]

⁶⁴ [REDACTED]

62. However, CN now forgoes its claim for constructive allowances and fringe benefits and only seeks reimbursement for additional wages allegedly incurred because of Amtrak delays (i.e., overtime payments).

63. Despite claiming it used an “understated methodology” for identifying and quantifying Amtrak-caused delays, CN now seeks [REDACTED] (based on its analysis of December 2019 data) for overtime allegedly paid to its crew members because of Amtrak. This is an *increase* of approximately 23% ([REDACTED]) from the per month calculation detailed in the Baranowski-Fisher Analysis.

64. Baranowski calculated overtime expenses allegedly due to Amtrak in the following manner. Baranowski attempted to match CN payroll data to SRS train event and delay data in an effort to identify employees working the trains at the locations where the “FA” delays occurred who earned overtime pay on the date in question.⁶⁵ He then “quantified the overtime attributable to Amtrak by using the lesser of (1) the minutes of delay attributable to Amtrak . . . and (2) the minutes of overtime reflected in the payroll records.”⁶⁶

65. This methodology is fundamentally flawed for two (2) reasons. First, it is based on Baranowski’s overstated delay time calculations. But, more importantly, Baranowski applies the total overtime to “FA” delays, regardless of any other delays the crew might have encountered during the shift. In other words, Baranowski does not treat any other delays (i.e., non-Amtrak delays) as having contributed to that crew member working beyond his or her assigned shift (and earning overtime pay).

66. The example Baranowski provides illustrates the problem:

[I]f the crewmember was delayed for 60 minutes due to Amtrak, and thereafter earned 30 minutes of overtime pay, I attributed to Amtrak his

⁶⁵ See, Baranowski VS at pp. 10-11.

⁶⁶ *Id.* at pp. 11-12.

full 30 minutes of overtime pay. . . If, however, the crew member was delayed for 30 minutes due to Amtrak and thereafter earned 60 minutes of overtime pay, I attributed only 30 minutes of overtime pay to Amtrak.⁶⁷

67. Baranowski applies this methodology despite knowing: (a) [REDACTED]
[REDACTED] (b) CN schedules account for a baseline level of delays; and (c) SRS does not capture all delays because of the thresholds required to trigger an SRS delay event.

68. Because SRS only captures delay events that are over a certain threshold, unreported delay events caused by CN or third-parties would not be tracked *but could* contribute to a crew member working overtime. Baranowski ignores this.

69. More importantly, Baranowski's methodology ignores CN's claim that its schedules account for some baseline level of delays. If this were true, it makes no logical sense to assign Amtrak-caused delays minute-for minute responsibility for a CN crew member's overtime payment, [REDACTED]

[REDACTED] Assigning Amtrak minute-for minute responsibility conflicts with Peterson's framework, which would require the use of a lower bound of a possible range. As we discussed above, in our description of the problems associated with Baranowski's development of delay time, this would require allocating the total crew overtime payment to all delays the crew encountered, not to the "FA" delays first.

70. In attempting to lend credibility to Baranowski's illogical methodology, Peterson contradicts his own call for applying a "conservative" and "reasonable" approach. Indeed, Peterson advises that if an "FA" delay is two (2) hours long, and the crew working that shift was

⁶⁷ *Id.* at p. 12.

⁶⁸ [REDACTED]

paid one hour of overtime, the “one hour of overtime for each train crew member is unambiguously an incremental expenditure due to the Amtrak-related delay.”⁶⁹ This is nonsensical. CN incurred overtime expenses because of everything that happened during the shift, i.e., *all delays*, not just the delay(s) attributed to Amtrak.

71. Under a truly “reasonable” and “conservative” approach, the total overtime paid to a crew member should be allocated evenly based on all delays encountered by a given crew, *not just to “FA” delays first*. For example, assume a crew member was paid for 28 minutes of overtime. During his or her shift, the train experienced a 30 minute “FA” delay and a 10 minute non-FA delay. A conservative approach would assign Amtrak responsibility for 21 of those minutes.⁷⁰

72. But, Baranowski did not attempt to quantify non-FA delays the crew experienced. In fact, CN did not provide the data necessary to perform the calculations (Wi-Tronix data/playbacks) for non-FA delays that were not concurrent with “FA” delays. Therefore, a more reasonable application, assigning responsibility for overtime based on the proportion of total delay minutes, cannot be made using the Baranowski framework with the data CN provided.

73. There are other significant flaws with Baranowski’s methodology for calculating overtime costs and assigning them to Amtrak.

74. First, Baranowski failed to establish a control group based on crews (and trains) that *did not* encounter “FA” delays to see whether those crews incurred overtime payments at a different rate than the crews that *did* encounter “FA” delays. If crews that do not encounter “FA” delays accrue similar overtime payments to crews that do, the premise of CN’s argument, that “FA” delays are extraordinary or incurred disproportionately “due to” Amtrak, is false. But,

⁶⁹ See, Peterson VS at ¶ 26.

⁷⁰ $30 \text{ “FA” minutes} \div 40 \text{ total SRS delay minutes} \times 28 \text{ total overtime minutes} = 21 \text{ minutes attributed to Amtrak.}$

Baranowski did not perform any analysis regarding overtime paid to crew members operating trains that did not experience “FA” delays. In fact, CN has not even provided the data required to perform such an analysis.

75. Second, in some instances Baranowski “double counted” crew expenses. Specifically, he sometimes applied the entire overtime payment to *separate* “FA” delays encountered by the same crew. For example, assume a crew member was paid for 28 minutes of overtime. During his or her shift, the train on which the crew member worked experienced two (2) “FA” delays: one delay for 30 minutes and the other for 60 minutes. We found instances where Baranowski applied the full overtime payment to *both* delays the crew encountered, resulting in Baranowski assigning *twice* the overtime payment than was actually paid by CN, and sometimes three (3) times, as shown in Exhibit No. 11. Double counting amplifies the negative effects caused by Baranowski’s failure to consider non-FA delays as contributing to overtime.

76. Third, Baranowski’s approach resulted in erroneously linking overtime payments for the wrong crew to the subject “FA” delay. As background, CN crews (train conductor and engineer) operate within districts (the locations where crew changes occur), even though the freight train on which they work will travel longer distances. In sum, the same crew members generally do not operate the train for its entire trip.

77. Our review revealed: (a) instances where overtime earned by one crew was applied to “FA” delays encountered by a different crew;⁷¹ and (b) instances where crew members who earned overtime payments were not even working on the train that experienced an “FA” delay, but instead were working on a separate train.⁷²

⁷¹ See, Exhibit No. 12, page 1.

⁷² See, Exhibit No. 12, page 2.

78. Baranowski also introduced an error due to unnecessarily rounding crew overtime to the nearest tenth of an hour. As shown in Exhibit No. 11, the crew in question was paid a total of [REDACTED] in overtime ([REDACTED] for the Engineer plus [REDACTED] for the conductor). This equates to 40 minutes of overtime, or 0.667 hours based on the pay rates of [REDACTED] and [REDACTED] respectively.⁷³ However, Baranowski rounded this to 0.7 hours, and attributed [REDACTED] in overtime to this crew. Baranowski's methodology conjures roughly an additional [REDACTED] that was never actually paid to this crew, and attributes it to Amtrak. As a result, Baranowski's analysis does not reflect the actual overtime costs incurred by CN. Worse, in this particular example, Baranowski applied this same overtime payment to three (3) separate "FA" delays. As a result, CN paid its crew [REDACTED] in overtime, but Baranowski attributes [REDACTED] to Amtrak due to triple application, coupled with erroneous rounding.

79. In addition, Baranowski failed to consider instances in which a crew may have worked one train in one direction, then another train in the opposite direction during its shift. For example, many crews that operate line-haul trains report the same on-duty and off-duty locations in the crew data.⁷⁴ If an "FA" delay was encountered on one train during the first part of the shift, and then the crew worked a different train on the second part of the shift, and the crew accrued overtime as a result of its full shift, Baranowski attributed that overtime to the first train (with an "FA" delay) without regard for what the crew may have encountered on its return trip.

80. In short, Baranowski's flawed methodology results in his calculations *overstating* the crew expenses CN incurred due to Amtrak. And, because CN withheld the data necessary to positively link the crew data to the SRS delay data, the appropriate amount of crew expenses to assign Amtrak, if any, cannot be specified, verified or quantified.

⁷³ [REDACTED]

⁷⁴ See, for example, Exhibit No. 11, figure 1.

E. BARANOWSKI'S CALCULATION OF FUEL EXPENSES IS FLAWED

81. In the Baranowski-Fisher Analysis, CN previously sought recovery for fuel elements based on apportioning Amtrak responsibility for start-stop consumption *and* idle consumption *for all delays*. In other words, CN included multi-cause delays, but only assigned Amtrak a portion of responsibility for same. Based on that analysis, CN sought to recover [REDACTED] from Amtrak, which is approximately [REDACTED] per month during the 18-month analysis period.

82. Now, CN no longer seeks reimbursement for start-stop fuel consumption for multi-cause delays. Baranowski also uses a lower consumption rate than that used in the Baranowski-Fisher Analysis. Using this new methodology, Baranowski claims CN incurred [REDACTED] in fuel expenses “due to Amtrak” during the one month Testing Period.

83. We previously criticized the Baranowski-Fisher Analysis for failing to acknowledge Auto Engine Start Stop (“AESS”) technology equipped locomotives. AESS automatically shuts an idle diesel engine when an equipped locomotive stops.⁷⁵ In 2013, approximately 40 percent of CN’s locomotive fleet was equipped with AESS technology.⁷⁶ Now, CN likely has more locomotives equipped with AESS. At the very least, CN has purchased additional locomotives with other fuel saving technologies.⁷⁷

84. Although Baranowski *does not even mention* AESS, or similar fuel saving technology, in his current analysis, he does implicitly take it into consideration with respect to his

⁷⁵ See, <https://tmvcontrol.com/products/aess/>.

⁷⁶ CN announced publicly that up to 800 of its locomotives would be equipped with this technology by 2013. See, http://www.cn.ca/en/news/2011/06/media_news_fuel_efficiency_program_20110622. CN’s 2016 Investor Fact Book shows that CN owned 2,029 Diesel locomotives in 2013. See workpaper “2016-IFB-Update-en.pdf” (800 ÷ 2029) = 40%.

⁷⁷ For example, in 2020 CN announced that it had purchased 260 locomotives equipped with fuel-efficiency technologies made by General Electric. See, <https://www.cn.ca/en/stories/20200807-fuel-efficiency/>.

idle time calculation when Wi-Tronix data is available. However, this is not properly considered in the TPC analysis conducted by Robinson.

85. We also criticized the Baranowski-Fisher Analysis for its reliance on modeling. Specifically, the Baranowski-Fisher Analysis relied on a fuel simulation study conducted by CN using its proprietary TPC software. But CN failed to explain why it relied on a fuel simulation study rather than analyzing *actual fuel consumption* data from CN locomotives. Data collected in the field is more reliable than model outputs, because data collected in the field reflects real world operations.

86. Despite being familiar with this criticism, Baranowski continues to rely on modeling to quantify the alleged fuel consumption of CN's locomotives.⁷⁸

1. Wi-Tronix Data is More Reliable than Modeling

87. CN did not need to rely on TPC modeling to quantify fuel consumption for trains powered by locomotives equipped with Wi-Tronix. In the normal course of business CN “uses the Wi-Tronix data system to monitor the efficacy of [its] fuel optimization efforts” because “the data provided by [Wi-Tronix] is detailed, specific and reliable.”⁷⁹ Indeed, “[t]he Wi-PU is also connected to the fuel sensor, which provides an approximate reading of the fuel levels for the locomotive.”⁸⁰ Wi-Tronix data provides information on fuel consumption in ten-gallon increments.⁸¹ CN did not provide the fuel level data from Wi-Tronix as part of its submission. Without that data, it is impossible to verify Baranowski's fuel expense calculations.

⁷⁸ See, Baranowski VS at pp. 7-8.

⁷⁹ See, Lizotte VS at pp.1, 4.

⁸⁰ *Id.* at p. 2.

⁸¹ *Id.* at p. 5, n. 4.

88. Despite Wi-Tronix data being “detailed, specific, and reliable,” CN chose to rely on TPC modeling to “quantify” fuel consumption of its locomotives. This again, appears to be a made-for-litigation strategy. Indeed, CN fails to demonstrate, in fact it does not even claim, that it uses TPC modeling, in the ordinary course of business, to obtain “detailed, specific and reliable” information about its trains’ fuel optimization. Nor does it demonstrate (or claim) that it uses TPC to validate Wi-Tronix data.

89. Nevertheless, Lizotte claims modeling is appropriate because Wi-Tronix only reports fuel levels in ten-gallon estimates.⁸² CN, then contends, without justification, that calculations based on modeling are “more accurate and reliable than relying directly on Wi-Tronix for fuel estimates.”⁸³

90. This statement is false. While CN’s method for calculating fuel consumption is certainly more granular, it is not more accurate. The Wi-Tronix data is from the *actual* locomotives used to move CN trains. The calculations performed by Baranowski and Robinson are based on computer models of *surrogate* trains, which are often grossly underpowered and pulling different consists over hypothetical rail segments with different physical characteristics than those in the real world. The method based on data from the trains actually operating on CN’s system (i.e., Wi-Tronix data) is clearly more accurate than the method based on surrogate trains operating on hypothetical tracks (i.e., modeling).

91. The notion that the 10-gallon increments in the Wi-Tronix data are not granular enough to measure consumption associated with an idle event that may consume less than 10 gallons is also flawed in this setting. Because there are so many observations in this analysis, using the Wi-Tronix data would result in an accurate depiction of fuel consumption overall. For

⁸² *Id.*

⁸³ *Id.*

example, assume an idle event consumes two (2) gallons of fuel, and there are 1,000 observations. In many observations, the Wi-Tronix data would appear to show no fuel was consumed (e.g., 200+ gallons before the event, and 200+ gallons after the event). For those particular observations, it would seem that the Wi-Tronix data would understate actual consumption (two (2) gallons actual burn vs. zero gallons reported burn). However, for many other observations the Wi-Tronix data would appear to show excessive fuel consumption (e.g., 200+ gallons before the event, and 190+ gallons after the event). For those particular observations, it would seem that the Wi-Tronix data would overstate actual consumption (two (2) gallons actual burn vs. 10 gallons reported burn). However, due to the scale of the analysis, the aggregate over and under reporting would give an accurate picture of actual fuel burn. There is simply no reason to rely on modeling when actual fuel consumption data is available and used by CN in the normal course of business (but was not provided here).

2. Robinson's "Basic Principles" are Flawed

92. According to Robinson, his "simple and intuitive" analysis relies on "basic principles" including:

when a train is stopped and then re-accelerates back to its regular speed, its locomotives consume more fuel than if the train had maintained steady speed... if additional locomotives are operating, or if they are pulling a greater load, or if the train is traveling at higher speed, Stop-Start Fuel Burn will tend to be higher.⁸⁴

93. While Robinson is generally correct that a heavier or faster train will burn more fuel than a lighter or slower train (holding all else equal), *it is not necessarily true* that more locomotives will consume more fuel than fewer locomotives. Fuel burn depends on the train weight and consist (and terrain and speed).

⁸⁴ See, Robinson VS at p. 2.

94. As discussed above, the modeling used trains that were artificially capped to two (2) locomotives. CN implemented this cap despite the fact that it routinely operates trains *with more than two (2) locomotives*.⁸⁵ This results in the modeled trains being underpowered when in the real world they are not. Therefore, the modeling is unreliable and the calculations flowing from it are nothing more than speculative, let alone verifiable or specific.

95. The locomotive cap is also a critical flaw in Robinson's analysis, because underpowered trains are inefficient, and generally burn *more fuel* than adequately powered trains, *even if the underpowered train has fewer locomotives operating*. As a result, Robinson's modeling *overstates* the amount of fuel consumption that is assigned to Amtrak.

96. Robinson also espouses the "principle" that "the more locomotives that are in operation consuming fuel, the more fuel will tend to be consumed, although the number of locomotives must be considered in conjunction with the trailing tonnage and train length."⁸⁶

97. This time, Robinson gets it half-right. There is certainly a relationship between trailing tonnage and train length.⁸⁷ But the first part of his statement is simply not true. As explained above, there are many operational situations in which more locomotive power will move a particular train more efficiently (and burn less fuel) than less locomotive power.

98. Robinson also claims that: "CN (like other freight railroads) sometimes includes inactive locomotives on trains."⁸⁸ While this *is* true, the statement is misleading. Inactive

⁸⁵ Locomotive horsepower and type – not strictly the number of locomotives – are the important metrics with respect to determining efficiency. However, assuming the locomotives being evaluated are all comparable units, then for long, heavy trains, three (3) locomotives may be able to get the train up to speed quickly and efficiently, while two (2) (or one) must run at full throttle for extended periods over long distances and still may not get the job done – as borne out in Robinson's analysis. But, more importantly, the two (2) locomotives will burn more fuel as they struggle to move the weight (when compared to the fuel burned by three (3) locomotives).

⁸⁶ See, Robinson VS at p. 4.

⁸⁷ Of course, in light of the cap on locomotives, Robinson did not give this adequate consideration. His failure to do so is a critical flaw in his methodology.

⁸⁸ See, Robinson VS at p. 5.

locomotives remain inactive when the train is stopped, moving at a slow speed, or when the locomotives are not needed because the train is already back up to speed, i.e., after all of the available power was used to get there. *However, they are active* when the freight train is accelerating from a dead stop under a heavy load.⁸⁹

99. Finally, Robinson acknowledges that “the greater the trailing tonnage, the more fuel will tend to be consumed.”⁹⁰ This is true, especially when the train is so underpowered that it cannot even get up to speed. But this reveals another flaw in Robinson’s methodology. [REDACTED]

Yet, Robinson insists his model locomotive consists were representative of real world observations.

100. For the reasons stated above, Robinson’s modeling is based on flawed principles and assumptions that are divorced from real world observations. Therefore, it is not reliable or verifiable. Accordingly, the Board should reject it completely.

3. Other Problems with Robinson’s Modeling

101. Robinson used TPC modeling to simulate fuel consumption by running each of the 51 trains in two (2) scenarios over a 125-mile piece of track with 0% grade and no curves. One involved the train traveling over the 125 miles without stopping; the other involved the train stopping at Mile 25 and then reaccelerating and continuing across the track. Robinson also lauds

⁸⁹ The practice of using power selectively to save fuel is well established in the industry. When trains are stationary, units are shut down because they are not needed (as demonstrated by the Wi-Tronix data). And, when terrain and consist allows it (for example a unit train traversing a long stretch of declining slope or a manifest train operating over a segment with a small number of cars between yards), select units may be shut down while the train is running because the power is not needed. Conversely, when trains encounter significant inclines or are long and heavy, and in particular when they are getting up to speed after a stop, more units are operative.

⁹⁰ See, Robinson VS at p. 5.

⁹¹ [REDACTED]

his analysis for “understating” fuel consumption because his model assumed trains were stopped via air-braking as opposed to dynamic braking.⁹²

102. These statements are speculative because they are based on modeling *and not* real world observations.

103. Stopping distances (and the associated fuel burn) vary depending on track conditions and trailing weight. Indeed, a train can stop more quickly on an incline, and accelerate more quickly on a decline. While level portions of track *may* be representative of many CN sidings, Robinson failed to demonstrate that the 761 trains were always delayed on sidings with zero grade.

104. Similarly, track conditions help inform an engineer’s decision on *how* to brake. In that regard, the engineer can brake by using dynamic brakes, air brakes or a combination of the two.

105. Finally, Robinson’s statement about understating fuel consumption, to the extent accurate, is irrelevant. In that regard, CN cannot demonstrate it incurred any expenses as a result of fuel consumption following Amtrak “caused” delays.

106. Freight carriers, including CN, typically apply fuel surcharges to freight traffic. These are theoretically calibrated to make the carrier whole based on its average operations, including start-stop events related to train meets. In other words, shippers have already paid CN for all fuel related expenses CN incurred. Therefore, CN would be recovering these costs again from Amtrak, under the guise of incremental costs, which would result in a windfall to CN.

107. Without analyzing all of CN’s pricing authorities⁹³ governing the shipment of the goods moving on the delayed CN trains, for example, to determine whether fuel surcharges apply,

⁹² See, Robinson VS at p. 8, n. 6.

⁹³ Pricing authorities were not provided in support of CN’s filing.

and the basis by which CN calculated the rates and surcharges applicable to those shipments, neither Baranowski nor Robinson has any basis to say that CN incurred *any* incremental fuel-related damages due to Amtrak.

F. BARANOWSKI'S FLAWED CALCULATION OF LOCOMOTIVE EXPENSES

108. In the Baranowski-Fisher Analysis, CN sought reimbursement for locomotive ownership expenses and horsepower equalization rates. Based on this methodology, CN claimed it was due [REDACTED] during the 18-month observation period (or approximately [REDACTED] per month).

109. Now, CN claims it is *only* seeking reimbursement based on horsepower hour (“HPH”) locomotive equalization rates. CN removed its claim for ownership expenses. Still, CN seeks [REDACTED] (i.e., [REDACTED] less than what it previously sought) for the locomotive costs it allegedly incurred during the Testing Period. This amount is comprised of two (2) elements: (1) CN owned locomotives; and (2) Foreign owned locomotives.

1. CN Owned Locomotives

110. CN’s claim is entirely speculative. Indeed, the documentation provided by CN demonstrates that CN incurred *no actual expenses* relating to its equipment. Nevertheless, CN assigns “value” to its equipment *in lieu of an expense*.⁹⁴ This is contrary to the STB directive that the expenses be “specific, verifiable, and quantifiable.” It is also contrary to the STB’s interim decision which foreclosed on CN’s ability to recover opportunity costs.

111. The “value”⁹⁵ CN claims is based on a calculation that is meant to mirror the “terms railroads have negotiated on a bilateral basis for the use of each other’s equipment [which] is

⁹⁴ See, Peterson VS at ¶ 35.

⁹⁵ CN also appears to overvalue its locomotives. [REDACTED]

plainly a direct incremental cost incurred by CN.”⁹⁶ In plain terms, CN seeks to impose terms of a bilateral locomotive ownership agreement with Amtrak where none exists. Indeed, Peterson explains:

[a]s with foreign locomotives, a sound and reliable way to quantify the value of a lost hour for a delayed asset is by using the hourly rate applicable to that specific asset under the arm’s-length agreements negotiated between the railroads.⁹⁷

112. Furthermore, a large portion of CN’s locomotive operating expenses is covered by the fuel component in its contracts. So, CN has already been largely reimbursed for its locomotive operating expenses.

113. Moreover, CN’s locomotive ownership expenses *do not* change when its locomotives are idle. At best, CN’s “expenses” are, in reality, estimated opportunity costs, which the STB explicitly rejected as an incremental cost.

114. To the extent these equipment costs may be valid, which they are not, the alleged expenses are overstated because they are based on a flawed assumption that CN’s locomotive utilization rate is 100%, and any incremental delay will force it to procure additional locomotives and incur additional ownership expenses.

115. As we previously stated, Baranowski’s “estimate of additional locomotive costs is based on the false premise that CN’s locomotive fleet is fully utilized at all times,” and the assumption that “CN lacks the ability to reposition locomotive power as needed to handle delays and other operational challenges inherent in the railroad industry as a result of routine ebbs and flows in traffic.”⁹⁸

⁹⁶ See, Peterson VS at ¶ 34.

⁹⁷ *Id.* at ¶ 35.

⁹⁸ See, Crowley/Mulholland RVS at p. 26.

116. No Class I railroad operates at (or even close to) 100 percent locomotive utilization. Railroad locomotive utilization rates range from eight (8) to 62 percent and are typically in the 25 percent to 35 percent range.⁹⁹ All railroads, including CN, structure their locomotive pools to account for efficient asset management, including accommodating down time, mechanical failures and operational delays.¹⁰⁰ Furthermore, nearly all locomotives are interchangeable and CN owns hundreds of locomotives in a variety of models.¹⁰¹

117. CN provided no evidence regarding its locomotive utilization rate. If CN's locomotive utilization rate is on par with the industry, Baranowski's calculations are overstated because they "include locomotive operating, lease rental, and depreciation expenses"¹⁰² that CN incurs regardless of Amtrak delays.

118. For the foregoing reasons, CN's expenses for its own locomotives should be rejected because they are speculative and cannot be verified, quantified or specified.

2. Foreign Locomotives

119. The second portion of CN's equipment expenses relates to HPH agreements between CN and foreign railroads. While these can be properly classified as a direct incremental cost incurred by CN, and not a "value" in lieu of an actual expense, they are speculative nonetheless.

120. Baranowski speculates that Amtrak delays caused CN to make HPH payments to foreign railroads. While CN provided agreements with other Class-I railroads, it did not provide any evidence that any HPH payments *were actually made*. If no HPH payment was made by CN

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at p. 27.

¹⁰² *See*, Baranowski VS at p. 17.

to the foreign railroad for the period in which the delay occurred (i.e., week, month, etc.) then no expense was actually incurred by CN.¹⁰³

121. For CN to attempt to claim this alleged expense as an incremental cost, CN would have to provide evidence that: (a) a demand for a locomotive was made; (b) CN was unable to provide a locomotive, in-kind; (c) CN's inability to provide a locomotive, in-kind, was solely due to an Amtrak delay; and (d) that an HPH payment was actually made by CN as a result. CN has not provided evidence to support any of these statements.

122. To the extent CN actually incurred foreign locomotive expenses, the amount assigned to Amtrak is overstated.

123. CN only treats delays "caused by" Amtrak as contributing to this category of expenses. In other words, assuming payments were made by CN based on the HPH agreements, it would be making those payments based on the inability to provide, in-kind, a locomotive to another Class-I railroad. But, the inability to return any given locomotive would be based on *all delays* the locomotive experienced on its route, including delays caused by CN and third-parties. Under a methodology utilizing this approach, Amtrak would only be responsible for the portion of delays it "caused" compared to the overall delays the locomotive experienced.

124. For the foregoing reasons, CN's claim for foreign locomotive expenses should be rejected as the expenses cannot be verified, quantified or specified.

¹⁰³ Peterson claims the cost was "tracked." However, a payment may not have been made by CN because the net amount of equipment use may well have led to CN being paid by the foreign carrier. The provided data does not allow analysis to determine net payments between CN and foreign carriers.

**G. BARANOWSKI'S FLAWED
CALCULATION OF CAR EXPENSE
ELEMENTS**

125. In its previous analysis, CN argued that it incurred incremental costs in the form of car expenses. Using hourly car-hire rates, CN calculated that CN had incurred [REDACTED] in damages over the 18-month analysis period (or [REDACTED] per month).¹⁰⁴ Baranowski relies on the same methodology now to argue CN incurred [REDACTED] during the one month Testing Period.

126. The same flaws in CN's locomotive analysis are present in the car cost analysis.

127. Regarding CN owned cars, CN incurs no incremental ownership expenses when its cars are delayed. Nevertheless, Baranowski assigns "value" for same in lieu of an expense based on CN's "car hire" agreements with other Class-I railroads. This is counter to the STB directive that expenses must be "specific verifiable and quantifiable." Also, it clearly represents an opportunity cost for CN.

128. Furthermore, Baranowski overstates the "value" of CN owned freight cars. Without justification, Baranowski valued CN freight cars at a rate *three (3) times higher* than the one used for foreign cars. Baranowski provides no explanation for this discrepancy.

129. CN's methodology also assumes that it utilizes its freight cars at 100%. There is no basis for that assumption.

130. For foreign owned cars, CN has not demonstrated that: (a) a demand for a car was made subject to a "car hire" agreement; (b) CN was unable to provide a car, in-kind; (c) CN's inability to provide a car, in-kind, was solely due to an Amtrak delay; and (d) a payment was actually made by CN as a result.

¹⁰⁴ [REDACTED]

131. Even assuming CN could prove any of those statements, Baranowski's methodology overstates Amtrak's responsibility. Like his methodology for calculating locomotive "expenses," Baranowski treats only Amtrak delay time as contributing to CN's inability to provide in-kind, a car. CN's inability to do so is based on *all delays* not just Amtrak delays

H. DATA COLLECTION

132. The Testing Period utilized by Baranowski is significantly shorter than that previously used in the Baranowski-Fisher Analysis. Specifically, the Baranowski-Fisher Analysis included collecting and analyzing data over a period of 18 months, specifically, from August 1, 2013, to January 31, 2015.¹⁰⁵ Now Baranowski analyzes data drawn from only *one single month*.¹⁰⁶

133. Baranowski, however, made no attempt to determine if the data collected during that month, and the resulting calculations, was representative of the data CN collects in any given month. And, while Baranowski and CN acknowledge that CN's claimed incremental costs need to be calculated on a month-by-month basis using the specific data collected during each month (i.e., they cannot extrapolate their calculations), Baranowski *is* claiming his methodology, which uses data from a single month, permits CN to specify, quantify and verify the alleged costs for which CN now seeks reimbursement.

134. It is not possible to test whether or not CN selected the abbreviated Testing Period to make its alleged incremental costs appear lower than they would have otherwise been if CN had selected another month (or used a wider testing period).

¹⁰⁵ See, Baranowski/Fisher OVS at p. 2.

¹⁰⁶ See, Baranowski VS at p. 1.

I. CONCLUSIONS

135. CN acknowledges that its “freight schedules are designed to allow for a baseline level of delay to CN’s trains due to “meets” with other trains.”¹⁰⁷ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Therefore, CN’s claim that “meets with Amtrak trains contribute disproportionately to such delays,”¹⁰⁹ is clearly false.

136. CN’s calculation of incremental expenses it attributes to Amtrak delays relies on theoretical and mechanical errors and should be rejected. Following the first round of evidence in this proceeding, CN developed a special “FA” delay code to better identify delays it attributes to Amtrak trains. CN also developed special instruction and training materials to guide its’ dispatchers use of this code in the field, most of which were not provided to Amtrak or the Board.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

137. [REDACTED]
[REDACTED]
[REDACTED]

¹⁰⁷ See, Matteucci/Kuxmann VS at p. 75.

¹⁰⁸ [REDACTED]

¹⁰⁹ See, Matteucci/Kuxmann VS at p. 75.

¹¹⁰ [REDACTED]

[REDACTED]

[REDACTED]

138. CN uses Wi-Tronix data in the normal course of business to track and monitor locomotive fuel consumption. However, in this made-for-litigation analysis, CN withheld the Wi-Tronix fuel consumption data from the record, and instead relied on a simulation to develop estimates of fuel consumption in a theoretical world that is not reflective of actual train operations (underpowered consists) or infrastructure (long stretch of single track with no curves or grade).

139. CN's attempts to associate crews that earned overtime with the "FA" delays that the crews encountered during their shift is flawed for several reasons. Most notably, CN fails to attribute any crew overtime with any non-FA delays the crew encountered during its shift. If a crew encountered four (4) hours of delay on its shift, and 30 minutes of that delay time was attributed to Amtrak, and the crew earned 30 minutes of overtime, CN claims that the overtime is entirely attributed to the Amtrak delay that accounted for only one eighth of the delay the crew encountered. In addition, Baranowski's methodology for associating a crew with the FA delays over the route segment the crew worked produces erroneous results. This is because the data CN entered in the record does not contain adequate data fields to allow for definitive linking of the crew wage data to the SRS event and delay data. It is possible (and even likely) that the link can be definitively made using the full systems CN has at its disposal in the normal course of business, but the CN data provided to Amtrak is deficient.

140. The lion's share of the equipment-related expenses that CN claims it incurs due to Amtrak caused delays do not reflect the actual expenses CN incurs. CN witness Peterson explicitly states that rather than actual incremental expenses, these estimates reflect an attempt to "quantify the value of a lost hour for a delayed asset."¹¹² This is clearly an opportunity cost, which the Board has ruled unequivocally should not be included in a statement of incremental expenses.

[The remainder of this page is intentionally left blank.]

¹¹² See, Peterson VS at p. 15, paragraph 35.

VERIFICATIONS

I, Thomas D. Crowley, verify under penalty of perjury that I have read this Reply Verified Statement on behalf of the National Railroad Passenger Corporation, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Thomas D. Crowley

Executed on 7/26/22

I, Robert D. Mulholland, verify under penalty of perjury that I have read this Reply Verified Statement on behalf of the National Railroad Passenger Corporation, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Robert D. Mulholland

Executed on 7/26/2022

EXHIBIT 5

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 6

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 7

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 8

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 9

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 10

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 11

[HIGHLY CONFIDENTIAL -
REDACTED]

EXHIBIT 12

[HIGHLY CONFIDENTIAL -
REDACTED]

CERTIFICATE OF SERVICE

I, Jerry A. Cuomo, declare under penalty of perjury that the foregoing is true and correct.

Pursuant to 49 § 1104.12, I hereby certify that on the 26th day of July, 2022 I have caused to be served a copy of the foregoing Reply Brief of National Railroad Passenger Corp. in Response to Opening Submission of Canadian National Railway Company and supporting Verified Statements and exhibits, upon all parties of record via electronic mail.

Executed on: July 26, 2022

By: /s/ Jerry A. Cuomo
Jerry A. Cuomo