

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42175

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

**UNION PACIFIC RAILROAD COMPANY'S REQUEST
FOR EXTENSION OF TIME TO RESPOND TO AMTRAK**

 GRANTED Office of Proceedings	DECISION ID NO.: <u>51542</u>
	DECIDED DATE: <u>12/21/2022</u>
	SERVED DATE: <u>12/21/2022</u>
	APPROVED: <u></u> Acting Director
	☒ Extended to 01/27/2023

CRAIG V. RICHARDSON
JAMES B. BOLES
JOSEPHINE JORDAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179
(402) 544-4554

MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

ALI MOJIBI
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
(424) 332-4800

Attorneys for Union Pacific Railroad Company

December 19, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

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

**UNION PACIFIC RAILROAD COMPANY'S REQUEST
FOR EXTENSION OF TIME TO RESPOND TO AMTRAK**

On December 8, 2022, National Railroad Passenger Corporation ("Amtrak") filed a "Complaint and Petition" invoking the Board's authority pursuant to Section 213 of the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") (codified at 49 U.S.C. § 24308(f)) to initiate an investigation into the customer on-time performance of Amtrak's Sunset Limited Service and award Amtrak damages and other relief. At the same time, Amtrak submitted a "Proposed Procedures and Framework" for the Board to follow in this proceeding. Amtrak alleges that Union Pacific Railroad Company ("UP") is largely responsible for the performance of the Sunset Limited Trains and suggests the Board's investigation should focus primarily on UP.

The Board's Rules of Practice do not specifically provide for the pleadings filed by Amtrak or establish a clear deadline for interested parties to file responses. The Board's rules give parties 20 days to file a reply addressed to any pleading when a more specific rule is not provided. *See* 49 C.F.R. § 1104.13(a). If a 20-day rule applies here, then any responses would be due by December 28, 2022. If a 20-day rule applies, then for the reasons set forth below, UP respectfully requests a 30-day extension of the due date to January 30, 2023.

UP's counsel have discussed this request with Amtrak's counsel, who authorized UP to say: "Amtrak defers to the Board as to how the Board wishes to proceed with this investigation under Section 213. If the Board does expect to receive filings in response to Amtrak's December 8, 2022 filings, Amtrak does not object to the extension sought."

UP's counsel have also discussed this request with counsel for the other railroads referenced in Amtrak's pleadings—that is, BNSF, CN, and SCRRA—and are authorized to report that BNSF and CN consent to the requested extension. (SCRRA was unable to respond before UP filed this request.)

Amtrak's Complaint and Petition includes 145 paragraphs of factual allegations and arguments. The requested extension of time is necessary to provide interested parties a reasonable and fair opportunity to respond, if they so choose.

Amtrak's filings also raise important procedural issues. Amtrak is asking the Board to adopt a new set of procedures to govern investigations conducted under Section 213. Surprisingly, Amtrak does not mention the procedures the Board adopted in its first investigation under Section 213, where the Board rejected proposed procedures similar to those Amtrak offers here. *See National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, NOR 42134 (STB served Jan. 3, 2013). In addition, Amtrak's procedural proposal does not account for the need to address what will likely be the central issue in this case: whether the published train schedules for the Sunset Limited Trains 1 and 2 are aligned with the customer on-time performance metric and standard established pursuant to PRIIA. The requested extension of time is needed to give UP a reasonable amount of time to consider and address Amtrak's procedural suggestions and

to provide its own constructive suggestions for handling the investigation in a timely, efficient, and fair manner. No party would be prejudiced by the extension.

For the foregoing reasons, good cause exists to grant UP's request to extend the time for filing any responses to Amtrak's pleadings by 30 days to January 30, 2023. UP requests expedited action because, absent the requested extension, responses could be due by December 28, 2022.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
JOSEPHINE JORDAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179
(402) 544-4554

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

ALI MOJIBI
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
(424) 332-4800

Attorneys for Union Pacific Railroad Company

December 19, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2022, I caused a copy of the foregoing document to be served by email on counsel for Amtrak, BNSF, CN and SCRRRA.

/s/ Michael L. Rosenthal