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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

AMTRAK’S OPENING STATEMENT

William Herrmann
Executive Vice President and General
Counsel
NATIONAL RAILROAD PASSENGER
CORPORATION
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 253-2763

Jessica Ring Amunson
Alex Trepp
Eleanor R. Slota
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

Andrew L. Osborne
Jocelyn A. Sitton
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 222-9350

Counsel for National Railroad Passenger Corporation

October 7, 2024

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GLOSSARY

Term/Abbreviation	Definition
Amtrak	National Railroad Passenger Corporation
BNSF	BNSF Railway Company
CN	Canadian National Railway Company and/or its subsidiary Illinois Central Railroad Company
CPKC	Canadian Pacific Kansas City Limited
Complaint Period	October 1, 2021 through September 30, 2022
COTP	Customer On-Time Performance
FRA	Federal Railroad Administration
FTI	Freight Train Interference
ICC	Interstate Commerce Commission
NOPB	New Orleans Public Belt Rail Corporation
PRIIA	Passenger Rail Investment and Improvement Act of 2008
PSR	Precision Scheduled Railroading
RCA	Root Cause Analysis
Relevant Period	October 1, 2021 through December 8, 2022
SCRRA	Southern California Regional Rail Authority
Section 213	Section 213 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, 122 Stat. 4848, 4925-27 (2008) (codified at 49 U.S.C. § 24308(f))
STB	Surface Transportation Board
Train 1	Amtrak's <i>Sunset Limited 1</i>
Train 2	Amtrak's <i>Sunset Limited 2</i>
UP	Union Pacific Railroad Company

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INTRODUCTION

In the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”), Congress charged the Surface Transportation Board (“Board”) with an important responsibility—to enforce the obligation of all rail carriers that host National Railroad Passenger Corporation (“Amtrak”) service to operate their networks such that Amtrak passengers reach their destinations on time. Congress provided specific instructions to the Board about the investigation the Board must undertake, the findings the Board must make, and the remedies the Board can impose in enforcing that obligation. However, as the Board continues its examination of the relevant metrics, standards, delay data, root causes, and regulatory reporting, it is critically important to remember that this proceeding is about *people*, and about Congress’s determination that ensuring Amtrak’s passengers arrive at their destinations on time should be a national priority.

Unfortunately, on-time performance for Amtrak’s passengers has not been a priority for the primary host railroad of the *Sunset Limited* service that Amtrak operates between New Orleans and Los Angeles. Indeed, during the four quarters that are the subject of this proceeding—from October 1, 2021 through September 30, 2022 (“Complaint Period”)—almost two-thirds of the passengers traveling westbound on the *Sunset Limited* arrived more than one hour late to their destinations and more than a quarter arrived more than three hours late. Over the same period, more than half of the passengers traveling eastbound arrived more than one hour late to their destinations and almost a fifth of passengers arrived more than three hours late. The cause of the vast majority of those delays is no great mystery—it was interference from a freight railroad and the unlawful decision to prioritize the movement of freight over the movement of people.

If air traffic controllers regularly held passengers on the ground to allow cargo planes to take off first, or if trucking companies regularly stopped big rigs on main highways blocking automobile passengers from passing around them, or if cruise ship passengers regularly were

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denied access to port facilities by large cargo ships, no one would think such practices were acceptable. Yet, somehow, it has become not just accepted, but expected, that interference from freight trains regularly will cause delays to Amtrak passengers. That should end now.

In this proceeding, Amtrak has asked the Board to undertake the investigation Congress charged the Board with performing in PRIIA: to “determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates” and to decide whether these delays or failures to achieve minimum standards “are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required” by statute. 49 U.S.C. § 24308(f)(1)–(2). This is the first such investigation since the Federal Railroad Administration (“FRA”) published the required minimum standards in 2020. In this investigation, as required by the statute, the Board has “obtain[ed] information from all parties involved” and has “review[ed] the accuracy of the train performance data.” *Id.* § 24308(f)(1).

The investigative record assembled by the Board overwhelmingly confirms that the allegations in Amtrak’s Complaint are correct. The delays or failures to achieve minimum standards on the *Sunset Limited* were attributable primarily to freight train interference (“FTI”) from Union Pacific Railroad Company (“UP”), which owns or controls the overwhelming majority of the *Sunset Limited* route and which regularly failed to provide preference to Amtrak over freight transportation as required by federal law. That failure manifested itself both in UP’s individual dispatching decisions and in UP’s systems, policies, and practices. UP does not (and cannot) dispute that the statutory criteria defining substandard performance that serve as the trigger for a Board investigation under 49 U.S.C. § 24308(f) are met here.

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Importantly, the record confirms that this substandard performance is correctable and can reasonably be addressed by UP. In this brief, consistent with the Board's instructions, Amtrak provides the Board with recommendations to improve the service, quality, and on-time performance of the *Sunset Limited*. In Stage Two of this proceeding, Amtrak will provide the Board with further information on the damages and other relief the Board should order, given that the delays or failures to achieve minimum standards here clearly were attributable to UP's failure to provide preference to Amtrak over freight transportation.

More than 50 years ago, Congress made the determination that ensuring Amtrak passengers arrive at their destinations on time is a national priority. That congressional commitment to Amtrak's passengers has only grown stronger over time. With its recent passage of the Infrastructure Investment and Jobs Act, Congress made historic investments in passenger rail, positioning Amtrak to play a central role in improving how people travel throughout the country in a sustainable way and in transforming the future of transportation. The Board also has an important role to play in achieving that future by enforcing Congress's determinations about the priority that must be accorded to Amtrak's passengers.

The brief proceeds as follows: Part I offers the relevant historical, legal, and factual background for this proceeding. Part II details the history of this proceeding. Part III addresses the Board's questions as to which parties should be considered host railroads for the *Sunset Limited* and as to the proper definition of that term. Part IV explains that delays to *Sunset Limited* passengers during the Complaint Period were due largely to causes that UP can reasonably address. Part V addresses the Board's questions regarding 49 U.S.C. § 24308(c)'s mandate that "Amtrak has preference over freight transportation" and explains how delays or failures to achieve minimum standards on the *Sunset Limited* during the Complaint Period were attributable to UP's

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failure to provide preference to Amtrak over freight transportation. Part VI addresses the Board's questions regarding the Board's authority to award damages and order other relief. Part VII addresses the Board's questions regarding the *Sunset Limited* schedule. Part VIII makes recommendations to improve the service, quality, and on-time performance of the *Sunset Limited*.

I. BACKGROUND.

The *Sunset Limited* was once the flagship service for the Southern Pacific Transportation Company, UP's predecessor. The oldest continuously operating passenger train in the nation, the *Sunset Limited* dates back to 1894, when it began as a weekly service between New Orleans and San Francisco.¹ In 1950, Southern Pacific introduced a streamlined version of the *Sunset Limited* that traveled daily between New Orleans and Los Angeles on a "new record breaking 42-hour schedule."² However, travel by automobile and airplane was growing in popularity, and by 1954, Southern Pacific was incurring a \$50 million annual deficit for its passenger rail services.³ Thus, the *Sunset Limited* "took center stage in a tortured drama that played out in the late 1960s involving [Southern Pacific], the Interstate Commerce Commission, and members of the new National Association of Railroad Passengers" as Southern Pacific sought to cut back on its *Sunset Limited* passenger service.⁴

Creation of Amtrak. That drama played a pivotal role in the public bargain that created Amtrak and thereby relieved not only Southern Pacific, but all of the nation's railroads, of the responsibility for operating increasingly unprofitable intercity passenger rail service. That bargain

¹ Kevin Keefe, *High-Water Mark for the 'Sunset Limited,'* Classic Trains (July 30, 2020), <https://cs.trains.com/ctr/b/mileposts/archive/2020/07/30/high-water-mark-for-the-39-sunset-limited-39.aspx> (Amtrak Exhibit 1).

² Southern Pacific *Sunset Limited* Advertising (1950), http://www.streamlinerschedules.com/concourse/track9/extras/sp_sunsetad195008.pdf.

³ Keefe, *supra* note 1.

⁴ *Id.*

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had a critical condition. Amtrak would take over the responsibility of providing intercity passenger rail services, but in return, the railroads had to—and must still—provide rail passengers with preference over freight traffic on their rail lines. That passenger-preference obligation was consistent with the longstanding industry practice that Southern Pacific and other railroads had adhered to, under which passenger operations were given priority over freight traffic.⁵ It was also consistent with the commitments made by industry leaders at the time of Amtrak’s inception to continue to prioritize passenger trains.⁶

Despite their commitments, after Amtrak assumed passenger rail obligations, many railroads began to ignore the well-established passenger-preference arrangement. Instead, these railroads, now known as “freight railroads,” began to “sidetrack” passenger trains to prioritize freight movements.⁷ As a result, just three years after the creation of Amtrak, Congress enacted into law an explicit requirement for the freight railroads to grant Amtrak passenger trains preference over freight transportation on any rail line, crossing, or junction.⁸

⁵ Southern Pacific adhered to this practice until its effort to discontinue the *Sunset Limited* in the late 1960s. See *Southern Pacific Company Discontinuance of Trains Nos. 1 and 2 Between Los Angeles, Calif. and New Orleans, La.*, 333 I.C.C. 783 (1968) (rejecting application for discontinuance of *Sunset Limited* based on finding that Southern Pacific had deliberately downgraded service by, among other things, giving freight trains priority over the *Sunset Limited*).

⁶ For example, John S. Reed, the President of the Santa Fe Railway, told Congress in a statement, “this railroad company traditionally has given passenger train operations preference over freight service and would continue to afford Amtrak trains such priority.” *Review and Refunding of Rail Passenger Service Act: Before the Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce (“Hearings on H.R. 709 et al.”)*, 92d Cong. 1, H.R. Rep. 92-54, at 670 (Dec. 7, 1971) (Statement of John S. Reed, President, Santa Fe Railway); see also *id.* at 744–45 (Statement of Congressman Adams) (summarizing prior testimony).

⁷ The practice of “sidetracking” or forcing an Amtrak train to “take a siding” means that Amtrak must significantly slow train speed to enter and then traverse a slow-speed turnout, come to a stop to wait for the opposing train, restart the train, and then traverse the slow-speed turnout back to the main line.

⁸ Amtrak Improvement Act of 1973, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552 (codified at 49 U.S.C. § 24308(c)).

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That preference requirement is critical to Amtrak's operations and customer service, but it has regularly been ignored by many freight railroads.⁹ Congress recognized the persistent nature of this problem and the adverse impact upon Amtrak's performance. To address this and other issues, Congress enacted PRIIA in 2008. It did so to "promote the expansion and improvement of intercity passenger rail service,"¹⁰ and to address concerns about "poor service, unreliability, and delays resulting from freight traffic congestion," *Dep't of Transp. v. Ass'n of Am. R.R.s*, 575 U.S. 43, 47 (2015).

PRIIA Reinforces Amtrak's Preference Rights. At the time of PRIIA's passage in 2008, Congress was well-aware of the changes that had occurred in freight rail transportation since the deregulation of the industry following the Staggers Act in 1980. With that knowledge, Congress acted to reinforce Amtrak's right to preference over freight transportation. PRIIA Section 207 directed Amtrak and the FRA together to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. PRIIA Section 213 then set forth a new process for the Board to investigate the causes of substandard on-time performance and to award Amtrak relief. Under Section 213, if the customer on-time performance ("COTP") of an intercity passenger train drops below 80% for any two consecutive quarters, and upon the filing of a complaint, the Board must investigate the causes of delay. *See* 49 U.S.C. § 24308(f)(1). The Board can also initiate such an investigation on its own initiative. *Id.*

Congress specified that as part of an investigation under Section 213, "the Board has authority to review the accuracy of the train performance data and the extent to which scheduling

⁹ *See generally* Federal Railroad Administration, *Root Causes of Amtrak Train Delays*, Rpt. No. CR-2008-076 (Sept. 8, 2008), <https://www.govinfo.gov/content/pkg/GOVPUB-TD-PURL-gpo26051/pdf/GOVPUB-TD-PURL-gpo26051.pdf>.

¹⁰ S. Rep. No. 110-67, at 7 (2007).

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and congestion contribute to delays.” *Id.* Additionally, in making its determination or carrying out its investigation, the Board “shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.” *Id.*

If the Board determines that delays or the failure to achieve COTP minimum standards “are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation,” then the Board can “award damages against the host rail carrier” and prescribe other relief that the Board determines to be “reasonable and appropriate.” *Id.* § 24308(f)(2). In awarding damages and prescribing other relief, the Board must consider “such factors as—(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and (B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.” *Id.* § 24308(f)(3). Any damages that are awarded must be used “for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation.” *Id.* § 24308(f)(4).

The FRA Final Rule. After many years of litigation over Section 207’s directive for the FRA and Amtrak to jointly develop metrics and minimum standards for performance,¹¹ the FRA in November 2020 published a Final Rule on *Metrics and Minimum Standards for Intercity Passenger Rail Service* (“Final Rule”). 85 Fed. Reg. 72971 (Nov. 16, 2020). Among other things, the Final Rule established a COTP Metric and Minimum Standard, underscoring the focus on the

¹¹ See generally *Ass’n of Am. R.R.*, 575 U.S. at 43–56; see also *Ass’n of Am. R.R.s v. U.S. Dep’t of Transp.*, 896 F.3d 539 (D.C. Cir. 2018).

experience of Amtrak’s passengers.¹² The COTP Metric and Minimum Standard together seek to ensure that at least 80% of all passengers on an intercity passenger train arrive at their detraining points no later than 15 minutes after their scheduled times.¹³ In promulgating the COTP Metric and Minimum Standard, the FRA emphasized that the 80% figure was a floor, and that the agency expected at least some intercity passenger rail services to “reliably achieve a higher standard of performance.”¹⁴

Schedule Certification. The Final Rule also set forth a procedure for Amtrak and its host railroads to certify the schedules of Amtrak’s existing routes. Consistent with its obligations under the Final Rule, Amtrak contacted all of its host railroads in December 2020 to certify schedules. Specifically with respect to the *Sunset Limited*, all of the host railroads involved in the route agreed to certify the schedule except UP, which owns and operates the vast majority of the route. The Final Rule, however, merely delayed—and did not suspend—the application of the COTP Minimum Standard when a rail carrier disputes a schedule. Accordingly, under the procedure set forth by the Final Rule, the COTP Minimum Standard became applicable to Amtrak’s *Sunset Limited* service on October 1, 2021. The current schedule for the *Sunset Limited* is a 45-hour 40-minute eastbound and 46-hour 35-minute westbound schedule operated three times a week between New Orleans and Los Angeles, with approximately 20 intermediate stops at communities

¹² To assist the Board in determining the cause of any failure to satisfy the Minimum Standard, the Final Rule also established metrics to measure train delays, station performance, and host running time (together, “Supplemental Metrics”). As set forth in the Complaint and Petition, *see Complaint and Petition of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(f)—For Substandard Performance of Amtrak’s Sunset Limited Trains 1 and 2* (Dec. 8, 2022) (“Compl. & Pet.”), these Supplemental Metrics were meant to provide more information about customer experience, train performance, and the amount and cause of delay. *See* Final Rule, 85 Fed. Reg. at 72974.

¹³ Amtrak addressed how the COTP Metric, the COTP Minimum Standard, and other pertinent metrics are defined in its Complaint. *See* Compl. & Pet. ¶¶ 48–51. Amtrak relies on the same definitions in this brief.

¹⁴ Final Rule, 85 Fed. Reg. at 72795; *see also id.* at 72977 (reiterating that the “FRA expects many services to operate more reliably” than the Minimum Standard requires).

in California, Arizona, New Mexico, Texas, and Louisiana.¹⁵ As a point of reference, the schedule today is approximately four hours longer than the 42-hour daily schedule for the *Sunset Limited* when Southern Pacific operated it in 1950.¹⁶

The COTP Minimum Standard. The *Sunset Limited*'s performance under the COTP Minimum Standard has been abysmal. During the Complaint Period,¹⁷ the *Sunset Limited* never came close to satisfying the minimum standard for on-time performance. For westbound Train 1, quarterly COTP during that period ranged from 9% to 40%.¹⁸ For eastbound Train 2, COTP during that period ranged from 7% to 40%.¹⁹ In the case of each train, performance peaked in the first quarter and deteriorated significantly after that.²⁰

Moreover, the majority of customers who arrived late arrived *very* late. During the Complaint Period, 61% of passengers on Train 1 were more than one hour late to their destinations, and 27% of passengers on Train 1 were more than three hours late. Over the same period, 55% of passengers on Train 2 arrived more than one hour late to their destinations, while 18% arrived more than three hours late.

¹⁵ See Compl. & Pet., App'x A, at 66–68.

¹⁶ Keefe, *supra* note 1.

¹⁷ The Complaint Period is distinct from the Board's definition of the "Relevant Period," which the Board defined as October 1, 2021 to December 8, 2022 (the date on which Amtrak filed its Complaint). See July 2023 Decision at 20. The Complaint Period ranges from Q1 2022 through Q4 2022 and encompasses the data available at the time Amtrak's Complaint was filed. See Compl. & Pet. ¶¶ 74–75.

¹⁸ Amtrak's Resp. to Bd.'s Interrogs. & Doc. Requirements, App'x A, Part III, Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022), Sept. 25, 2023 ("Amtrak's Sept. 2023 Resp.").

¹⁹ Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022).

²⁰ Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022). During the pendency of this proceeding, the frequency of runs that achieve the COTP Minimum Standard has improved. However, COTP overall remains below the Minimum Standard, and Board intervention is required to secure and build on post-Complaint improvements.

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UP's Responsibility for Delays. The significant delays that plagued *Sunset Limited* service during the Complaint Period were due primarily to interference from freight trains on rail lines that UP owns and dispatches. UP is the host railroad for almost the entirety of the *Sunset Limited* route, with much smaller segments hosted by Amtrak, BNSF Railway Company (“BNSF”), Canadian National Railway Company (“CN”), and the Southern California Regional Rail Authority (“SCRRA”).²¹ UP controls the dispatching decisions on its rail lines and is therefore responsible for ensuring that its personnel are adhering to federal law by giving preference to Amtrak passengers, as well as adhering to their obligations to ensure the COTP Minimum Standard is achieved.

In September 2018, UP announced its transition to Precision Scheduled Railroading (“PSR”).²² According to UP, PSR should produce a more scheduled, balanced network that “increases asset utilization, improves service reliability and is ... more efficient.”²³ UP has publicly emphasized that its PSR strategy is “driving strong financial performance and enabling significant shareholder returns.”²⁴ However, the strong financial performance that UP has attributed to the transition to PSR has come at a cost to Amtrak. The longer freight trains ushered in under PSR often are unable to fit into existing rail sidings, which complicates train movements

²¹ Amtrak responds to the Board’s questions regarding how to define a “host railroad” *infra* Part III.

²² *Union Pacific Announces Unified Plan 2020*, Union Pacific Corp. (Sept. 17, 2018), <https://www.up.com/media/releases/180917-unified-plan-2020.htm>.

²³ *What Is Precision Scheduled Railroading?*, Track Record (Sept. 17, 2019), <https://www.up.com/customers/track-record/tr091019-precision-scheduled-railroading.htm>.

²⁴ *2021 Investor Day*, Union Pacific Corp., https://www.up.com/cs/groups/public/@uprr/@corprel/documents/up_pdf_nativedocs/pdf_up_inv-day-infographic.pdf. Indeed, UP closed out 2021 with \$9.3 billion in net operating income, an increase of 15% over the previous year. Press release, Union Pacific Corp., *Union Pacific Reports Fourth Quarter and Full Year 2021 Results*, (Jan. 20, 2022), <https://www.up.com/media/releases/4q21-earnings-nr210120.htm>. Lance Fitz, then CEO and President, called 2021 “UP’s most profitable year ever.” *Id.* That profitability carried over into 2022 and UP continues to generate significant profits today. In the first quarter of 2024 alone, UP paid \$795 million in dividends to stockholders. See Press Release, Union Pacific Corp., Q1 2024 Earnings Call, at 4 (Apr. 25, 2024).

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and dispatching, sometimes causing cascading delays to Amtrak's passenger trains by forcing them to wait in sidings for freight train "meets."²⁵ These and other issues related to staffing, maintenance, and operating resiliency under UP's PSR system are more fully addressed in Part IV, *infra*.

II. PROCEDURAL HISTORY.

On December 8, 2022, pursuant to the procedure established by Section 213 of PRIIA and subsequently codified at 49 U.S.C. § 24308(f), Amtrak filed a Complaint with the Board about the substandard performance of the *Sunset Limited*.²⁶ With its Complaint, Amtrak filed a procedural roadmap for the proceeding, which identified procedures consistent with the statutory requirement that Section 24308(f) investigations be led by the Board rather than conducted through an adversarial party-led process.²⁷ Amtrak's procedural roadmap also proposed an expeditious schedule for a Board-led investigation, recognizing that the statute focuses on just two quarters of substandard performance and thereby contemplates quick relief to Amtrak.²⁸

In its Complaint, Amtrak alleged that *Sunset Limited* passengers had been subject to deficient on-time performance for at least two consecutive calendar quarters, thereby requiring the Board to initiate an investigation under the statute. In fact, the Complaint showed the deficient performance of the *Sunset Limited* for four consecutive quarters. Table 1 reflects the deficient COTP of *Sunset Limited* Trains in each of those quarters.

²⁵ One recent critic noted that PSR's implementation has not enhanced precision or scheduling and has proposed capping the length of trains to mitigate (not eliminate) the wide range of problems that longer trains have created. See Justin Roczniak, *Mismanagement and 'Monster Trains' Have Wrecked American Rail*, N.Y. Times (Oct. 9, 2022), <https://www.nytimes.com/2022/10/09/opinion/business-economics/freight-train-mismanagement.html>.

²⁶ See generally Compl. & Pet.

²⁷ See Amtrak Proposed Proc. & Framework for Bd. Investigative & Remedial Phases of Proceeding Under 49 U.S.C. § 24308(f), at 6–7 (Dec. 8, 2022) ("Amtrak's Proposed Procs.").

²⁸ Amtrak's Proposed Procs. at 7.

Table 1: Sunset Limited COTP By Quarter

Calendar Quarter	Train 1 COTP	Train 2 COTP
October 1, 2021–December 31, 2021	40%	40%
January 1, 2022–March 31, 2022	24%	35%
April 1, 2022–June 30, 2022	9%	11%
July 1, 2022–September 30, 2022	11%	7%

Amtrak further alleged that the substandard COTP of *Sunset Limited* Trains was due largely to causes that can and should be addressed by UP, and that UP had systematically violated Amtrak’s right to preference over freight transportation.²⁹

On July 11, 2023, the Board issued a decision (“July 2023 Decision”) opening an investigation under the mandatory provisions in 49 U.S.C. § 24308(f)(1) and directed the parties to provide answers to a number of investigative questions from the Board.³⁰ The parties submitted responses on September 25, 2023 and December 5, 2023. As part of its response, Amtrak produced a listing of more than 19,000 entries of recorded delays to *Sunset Limited* Trains during the Complaint Period.³¹ Based on that data, the Board issued a decision on February 13, 2024 (“February 2024 Decision”), directing the parties to address several additional issues, to provide

²⁹ There are several other parties to the investigation. The *Sunset Limited* travels mostly over track hosted by UP, as well as track owned or operated by Amtrak, BNSF, CN (operating through its subsidiary Illinois Central Railroad Company), the New Orleans Public Belt Rail Corporation (“NOPB”), SCRRA, and Canadian Pacific Kansas City Limited (“CPKC”), all of which are considered necessary parties to the investigation. See *Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2*, NOR 42175, slip op. at 10 (S.T.B. served July 11, 2023) (“July 2023 Decision”); *Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2*, NOR 42175, slip op. at 2-3 (S.T.B. served Sept. 12, 2023).

³⁰ July 2023 Decision at 1–2, App’x A.

³¹ This figure includes NOD (“Not Otherwise Defined”) delays, which reflect unused recovery time. Amtrak excludes NOD delays for the purpose of calculating the amount of delay minutes herein. See Amtrak’s Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0002).

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root cause analyses for a set of egregious delays—of 90 minutes or more—to the *Sunset Limited*,³² and to provide explanations for an additional Board-selected set of illustrative *Sunset Limited* delays.³³ UP moved to extend the time to provide its root cause analysis (“RCA”), and those submissions were completed on July 24, 2024. The Board subsequently ordered UP to resubmit its root cause analysis because UP had improperly designated its entire submission and all supporting documents as “highly confidential,” which prevented them from being distributed to the public and other parties. UP resubmitted its materials with new confidentiality designations on September 9, 2024.

In addition to its own investigative questions, the Board authorized a limited period for party-led discovery to augment the record developed by the Board.³⁴ Consistent with the Board’s Order, Amtrak served UP with targeted discovery concerning the causes of delay to *Sunset Limited* Trains or the failure to provide those trains with preference over freight transportation.³⁵ Because UP failed to produce certain materials and made a significant misrepresentation in its responses and objections, Amtrak was forced to file successive motions to compel.³⁶ Following hearings before the administrative law judge assigned by the Board to this proceeding, UP agreed to

³² *Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2*, NOR 42175, slip op. at 3, App’x Part II (S.T.B. served Feb. 13, 2024) (“February 2024 Decision”).

³³ February 2024 Decision at 8, App’x Part I.

³⁴ July 2023 Decision at 13. Amtrak objected to party-led discovery given that 49 U.S.C. § 24308(f) calls for a Board-led investigation and charges the Board with “obtain[ing] information from all parties involved.” See July 2023 Decision at 8 (citing 49 U.S.C. § 24308(f)(1)). The freight rail carrier parties advocated for party-led discovery rather than a Board-led investigation. See July 2023 Decision at 7–8.

³⁵ In stark contrast, UP served 150 requests on Amtrak. Pursuant to Judge McCarthy’s Order on September 7, 2023, Amtrak and UP engaged in several lengthy discussions to address the appropriate scope of UP’s discovery requests to Amtrak, and Amtrak completed its production on December 20, 2023. See Order Memorializing Sept. 7 Conf. Call at 2 (Sept. 15, 2023).

³⁶ Amtrak Mot. to Compel Produc. of Docs. from Union Pacific R.R. Co. (Dec. 12, 2023); Amtrak’s Renewed Mot. to Compel Produc. of Docs. from Union Pacific R.R. Co. (Jan. 23, 2024).

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supplement its production.³⁷ Obtaining those productions—and resolving the various discrepancies within them—took approximately eight months.

On August 19, 2024, the Board issued a decision (“August 2024 Order”) closing the discovery period and setting forth a briefing schedule.³⁸ The Board also denied Amtrak’s motion seeking to secure the preservation of dispatch playback materials, which Amtrak continues to believe are important to the Board’s review of the issues in this case. The Board’s August 2024 Order invited briefs not only from the parties, but also opened the proceeding to third parties to file briefs.³⁹ The Board directed Amtrak to address several issues in its opening brief related to Amtrak’s preference rights, the definition and identification of host railroads on the *Sunset Limited*’s route, the Board’s authority to award damages, and the *Sunset Limited*’s schedule.⁴⁰ Amtrak addresses these issues below. Consistent with the decision, Amtrak also addresses other issues relevant to the Board’s investigation.

³⁷ At the suggestion of Judge McCarthy, and to help resolve a discovery dispute between the parties, Amtrak significantly narrowed the scope of an important request, which sought contracts involving variable compensation executed between UP and its shippers. Amtrak continues to believe those contracts would provide valuable information about the magnitude of contractual incentives that UP might have in directing traffic over its network, and the force those contractual incentives might have when dispatchers or their supervisors evaluate whether to prioritize *Sunset Limited* passengers as required by federal law. See Union Pacific Corp.’s Resp. to App’x A, Part IV at 29–32 (Sept. 25, 2023) (“UP’s Sept. 2023 Resp.”) (explaining how UP dispatchers “are also taught that Amtrak’s preference does not mean they should disregard impacts to other trains or the network as a whole to ensure Amtrak trains are never slowed or stopped en route”).

³⁸ *Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2*, NOR 42175 (S.T.B. served Aug. 19, 2024) (“August 2024 Order”).

³⁹ The Board had earlier ruled that “under the Board’s rules only parties to the proceeding will be permitted to ... submit substantive arguments.” July 2023 Decision at 3 n.5

⁴⁰ See August 2024 Order at 3–4.

III. THE HOST RAILROAD FOR THE VAST MAJORITY OF THE *SUNSET LIMITED* ROUTE IS UNDISPUTED.

In its August 2024 Order, the Board directed Amtrak to address four interrelated questions with respect to host railroads for the *Sunset Limited*.⁴¹ Amtrak addresses these questions below. At the outset, however, it is critical to note that there is no dispute as to the proper host for the vast majority of the *Sunset Limited*'s route. It is UP. And there is no dispute as to the source of the vast majority of delays to Amtrak's passengers on the *Sunset Limited*'s route. Again, it is UP. Of the 1,993 total miles of the route, the only disagreement as to the responsible host is for a segment of *less than 12 miles*. That small portion of the route likewise accounts for only a small fraction of delay minutes. Of the 169,793 total delay minutes the *Sunset Limited* experienced during the Complaint Period, just 6% occurred in the segment where there is disagreement as to host status.⁴²

As set forth below, Amtrak agrees that the Board should use the regulatory definition of "host railroad" for purposes of its Section 24308(f) investigation and explains how that definition applies to the host railroads for the various segments of the *Sunset Limited* route. There are some short segments of the route for which there could be more than one host railroad, including portions of the segment the Board asked about between Live Oak and the New Orleans Union Passenger Terminal. But as Amtrak explains, Host-Responsible Delay is assigned to a single rail carrier for

⁴¹ See August 2024 Order at 3–5 (directing Amtrak to address: (1) Which parties should the Board consider to be "host rail carriers" for purposes of 49 U.S.C. § 24308(f)? (2) To what extent should the Board rely on the Federal Railroad Administration's definition of "host railroad" in 49 C.F.R. § 273.3? (3) Whether, and under what circumstances, can multiple rail carriers—each fulfilling one or more functions such as (but not limited to) ownership, dispatching, maintenance, and contractual accountability to Amtrak—be considered "host railroads" on a given portion of the *Sunset Limited*'s route? (4) Which parties should be considered "host rail carriers" for purposes of 49 U.S.C. § 24308(f) as it relates to the segment between Live Oak, Louisiana, and the New Orleans Union Passenger Terminal?). Although the August 2024 Order is focused on the designation of a host railroad, Amtrak reiterates that UP either solely or jointly owns more than 98% of trackage along the *Sunset Limited* route. In other words, under Section 24308(f), UP is a "rail carrier over whose tracks" the *Sunset Limited* operates for more than 98% of its route.

⁴² See Amtrak's Sept. 2023 Resp., Detailed Run Time Data (AMTRAK_STB_NATIVE_0005).

each segment.⁴³ Importantly, regardless of the designated host for a segment, all rail carriers are charged with honoring Amtrak’s statutory right to preference over freight transportation.

A. There Is No Dispute That UP Hosts The Vast Majority Of The *Sunset Limited* Route.

Section 24308(f) makes several references to Amtrak “host[s].”⁴⁴ Although the statute does not define the term “host rail carrier,” in the Final Rule, the FRA defined a “[h]ost railroad” as “a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.” 49 C.F.R. § 273.3.⁴⁵ That is the definition the Board should employ for purposes of this investigation under Section 24308(f).

Applying that definition, it is undisputed that UP is the host railroad for the vast majority of the *Sunset Limited*’s route. UP does not dispute that it is directly accountable to Amtrak by agreement for Amtrak operations over the segment between El Monte and Iowa Junction, which makes up 1,774.4 miles of the route.⁴⁶ There is likewise no dispute that BNSF is the host railroad directly accountable to Amtrak by agreement for Amtrak operations over the segment between

⁴³ “Host-Responsible Delays” are defined as “delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including [FTI], slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.” 49 C.F.R. § 273.3.

⁴⁴ See 49 U.S.C. § 24308(f)(1) (referring to a “host freight railroad over which Amtrak operates”); *id.* § 24308(f)(2) (titled “Problems caused by host rail carrier” and authorizing the Board to award damages and other relief against “the host rail carrier”); *id.* § 24308(f)(3)(A) (directing Board to consider the extent to which Amtrak suffers financial loss “as a result of host rail carrier delays or failure to achieve minimum standards”); *id.* § 24308(f)(4) (authorizing the Board to “order the host rail carrier” to remit damages to Amtrak or to an entity for which Amtrak operates intercity passenger rail service).

⁴⁵ Before it issued the Final Rule, the FRA consulted with industry stakeholders, published a notice of proposed rulemaking, *see* Metrics and Minimum Standards for Intercity Passenger Rail Service, 85 Fed. Reg. 17835 (Mar. 31, 2020), and received more than 320 comments from stakeholders, including comments from UP and the Board, *see* Final Rule, 85 Fed. Reg. at 72972.

⁴⁶ Union Pacific R.R. Co.’s Resp. to Amtrak’s Compl. & Pet. & Proposed Procs. at 3 & n.3 (Jan 27, 2024) (“UP’s Resp. to Compl. & Pet.”).

Iowa Junction and Live Oak, which makes up 190.3 miles of the route.⁴⁷ At the very eastern end of the route, all parties agree that Amtrak hosts the 4.2 miles of track between New Orleans Union Passenger Terminal and Southport Junction. And on the very western end of the route, the relevant parties agree that SCRRA is the appropriate host for the portion of the route between Yuma Junction and Los Angeles (0.8 miles) and that UP is the appropriate host for the portion of route between Yuma Junction and El Monte.⁴⁸ That leaves just an 11.8-mile segment where the historical host carriers have disputed their responsibilities (as further discussed below).

B. Although Multiple Carriers Could Be Considered “Hosts” For Some Short Segments, Amtrak Generally Assigns Host-Responsible Delay To A Single Rail Carrier For Each Segment.

It is possible that there may be more than one railroad that is “directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.” 49 C.F.R. § 273.3. Amtrak is not typically notified when railroads enter joint dispatching or joint facility arrangements. Where Amtrak is aware that a portion of an intercity passenger route is owned, operated, and/or dispatched by more than one railroad company, Amtrak attributes

⁴⁷ BNSF Resp. to the Bd.’s Interrogs. & Doc. Requirements; App’x A, Part IV at 1 (Sept. 25, 2024) (“BNSF’s Sept. 2023 Resp.”). Although BNSF hosts this portion of the route, BNSF and UP jointly own and operate track between Live Oak and Dawes, Texas. *Id.* at 2. BNSF maintains and bears primary responsibility for dispatching the eastern portion of the track from Live Oak to Iowa Junction. *Id.* UP maintains and bears primary responsibility for dispatching the western portion of the route from Iowa Junction to Dawes. *Id.* at 1. However, BNSF and UP personnel responsible for dispatching these segments of track are overseen by a neutral joint director that is hired by both railroads. Moreover, dispatchers and supervisory personnel from both railroads meet each morning to coordinate dispatching over the jointly owned and operated line. *See id.* at 35.

⁴⁸ Union Pacific Co.’s Resp. to App’x A, Part IV at 5 (Sept. 25, 2023) (“UP’s Sept. 2023 Resp.”); S. Cal. Regional Rail Auth.’s Interrogs. & Docs. Produc. in Resp. to July 9, 2023 Decision (App’x A, Part V) at 2 (Sept. 25, 2023) (“SCRRA’s Sept. 2023 Resp.”), Amtrak’s Sept. 2023 Resp. at 18. Because the delay data that Amtrak compiled during the Complaint Period and submitted to the Board ordinarily ascribed host status for both of these segments to SCRRA, figures cited herein understate the amount of delay that occurs on UP-Hosted Segments of the route, and the amount of Host-Responsible Delay that UP imposed. *See Compl. & Pet.* ¶¶ 27-28. However, the understatement is minor and inconsequential. During the Complaint Period, 2.5% of the total number of delays and 2.0% of total delay minutes occurred on the broader segment between El Monte and Los Angeles, and some of those delays were recorded on the 0.8-mile segment that is hosted by SCRRA, between Yuma Junction and Los Angeles. *See Amtrak’s Sept. 2023 Resp., Detailed Run Time Data (AMTRAK_STB_NATIVE_0005).*

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Host-Responsible Delays based on its contractual arrangements with rail carriers as well as its historical hosting relationships.⁴⁹ Where contractual arrangements permit Amtrak to designate more than one railroad as the host for the portion of the route at issue, Amtrak generally has relied on the hosting arrangement that predated joint ownership, operation, or dispatching to make a determination about the appropriate host railroad for purposes of assigning Host-Responsible Delays. Consistent with the mandate of 49 C.F.R. § 273.5(d), Amtrak then relies on host railroads to satisfy their obligation to dispute any Host-Responsible Delays that are assigned to them and to request that Amtrak change any delay entry that the host believes is not actually its responsibility.⁵⁰ During the Complaint Period, more than 99.8% of Host-Responsible Delay minutes on the *Sunset Limited* route ultimately were undisputed by the host railroads.⁵¹

The Board asked whether, and under what circumstances, multiple rail carriers—each fulfilling one or more functions such as ownership, dispatching, maintenance, and contractual accountability to Amtrak—could be considered “host railroads” on a given portion of the *Sunset Limited*’s route.⁵² Based on underlying freight railroad agreements, multiple railroads could potentially be considered host railroads on certain portions of the *Sunset Limited* route because more than one railroad could be “directly accountable to Amtrak by agreement” for certain segments of the route. *See infra* Part III.C. Importantly, however, regardless of their designation

⁴⁹ This approach is also consistent with operational reality. Amtrak conductors take instructions in real time from dispatchers. Where Amtrak can operate over lines owned or operated by different host railroads, its conductors are not in a position to question the actual or apparent authority of dispatchers to issue instructions, nor can Amtrak conductors litigate dispatching instructions over the radio. Doing so would present safety and operating concerns.

⁵⁰ 49 C.F.R. § 273.5(d) (“The train delays metric is also reported by the number of non-Amtrak host-responsible delay minutes disputed by host railroad and not resolved by Amtrak.”); Final Rule, 85 Fed. Reg. at 72982 (noting that obligation to report disputed delays was meant to ensure transparent reporting and establish the expectation that Amtrak and host railroads would be in frequent communication about train delays).

⁵¹ *See* Amtrak’s Sept. 2023 Resp., Disputed Delay Log by Host Table (AMTRAK_STB_Native_0011).

⁵² *See* August 2024 Order at 3.

as a “host,” each rail carrier on the *Sunset Limited*’s route is required under Section 24308(c) to provide Amtrak with preference over freight transportation. That preference obligation applies to all rail carriers “fulfilling one or more functions such as ownership, dispatching, maintenance, and contractual accountability,”⁵³ regardless of whether the carrier is formally designated the “host” for a given segment or whether the carrier disclaims its hosting responsibilities.

Ultimately, the question as to whether one or multiple rail carriers should be considered “hosts” on a given segment will not have a significant bearing on these proceedings. UP is the undisputed host for the vast majority of the *Sunset Limited* route and responsible for the majority of delays (65%) and Host-Responsible Delays (88%).⁵⁴ Thus, the relevant analysis of causes of Host-Responsible Delay in this case, as well as any evaluation of potential remedies, will focus significantly on the 1,774.4-mile segment over which there is no dispute that UP is the host, as well as the remaining segments that UP jointly owns and has at least some role in dispatching.

C. Multiple Rail Carriers Can Appropriately Be Designated Hosts Between Southport Junction And Live Oak.

The Board specifically asked about the host for the 15-mile stretch of track from New Orleans Union Passenger Terminal to Live Oak, encompassing Southport Junction, East Bridge Junction, and West Bridge Junction. There is no dispute that Amtrak hosts service for the first 4.2 miles of this stretch, beginning at New Orleans Union Passenger Terminal and concluding at Southport Junction.⁵⁵ As to the remaining segments, the FRA’s definition of “host railroad” contemplates the reality where Amtrak has multiple agreements with carriers, and therefore a portion of the route could have multiple hosts. On the disputed areas of the route between

⁵³ *Id.*

⁵⁴ See Compl. & Pet. ¶¶ 27–28; see also Amtrak’s Sept. 2023 Resp., Detailed Run Time Data (AMTRAK_STB_NATIVE_0005), Total Run Time Data (AMTRAK_STB_NATIVE_0008).

⁵⁵ See Compl. & Pet. ¶ 27.

Southport Junction and Live Oak, Amtrak has formal agreements with multiple carriers (as described below), and thus, each carrier can be considered a host rail carrier.

Southport Junction to East Bridge Junction. Amtrak, in its Complaint, named CN as the host of the 2.2-mile segment from Southport Junction to East Bridge Junction—a designation that CN disputes. CN admittedly “own[s], operat[es], dispatche[s], serve[s], or lease[s]”⁵⁶ the section of track between Southport Junction and East Bridge Junction, yet CN asserts it is *not* the appropriate host because it leases that segment to NOPB. As such, CN argues, Amtrak is operating over that segment via UP’s trackage agreement with NOPB rather than Amtrak’s contract with CN.⁵⁷ However, Amtrak has a contractual agreement with CN to {{ [REDACTED] }}.⁵⁸

This agreement contains several provisions that {{ [REDACTED] }}
[REDACTED]
[REDACTED] {{ [REDACTED] }}⁶⁰

Additionally, the Board has acknowledged CN’s host status over this portion of track for a different Amtrak route.⁶¹

⁵⁶ Resp. of Ill. Cent. R.R. Co. to STB’s Interrogs. & Doc. Requirements at 2 (Sept. 25, 2023) (“CN’s Sept. 2023 Resp.”).

⁵⁷ See Resp. of Ill. Cent. R.R. Co. to Amtrak’s Compl. & Proposed Procs. at 8–9 (Jan. 27, 2023) (“CN’s Resp. to Compl. & Pet.”); see also CN’s Sept. 2023 Resp. at 3–4.

⁵⁸ See Amtrak’s Resp. To the Bd.’s Interrogs. & Doc. Requirements App’x A, Part III at 17–18 (Dec. 5, 2023) (“Amtrak’s Suppl. Resp.”) (citing Operating Agreement Between Nat’l R.R. Passenger Corp. & Grand Trunk W. R.R. Co. & Ill. Cent. R.R. Co. (“CN Operating Agreement”) (AMTRAK STB 0014530) at {{ [REDACTED] }}
[REDACTED] }

⁵⁹ See CN Operating Agreement at {{ [REDACTED] }}

⁶⁰ *Id.* at {{ [REDACTED] }}

⁶¹ See *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian National Railway Co.*, FD 35743, at 4 (S.T.B. served Aug. 9, 2019) (acknowledging that Amtrak’s City of New Orleans service runs “over CN lines between Chicago and Southport Junction in suburban New Orleans”).

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CN also asserts that Amtrak has never tried to “consult with CN regarding the service and Amtrak has not viewed CN as a source of problems or issues for that service” as it would with other hosts.⁶² However, Amtrak previously worked with CN to certify several Amtrak schedules, including the *Sunset Limited*, and CN initially agreed to certify the schedule.⁶³ Consistent with the mandate of 49 C.F.R. § 273.5(d), Amtrak also provided CN with an opportunity to dispute any Host-Responsible Delays for this segment of track, and CN never disclaimed responsibility for delays on this segment until after Amtrak filed its Complaint in this matter. These interactions further support the proposition that CN is contractually, directly accountable to Amtrak.

UP also has a contractual relationship with Amtrak that is applicable to this segment. CN is correct when it asserts that Amtrak has {{ [REDACTED] }}. Therefore, under the FRA definition of “host railroad,” both UP and CN could be hosts as both are directly accountable to Amtrak for Amtrak operations over this line.

To determine the appropriate host for purposes of assigning Host-Responsible Delay, Amtrak has relied on the agreement that predated the joint leasing relationship and historical practice. Although UP dispatchers currently operate interlockers at East Bridge Junction, that is a recent development—CN dispatchers were responsible for those operations until 2018—and CN still notifies the UP dispatchers of approaching Amtrak trains between Southport Junction and East Bridge Junction.⁶⁴ CN still maintains and operates the tracks. Thus, in conformity with the FRA definition of “host railroad” adopted here, CN and Amtrak have an agreement that renders CN

⁶² CN’s Resp. to Compl. & Pet. at 9.

⁶³ See Amtrak’s Suppl. Resp. at 18; see also CN’s Resp. to Compl. & Pet. at 27 (Letter from M. Matteucci to J. Blair) (“Assuming there are no changes to the arrival or start times at the beginning of CN’s portion of the route, CN believes the schedules for the trains on its portion of the Wolverine, Blue Water, Lincoln, Texas Eagle, and Sunset Limited services are ready to be certified. We can therefore certify the schedules for 5 of the 7 services and 20 of the 26 daily trains that operate over CN’s lines in the United States during normal operations.”).

⁶⁴ See UP’s Sept. 2023 Resp. at 2.

“directly accountable to Amtrak” for Amtrak operations over this segment despite CN’s separate leasing agreement with NOPB, and Amtrak has designated CN as the host for purposes of assigning Host-Responsible Delay to this segment.

East Bridge Junction to West Bridge Junction. UP is contractually responsible for Amtrak’s operations along this 5.2-mile segment of track. NOPB owns and operates this section of track, and UP has trackage rights over NOPB track.⁶⁵ The agreement between Amtrak and UP {{ [REDACTED] }}.”⁶⁶ Thus, UP is the appropriate designated host from East Bridge Junction to West Bridge Junction and is appropriately assigned the Host-Responsible Delay for this segment.

West Bridge Junction to Live Oak. In its Complaint, Amtrak asserted that UP is the “contractual host” for this 4.4-mile segment between West Bridge Junction and Live Oak.⁶⁷ UP has disputed this assertion and claims instead that BNSF is the host because BNSF acquired this track segment in the UP/Southern Pacific merger.⁶⁸ Although BNSF acknowledges that it is “the sole owner, operator, and dispatcher of this train segment,” barring a cross-over track that spans less than a mile, BNSF claims it is not a host—despite *also* acknowledging that *Sunset Limited* Trains “at times” move onto BNSF track at West Bridge Junction.⁶⁹

Both BNSF and UP have contractual obligations to Amtrak and thus both are appropriately designated host railroads for this segment. Between Live Oak and West Bridge Junction, *Sunset*

⁶⁵ *Id.*

⁶⁶ See Amtrak’s Sept. 2023 Resp., UP Operating Agreement at {{ [REDACTED] }}

⁶⁷ Compl. & Pet. ¶ 27.

⁶⁸ UP’s Sept. 2023 Resp. at 2.

⁶⁹ See BNSF’s Sept. 2023 Resp. at 36 & n.59.

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Limited Trains can take two potential routes—one of which is controlled by BNSF and one of which is controlled by UP. Each route is covered by an operating agreement with Amtrak governing its statutory rights to operate over the segment. Amtrak’s contract with UP states that UP must {{ [REDACTED] }} Additionally, as discussed above, the agreement between UP and Amtrak also provides for Amtrak’s use of UP rail lines, including {{ [REDACTED] }} Amtrak’s agreement with UP to use these trackage rights dates back to the formation of Amtrak.

Amtrak’s contract with BNSF operates similarly. The agreement provides that BNSF shall

{{ [REDACTED] }}

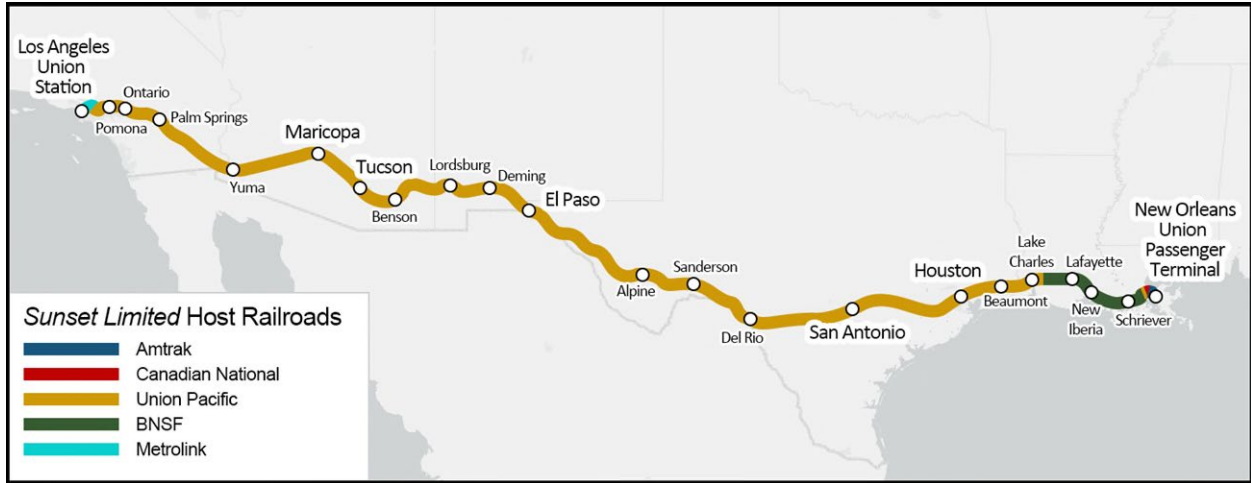
⁷⁰ See UP Operating Agreement at {{ [REDACTED] }}

⁷¹ Amtrak’s Suppl. Resp. at 15.

⁷² See Agreement Between Nat’l R.R. Passenger Corp. & Burlington N. R.R. Co. & Atcheson, Topeka, & Santa Fe Ry. Co. (“BNSF Operating Agreement”) (AMTRAK_STB_0014354) at {{ [REDACTED] }}

⁷³ See Letter from J. Blair to DJ Mitchell at 3, Exhibit A (Feb. 26, 2015).

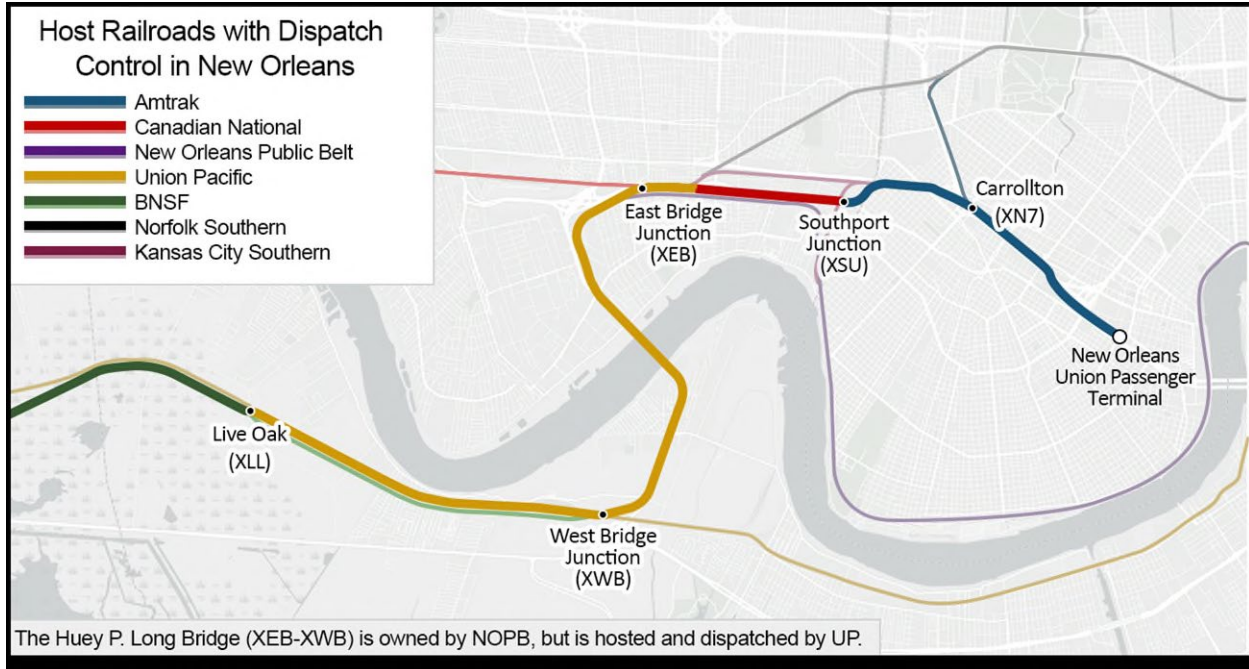
Map 1: Entire *Sunset Limited* Route



Map 2: Louisiana Handoffs for *Sunset Limited* Route



Map 3: New Orleans Area Handoffs for *Sunset Limited* Route



IV. DELAYS OR FAILURES TO ACHIEVE MINIMUM STANDARDS ON THE *SUNSET LIMITED* WERE DUE PRIMARILY TO CAUSES THAT COULD REASONABLY BE ADDRESSED BY UP.

In this investigation, Congress specifically charged the Board with “determin[ing] whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.” 49 U.S.C § 24308(f)(1). As set forth below, the investigative record assembled by the Board in this proceeding confirms the allegations in Amtrak’s Complaint. Namely, that the delays and failures to achieve minimum standards on the *Sunset Limited* are due primarily to causes that could reasonably be addressed by UP—the rail carrier over whose tracks Amtrak operates for the vast majority of the route.

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The Board need look no further than UP's own submissions to make the statutorily required determination. In this proceeding, the Board charged UP with explaining the reasons for 990 Host-Responsible Delays on the *Sunset Limited* route, including 42 Host-Responsible Delays of 90 minutes or more.⁷⁶ As discussed below, UP's own explanations for its dispatching decisions and operating practices show that UP can reasonably address the reasons for delay and failures to achieve minimum standards. In Part VIII, Amtrak provides recommendations for how to do so.

A. UP Hosts Most Of The *Sunset Limited* Route And UP Has Not Disputed Its Responsibility For The Majority Of Delay To The *Sunset Limited*.

No party disputes that the *Sunset Limited* meets the statutory criteria for a Board investigation under Section 24308(f),⁷⁷ or that UP serves as the contractual host railroad for most of the *Sunset Limited* service.⁷⁸ Moreover, there is no dispute that most delays to *Sunset Limited* passengers occur on UP-Hosted Segments of the *Sunset Limited* route.⁷⁹ During the Complaint Period, the average *Sunset Limited* passenger experienced approximately *six hours* of Host-Responsible Delay per trip on the UP-Hosted Segments of the route.⁸⁰ These delays account for almost 88% of all Host-Responsible Delay minutes on the *Sunset Limited* service, and nearly 65% of total delays on the service.⁸¹

⁷⁶ See February 2024 Decision, App'x Parts I–II.

⁷⁷ See July 2023 Decision at 9; *supra* Part II (Table 1).

⁷⁸ See *supra* Part III.

⁷⁹ See Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0002) (demonstrating that approximately 87% of delays to *Sunset Limited* Trains occur on UP-Hosted Segments of service).

⁸⁰ For Train 1, the figure was 366.5 minutes and for Train 2 it was 348.5 minutes. See Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0002).

⁸¹ *Id.*

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Passengers on both *Sunset Limited* Trains encounter cascading and severe delays when traveling on UP-Hosted Segments.⁸² For example, on Train 1, most riders are destined for stops west of San Antonio. Amtrak previously added a substantial amount of excess dwell time at that stop for the express purpose of allowing the train to recover from delays and help UP meet the scheduled runtime for subsequent destinations.⁸³ Nevertheless, COTP deteriorates rapidly after the San Antonio stop. During the Complaint Period, *Sunset Limited* passengers frequently arrived late to Del Rio, Texas, the stop immediately following San Antonio, and Train 1 reached Del Rio within 15 minutes of its scheduled arrival on only 24% of trips.⁸⁴ Across the station stops following San Antonio, Amtrak passengers experienced average delays of more than three hours.⁸⁵

For passengers on eastbound Train 2, who arrive on UP trackage almost immediately after departing Los Angeles, COTP declines quickly and precipitously. Indeed, passengers on Train 2 travel less than one mile before arriving on the UP-Hosted Segments for 17 station stops. During the Complaint Period, UP failed to deliver adequate COTP at a single one of those stations.⁸⁶ Nor did it come close. Over those four successive quarters, COTP declined to 62% by the time Train 2 passengers reached Pomona, the very first station on the route.⁸⁷ By the time Train 2 passengers

⁸² Compl. & Pet. ¶ 109; accord Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022). To be clear, UP also plays a role in driving delays early in Train 1 service, including because it owns, jointly owns, or has some role in dispatching most of the trackage preceding its hosted segments. See *supra* Part III.

⁸³ See Amtrak's Sept. 2023 Resp. at 56 ("For example, at San Antonio, Train 1 generally requires 90 minutes or less of Dwell Time to perform normal work, but the schedule skeleton provides for 160 minutes of Dwell Time. This Extended Dwell Time therefore serves the same purpose as Recovery Time.").

⁸⁴ See Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022).

⁸⁵ Performance was particularly troubling during the final two quarters of the Complaint Period, during which UP failed to deliver more than a single passenger on-time to certain stations. See Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022).

⁸⁶ See Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022).

⁸⁷ See *id.*

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reached Yuma, the first stop in Arizona, COTP had declined to approximately 46%.⁸⁸ Performance never recovered. It remained below that figure—and typically *well* below that figure—for the remainder of the trip, including at ridership-heavy stations like Maricopa, Tucson, San Antonio, and Houston.⁸⁹

UP had an opportunity to review and contest all the delays underlying this poor performance before this proceeding began. Consistent with its regulatory obligations, Amtrak records all delays for the *Sunset Limited* service and provides each host along the route with the opportunity to analyze and dispute the delay if, for example, the host believes that the delay is miscalculated or believes the delay is not, in fact, the host’s responsibility. This FRA-mandated process ensures that delay reporting is transparent and that the Board can complete an expeditious investigation of substandard COTP.⁹⁰

UP already had systems in place to analyze and dispute Amtrak-reported delays when the FRA-mandated delay-dispute process was adopted. Moreover, UP admits that its corridor managers “review each delay Amtrak identifies,”⁹¹ and bear responsibility for “initiating the dispute process, as appropriate.”⁹² During the Complaint Period, 99.8% of Host-Responsible Delays assigned to UP were ultimately undisputed.

⁸⁸ *See id.*

⁸⁹ *See id.*

⁹⁰ *See* Final Rule, 85 Fed. Reg. at 72982 (emphasizing that process is meant to ensure transparent delay reporting).

⁹¹ UP’s Sept. 2023 Resp. at 8.

⁹² *Id.*

B. The Investigative Record Confirms That Delays Or The Failure To Meet Minimum Standards On The *Sunset Limited* Route Were Due Largely To Causes That Could Reasonably Be Addressed By UP.

In this proceeding, the Board has compiled a robust investigative record that confirms the central allegations in Amtrak’s Complaint: The delays or failures to meet minimum standards for the *Sunset Limited* were due largely to causes that could reasonably be addressed by UP.⁹³ In the July 2023 Decision opening the investigation, the Board solicited detailed train performance data and information about host railroad operating policies, practices, and procedures.⁹⁴ In the February 2024 Decision, the Board identified an illustrative selection of delay events to inform its investigation—over 1,000 across all parties.⁹⁵ The delays included some of the most egregious that *Sunset Limited* passengers encountered.⁹⁶ They also included stand-alone delays of 15 minutes or more, and clusters of proximate delays (potentially sharing common characteristics or related impacts) for the 20 eastbound and 20 westbound trains that incurred the great number of Host-Responsible Delay minutes.⁹⁷ In response to the Board’s February 2024 Decision, the parties submitted root cause analyses for the Board-selected, Host-Responsible Delays that occurred on their trackage.

UP’s own root cause analysis submissions confirm that, in addition to both running a significant number of non-fitting trains in territory shared with Amtrak operations and mismanaging the operation of freight trains with expiring or expired crews, UP also made

⁹³ The Board’s investigative record focused solely on documents and data requests. The Board did not accept Amtrak’s proposal that the Board interview dispatchers, corridor managers, train crews, and other personnel to address any discrepancy between documented and actual operational processes. *See* Amtrak Proposed Procs. at 13–14.

⁹⁴ *See* July 2023 Decision App’x A, Parts. I–V.

⁹⁵ *See* February 2024 Decision at 7, App’x Part I.

⁹⁶ *See id.* at 7, App’x Part II.

⁹⁷ *See id.* at 7, App’x Part I.

dispatching decisions that forced Amtrak passengers to incur needless delay when meeting or following freight trains, when faster trackage was occupied by freight trains, and because UP wanted to preserve UP's preferred directional operating patterns. UP's root cause analysis also reflects the frequency with which Amtrak passengers were made to sit and wait because of careless operating decisions like the failure to clear working trains, failure to clear maintenance crews, and failure to ensure tracks adjacent to station platforms were accessible to Amtrak trains.

In short, UP's own analysis of Board-selected egregious and illustrative delays provides sufficient basis to determine that delays or the failure to achieve minimum standards were due largely to causes that can be addressed by UP. Indeed, of the 43 egregious delays the Board identified,⁹⁸ 42 of them occurred on UP trackage.⁹⁹ UP has acknowledged responsibility for most of those delays,¹⁰⁰ and has also acknowledged that Amtrak played a role in just two of them.¹⁰¹

Below, Amtrak explains the primary causes of delay to *Sunset Limited* passengers, all of which can reasonably be addressed by UP. First, Amtrak recaps delay data that establishes FTI as the leading cause of delay to *Sunset Limited* passengers. Second, Amtrak identifies the several ways in which UP has acknowledged that it caused delay to *Sunset Limited* passengers. Third, Amtrak explains how UP policies, practices, and procedures compound delay, including because of their failure to appropriately account for Amtrak operations. Finally, Amtrak addresses Host-Responsible Delays attributed to slow orders in effect across the route and freight mechanical issues.

⁹⁸ See *id.* at 54–55, App'x Part II.

⁹⁹ See *id.*

¹⁰⁰ See generally UP's Select Host-Responsible Delays of 90-Minutes or More, Apr. 15, 2024 ("UP Egregious Delay RCA").

¹⁰¹ See *id.* at 7, 15.

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Importantly, many of the individual dispatching decisions and systemic practices addressed here also violate Amtrak’s statutory right to preference over freight transportation, which is further addressed in Part V, *infra*.

1. FTI is the leading cause of delay to *Sunset Limited* passengers.

FTI is the leading cause of delay for *Sunset Limited* passengers on the UP-Hosted Segments of the route. No other type of delay comes close. FTI occurs when an Amtrak train is stopped or slowed due to meeting or being forced to follow a freight train. For example, an FTI delay occurs when a host railroad’s dispatcher: (1) stops an Amtrak train to allow a freight train to proceed first; (2) requires an Amtrak train to operate behind a slower freight train; (3) requires an Amtrak train to stop behind a stationary freight train; or (4) forces an Amtrak train to wait in a siding while a slower freight train passes on the main line.¹⁰²

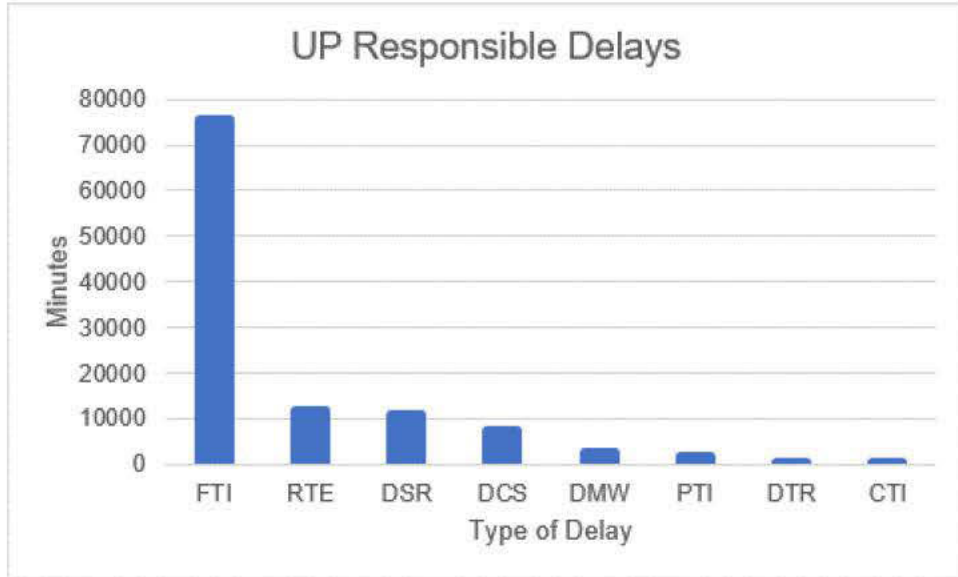
Sunset Limited passengers experienced a staggering amount of FTI when traveling on the UP-Hosted Segments. As reflected in Figure 1, the amount of FTI that *Sunset Limited* passengers encounter on UP-Hosted Segments dwarfs the amount of other Host-Responsible Delay. In total, during the Complaint Period, FTI drove approximately 69% of all Host-Responsible Delay minutes on the UP-Hosted Segments.¹⁰³ Indeed, during the Complaint Period, UP imposed on the average *Sunset Limited* Train more than 15 instances of FTI per trip, resulting in more than four hours of per-trip delay.¹⁰⁴

¹⁰² See Amtrak’s Sept. 2023 Resp., Reporting and Recording Delays on Host R.R.s (effective Oct. 10, 2022) (“Amtrak 2022 Delay Manual”) (AMTRAK_STB_0000017).

¹⁰³ See Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹⁰⁴ Compl. & Pet. ¶¶ 92–95; accord Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002). Across the entire route, UP drove approximately 95% of FTI delays and approximately 93.9% of FTI Delay Minutes. Verified Statement of Robert Mulholland and Timothy Crowley (“Peabody V.S.”) at 16; accord Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002). As Amtrak explained in its Complaint, the significant amount of FTI on UP-

Figure 1
Type of Host-Responsible Delay on UP-Hosted Segments During Complaint Period



Many of the delays that *Sunset Limited* passengers encountered during the Complaint Period involved {{ [REDACTED] }}.¹⁰⁵ During the Complaint Period, {{ [REDACTED] }}
{{ [REDACTED] }}.¹⁰⁶ Moreover, a significant number of FTI delays were driven by {{ [REDACTED] }}
{{ [REDACTED] }}
{{ [REDACTED] }}
{{ [REDACTED] }}

Hosted Segments affects passengers on Trains 1 and 2 and showed no signs of abating during the Complaint Period. See Compl. & Pet. ¶¶ 122–124 & Figures 7–8; accord Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹⁰⁵ See Peabody V.S. at 3–4.

¹⁰⁶ See *id.* at 4 {{ [REDACTED] }}.

¹⁰⁷ See *id.* at 3–4, 34–35, Table 11 {{ [REDACTED] }}.

[REDACTED]

[REDACTED]

[REDACTED] } } .¹⁰⁹

Delays driven by FTI also occur across the route. To be sure, *Sunset Limited* passengers are more likely to encounter long-duration FTI in and around major metropolitan areas, as in the stretch between Houston and Beaumont, or between San Antonio and Houston, where average FTI spikes.¹¹⁰ *Sunset Limited* passengers also experience a significant amount of FTI near { [REDACTED]

[REDACTED]

[REDACTED] } } .¹¹¹ However, *Sunset Limited* passengers experience FTI across the entirety of the UP-Hosted Segments, heading both eastbound and westbound.¹¹² The sheer amount of FTI across the UP-Hosted Segments made compliance with the COTP Minimum Standard impossible, and UP’s root cause analysis establishes—in UP’s own words—some of the leading causes of FTI.

2. UP’s root cause analysis confirms that non-fitting trains cause substantial delay to *Sunset Limited* passengers.

During the Complaint Period, UP failed to align its freight operating practices with the existing physical infrastructure on the *Sunset Limited* route, to the significant detriment of Amtrak passengers. Throughout the Complaint Period, the UP-Hosted Segments did not have a single

¹⁰⁸ See *id.* at 36 { [REDACTED] } ; *id.* at 36-37({ [REDACTED] } } .

¹⁰⁹ See *id.* at Table 17.

¹¹⁰ Compl. & Pet. ¶¶ 92–95; accord Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹¹¹ See Peabody V.S. at 55 & Table 19.

¹¹² See *id.* at 52 & Table 18.

siding long enough to accommodate all trains that travelled past it.¹¹³ Not one. UP initially reported that during the Complaint Period more than 27,000 trains were too long for at least one siding that they passed along the *Sunset Limited* route.¹¹⁴ That number increased to more than 37,000 trains after Amtrak identified discrepancies in UP data.¹¹⁵

{}
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{}¹¹⁸

As a National Academies of Sciences, Engineering, and Medicine study (“Long Freight Trains Study”) recently observed: “Long trains that exceed available siding lengths in a subdivision require managers and/or dispatchers to employ special techniques to operate trains[.]” including “[f]orcing smaller trains (including passenger trains) to wait for longer trains to pass by

¹¹³ UP’s Sept. 2023 Resp. at 24.

¹¹⁴ See *id.* at 25. Compare this number to that of BNSF, which reported that only 308 of its trains could not fit into at least one siding on its route. See BNSF’s Sept. 2023 Resp. at 17. Although BNSF runs a significantly smaller number of trains along the route (only just over 4,600 trains) than UP does, the fact that only 6% of its trains were too long to fit in one siding indicates that UP’s proportion of non-fitters is outsized compared to the industry. See *id.*

¹¹⁵ Union Pacific R.R. Co.’s Amended Resp. to App’x A, Part IV, Request No. 15 at 3 (Aug. 12, 2024).

¹¹⁶ Peabody V.S. at 41–42 & Table 14; see also *id.* at 36 {
{}; *id.* at 43 {
}.

¹¹⁷ *Id.* at Table 14; see also *id.* at 36–37 {
{}.

¹¹⁸ *Id.* at 40–41 & Table 13 {
}.

while they wait in sidings.”¹¹⁹ During the Complaint Period, the decision to operate non-fitting trains in territory shared with Amtrak operations imposed an enormous amount of delay on *Sunset Limited* passengers. In Table 2, Amtrak provides examples of how non-fitting trains delayed *Sunset Limited* passengers, drawing exclusively on the root cause analysis that UP submitted in this proceeding.¹²⁰

Table 2:
Illustrative Delays Involving Non-Fitting Trains from UP’s Root Cause Analysis¹²¹

Delay Date	Delay Train	Delay Length	Delay Explanation
1/21/2022	1	108 minutes	{ [REDACTED] }
9/23/2022	2	124 minutes	{ [REDACTED] }
8/03/2022	2	61 minutes	{ [REDACTED] }
9/25/2022	1	50 minutes	{ [REDACTED] }

¹¹⁹ National Academies of Sciences, Engineering, and Medicine, *Long Freight Trains: Ensuring Safe Operations, Mitigating Adverse Impacts* 67 (Sept. 17, 2024) (“Long Freight Trains Study”) (Amtrak Exhibit 2).

¹²⁰ Delays were sometimes compounded by other operational decisions or issues addressed herein. Amtrak emphasizes that these examples are not meant to be exhaustive. They do not include each instance in which UP acknowledges in its root cause analysis that a non-fitting train delayed the *Sunset Limited*, nor do they attempt to draw from and catalogue the universe of delays beyond those identified in the Board-selected egregious and illustrative delays. Tables 3–10, *infra*, also contain examples that are not meant to identify each instance in which UP acknowledges the pertinent delay type in its root cause analysis, and do not attempt to identify delays beyond those already identified by the Board.

¹²¹ See, e.g., UP Egregious Delay RCA at 6 (1/21/2022; 108-minute delay); UP Egregious Delay RCA at 37 (9/23/2022; 124-minute delay); Train 2 RCA at 256 (8/03/2022; 53-minute delay); UP Train 1 RCA at 70-71 (9/25/2022; 50-minute delay); UP Train 1 RCA at 62 (3/08/2022; 30-minute delay); UP Train 1 RCA at 436 (9/02/2022; 168-minute delay); UP Train 2 RCA at 260 (8/03/2022; 46-minute delay); UP Train 2 RCA at 337 (9/02/2022; 16-minute delay); UP Train 2 RCA at 381 (9/09/2022; 13-minute delay); UP Train 1 RCA at 399 (7/12/2022; 42-minute delay); UP Train 1 RCA at 43-44 (9/23/2022; 13-minute delay); UP Train 1 RCA at 80 (3/08/2022; 12-minute delay); UP Train 1 RCA at 176 (4/08/2022; 30-minute delay); UP Train 2 RCA at 45-46 (4/03/2022; 26-minute delay); UP Train 2 RCA at 158-59 (5/25/2022; 46-minute delay); UP Train 2 RCA at 160-61 (5/25/2022; 30-minute delay); UP Train 2 RCA at 256 (8/03/2022; 61-minute delay); UP Train 2 RCA at 265 (8/03/2022; 13-minute delay); UP Train 2 RCA at 123 (5/06/2022; 30-minute delay).

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Delay Date	Delay Train	Delay Length	Delay Explanation
3/08/2022	1	30 minutes	[REDACTED]
9/02/2022	1	168 minutes	[REDACTED]
8/03/2022	2	46 minutes	[REDACTED]
7/12/2022	1	42 minutes	[REDACTED]
9/23/2022	1	13 minutes	[REDACTED]
3/08/2022	1	12 minutes	[REDACTED]
4/08/2022	1	30 minutes	[REDACTED]
4/03/2022	2	26 minutes	[REDACTED]
5/25/2022	2	46 minutes	[REDACTED]
5/25/2022	2	30 minutes	[REDACTED]
8/03/2022	2	61 minutes	[REDACTED]
8/03/2022	2	13 minutes	[REDACTED]
5/06/2022	2	30 minutes	[REDACTED]

Sometimes, decisions concerning the operation and dispatching of non-fitting trains caused the *Sunset Limited* to “catch” a non-fitter, requiring that Amtrak passengers follow or stop behind the slower freight train that could not take a siding because it was too long. In Table 3, Amtrak draws exclusively on the root cause analysis that UP submitted in this proceeding to provide

examples of how non-fitting trains delayed *Sunset Limited* passengers by forcing them to follow or stop behind a slower moving freight train that could not take a siding.

**Table 3:
Illustrative Delays Involving Non-Fitting Trains From UP’s Root Cause Analysis
(Follows)¹²²**

Delay Date	Delay Train	Delay Length	Delay Explanation
9/25/2022	1	50 minutes	[REDACTED]
3/08/2022	1	30 minutes	[REDACTED]
9/02/2022	1	168 minutes	[REDACTED]
8/03/2022	2	46 minutes	[REDACTED]
6/19/2022	2	35 minutes	[REDACTED]

Other times, the decision to dispatch non-fitting trains onto segments that were or soon would be occupied by *Sunset Limited* Trains required Amtrak to take a siding, or otherwise experience delay during a meet. In Table 4, Amtrak draws exclusively on the root cause analysis that UP submitted in this proceeding to provide examples of how meets between non-fitting trains and the *Sunset Limited* imposed delay on Amtrak passengers.¹²³

¹²² See, e.g., UP Train 1 RCA at 70–71 (9/25/2022; 50-minute delay); UP Train 1 RCA at 62 (3/08/2022; 30-minute delay); UP Train 1 RCA at 436 (9/02/2022; 168-minute delay); UP Train 2 RCA at 260 (8/03/2022; 46-minute delay); UP Train 2 RCA at 211 (6/19/2022; 35-minute delay).

¹²³ Additionally, UP acknowledges that it { [REDACTED] }. UP Train 1 RCA at 176 (4/08/2022; 30-minute delay). Crew issues are discussed further *infra* Part IV.B.4.

Table 4:

Illustrative Delays Involving Non-Fitting Trains from UP’s Root Cause Analysis (Meets)¹²⁴

Delay Date	Delay Train	Delay Length	Delay Explanation
7/12/2022	1	42 minutes	{ [REDACTED] }
9/23/2022	1	13 minutes	{ [REDACTED] }
3/08/2022	1	12 minutes	{ [REDACTED] }
4/08/2022	1	30 minutes	{ [REDACTED] }
4/03/2022	2	26 minutes	{ [REDACTED] }
5/25/2022	2	46 minutes	{ [REDACTED] }
5/25/2022	2	30 minutes	{ [REDACTED] }
8/03/2022	2	61 minutes	{ [REDACTED] }
8/03/2022	2	13 minutes	{ [REDACTED] }
5/06/2022	2	30 minutes	{ [REDACTED] }
1/21/2022	1	108 minutes	{ [REDACTED] }
9/02/2022	2	32 minutes	{ [REDACTED] }

¹²⁴ See, e.g., UP Train 1 RCA at 399 (7/12/2022; 42-minute delay); UP Train 1 RCA at 43–44 (9/23/2022; 13-minute delay); UP Train 1 RCA at 80 (3/08/2022; 12-minute delay); UP Train 1 RCA at 176 (4/08/2022; 30-minute delay); UP Train 2 RCA at 45-46 (4/03/2022; 26-minute delay); UP Train 2 RCA at 158–59 (5/25/2022; 46-minute delay); UP Train 2 RCA at 160–61 (5/25/2022; 30-minute delay); UP Train 2 RCA at 256 (8/03/2022; 61-minute delay); UP Train 2 RCA at 265 (8/03/2022; 13-minute delay); UP Train 2 RCA at 123 (5/06/2022; 30-minute delay); UP Egregious Delay RCA at 6 (1/21/2022; 108-minute delay); UP Train 2 RCA at 351 (9/02/2022; 32-minute delay).

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These are just some examples—acknowledged in UP’s analysis of Board-selected egregious and illustrative delays—of the ways in which UP’s operation of non-fitting trains caused delay.¹²⁵ And, during the Complaint Period, several additional factors compounded the delays caused by the operation of non-fitting trains in territory shared with Amtrak operations, such as the prevalence of single-track territory, certain UP operating practices, and the location of sidings.

Single-Track Territory. Some UP-Hosted Segments of the *Sunset Limited* route are single-tracked. For example, approximately {{ [REDACTED] }} miles of the trackage between Iowa Junction and El Paso consists of a single main line with passing sidings. *Sunset Limited* Trains also run over approximately {{ [REDACTED] }} miles of single-track territory between El Paso and Los Angeles.¹²⁶ UP’s root cause analysis confirms that the railroad regularly ran non-fitting trains over these segments of track when *Sunset Limited* Trains were already—or soon would be—occupying those segments.¹²⁷

Freight Operating Practices. Notwithstanding its acknowledgement that it regularly runs non-fitting trains, UP attempted to assure the Board that *Sunset Limited* Trains nonetheless could pass, representing that “substantial portions of the *Sunset Limited* route are double-track territory, so trains can pass regardless of their length or the length of nearby passing sidings.”¹²⁸ But during

¹²⁵ As the Long Freight Trains Study noted: “A host railroad that is aware of [] a mismatch between the length of its freight trains and the infrastructure available on the route segment to accommodate meets and passes with Amtrak trains would seem to conflict with the passenger railroad’s statutory right for dispatching preference.” Long Freight Trains Study, *supra* note 119, at 70.

¹²⁶ As discussed above, {{ [REDACTED] }} Peabody V.S. at 40–41 & Table 13 { [REDACTED] }.

¹²⁷ See, e.g., UP Train 1 RCA at 399 (7/12/22; 42-minute delay); UP Train 1 RCA at 400 (7/12/22; 62-minute delay); UP Train 1 RCA at 70-71 (9/25/22; 50-minute delay); UP Train 2 RCA at 160 (5/25/2022; 30-minute delay); UP Train 2 RCA at 160 (5/25/2022; 30-minute delay).

¹²⁸ UP’s Sept. 2023 Resp. at 24.

the Complaint Period, UP did not conform freight operating practices to ensure that *Sunset Limited* Trains only encountered non-fitters within double-tracked territory. As a result, Amtrak and its passengers experienced considerable delay.¹²⁹

Location of Sidings. Further, delays caused by non-fitting trains operating in territory shared with Amtrak were compounded by the location of certain sidings. During the Complaint Period, there were {{[REDACTED]}} sidings on the UP-Hosted Segments of the *Sunset Limited* route between Iowa Junction and El Monte, California.¹³⁰ However, of the {{[REDACTED]}} sidings, only {{[REDACTED]}} exceeded 10,000 feet during the Complaint Period.¹³¹ None of the sidings that exceeded 10,000 feet was located { [REDACTED] }¹³² And { [REDACTED] } that were too short to accommodate the average passing UP freight train in single-track territory were west of El Paso.¹³³ Notwithstanding these and other limitations on the length of passing sidings,¹³⁴ UP ran

¹²⁹ Moreover, on some double-tracked portions of the *Sunset Limited* route, UP has acknowledged that it implements directional operating practices that involve using one main line for all westbound traffic and another main line for all eastbound traffic. *See, e.g.*, UP Train 1 RCA at 191 (4/08/2022; 20-minute delay); UP Train 1 RCA at 158 (4/03/2022; 7-minute delay); UP Train 1 RCA at 238 (5/01/2022; 51-minute delay); UP Train 1 RCA at 247 (5/01/2022; 49-minute delay); UP Train 1 RCA at 398 (7/12/2022; 15-minute delay); UP Train 2 RCA at 66 (4/10/2022; 52-minute delay); UP Train 2 RCA at 207 (6/19/2022; 39-minute delay); UP Train 2 RCA at 211 (6/19/2022; 35-minute delay). This results in delays to Amtrak trains that catch up with slower freight trains, if they are not permitted to pass. Peabody V.S. at 18–19.

¹³⁰ UP’s Sept. 2023 Resp. at 23–24 (explaining that track profiles produced in response to Request No.12 (UP-SL-0003676–UP-SL-0008298) show “lengths of passing sidings”).

¹³¹ *Id.*

¹³² Peabody V.S. at 39. { [REDACTED] }
[REDACTED] }¹³³ *See id.*

¹³³ *Id.* at 40 & Table 13.

¹³⁴ Another issue with the length of sidings arises on { [REDACTED] }
[REDACTED] } *See id.* at 39. Additionally, there are long stretches of double-track territory that lack sidings exceeding 10,000 feet. For example, none of the sidings that exceeded 10,000 feet was located in the nearly 89-mile stretch between El Paso, Texas and Deming, New Mexico. *See id.* at Ex. 6. And just {{[REDACTED]}} of the sidings that exceeded 10,000 feet were located in the more than 640-mile stretch between Deming and El Monte. *See id.* at Ex. 6. The absence of longer passing sidings in double-track territory can compound the effect that other UP operating practices have on the operation of *Sunset Limited* Trains, for example where UP runs non-fitting trains in territory shared with the *Sunset Limited* and also implements directional operating preferences.

a significant number of non-fitting trains over these segments when *Sunset Limited* Trains were also operating in the area.¹³⁵

In sum, UP's decision to continue lengthening freight trains without making commensurate improvements to the frequency and length of its sidings had a significant and demonstrable adverse effect on *Sunset Limited* performance. The robust investigative record developed by the Board during this investigation confirms that the practice of running non-fitters in territory shared with *Sunset Limited* Trains resulted in considerable delay for Amtrak passengers. And that practice is squarely within UP's control.

3. UP's root cause analysis confirms that *Sunset Limited* passengers have regularly experienced delays meeting and following freight trains.

During the Complaint Period, *Sunset Limited* passengers experienced a significant amount of delay during meets and follows. "Meets" occur when trains are traveling in opposite directions on the same track. When this happens in single-track territory, one train must be placed on a passing siding adjacent to the mainline track, so that the other train can pass it on the mainline track. The investigative record demonstrates that *Sunset Limited* passengers were regularly delayed when meeting freight trains during transit. In fact, the investigative record establishes that *Sunset Limited* passengers were slowed by freight meets more than 2,500 times on UP-Hosted Segments, or an average of more than eight times per trip.¹³⁶ On average, those meets imposed delays exceeding two hours per trip.¹³⁷

¹³⁵ See, e.g., *id.* at 36–37. Blocked sidings can also compound the number of delays that *Sunset Limited* Trains encounter on the route. See *id.* at 47.

¹³⁶ See Compl. & Pet. ¶127 n.110; accord Amtrak's Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹³⁷ See Amtrak's Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

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During the Complaint Period, *Sunset Limited* passengers also endured considerable delay when forced to follow slower freight trains on UP-Hosted Segments. “Follows” occur when trains are traveling in the same direction on the same track, and the train in front is a slower moving train than the one behind it. When train follows occur in single-track territory, the faster following train ordinarily must trail the slower lead train at reduced speed, until the lead train encounters a passing siding that is unoccupied and that can accommodate the lead train. The lead train is then sided, and the following train is allowed to overtake it on the main track. Follows also occur in double-track territory, when one of the tracks is blocked by a stationary or approaching train or where the tracks are used for directional running. Altogether, *Sunset Limited* Trains were forced to follow slower-moving freight trains nearly 1,200 times when operating on UP-Hosted Segments, or nearly four times per trip.¹³⁸ On average, those follows imposed delays of more than 75 minutes per trip.¹³⁹

Some of the meets and follows that *Sunset Limited* passengers experienced during the Complaint Period can be attributed to UP’s insistence on running non-fitting trains in territory shared with Amtrak operations, as discussed above.¹⁴⁰ But that operational practice does not explain all of the FTI driven by such occurrences. UP’s root cause analysis of the Board-selected egregious and illustrative delays establishes that many delays occurred because *Sunset Limited* passengers were stuck following a freight train for reasons not apparently related to the length of trains or proximate sidings involved. In Table 5, Amtrak provides examples of follows not apparently related to non-fitting trains, drawing entirely on the root cause analysis that UP submitted in this proceeding.

¹³⁸ See Compl. & Pet. ¶ 128; accord Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹³⁹ *Id.*

¹⁴⁰ See *supra* Part IV.B.2.

Table 5:
Illustrative Delays Involving Other Follows from UP's Root Cause Analysis¹⁴¹

Delay Date	Delay Train	Delay Length	Delay Explanation
9/23/2022	1	38 minutes	{ [REDACTED] }
11/9/2021	1	24 minutes	{ [REDACTED] }
3/18/2022	1	44 minutes	{ [REDACTED] }
3/13/2022	2	20 minutes	{ [REDACTED] }
4/08/2022	1	20 minutes	{ [REDACTED] }
9/09/2022	2	60 minutes	{ [REDACTED] }
9/20/2022	1	26 minutes	{ [REDACTED] }
3/18/2022	1	44 minutes	{ [REDACTED] }
4/08/2022	1	32 minutes	{ [REDACTED] }
5/01/2022	1	49 minutes	{ [REDACTED] }
5/01/2022	1	51 minutes	{ [REDACTED] }

¹⁴¹ See, e.g., UP Train 1 RCA at 41–42 (9/23/2022; 38-minute delay); UP Train 1 RCA at 26 (11/9/2021; 24-minute delay); UP Train 1 RCA at 128 (3/18/2022; 44-minute delay); UP Train 2 RCA at 5–6 (3/13/2022; 20-minute delay); UP Train 1 RCA at 191 (4/08/2022; 20-minute delay); UP Train 2 RCA at 371 (9/09/2022; 60-minute delay); UP Train 1 RCA at 20-21 (9/20/2022; 26-minute delay); UP Train 1 RCA at 128 (3/18/2022; 44-minute delay); UP Train 1 RCA at 190 (4/08/2022; 32-minute delay); UP Train 1 RCA at 247 (5/01/2022; 49-minute delay); UP Train 1 RCA at 238 (5/01/2022; 51-minute delay); UP Train 2 RCA at 66 (4/10/2022; 52-minute delay); UP Train 2 RCA at 207 (6/19/2022; 39-minute delay); UP Train 2 RCA at 337 (9/02/2022; 16-minute delay); UP Train 2 RCA at 381 (9/09/2022; 13-minute delay).

Delay Date	Delay Train	Delay Length	Delay Explanation
4/10/2022	2	52	[REDACTED]
6/19/2022	2	39 minutes	[REDACTED]
9/02/2022	2	16 minutes	[REDACTED]
9/09/2022	2	13 minutes	[REDACTED]

The same is true for meets. It appears that sometimes, *Sunset Limited* passengers were delayed during meets in order to prioritize [REDACTED].¹⁴² In other cases, UP admits that *Sunset Limited* passengers were delayed by meets, but provides no explanation for why the relevant freight trains were occupying track during the scheduled approach of *Sunset Limited* Trains. In Table 6, Amtrak provides examples of meets apparently unrelated to non-fitting trains, drawing entirely on the root cause analysis that UP submitted in this proceeding.

¹⁴² See, e.g., UP Egregious Delay RCA at 42 (11/6/2022; 90-minute delay) [REDACTED]; see also Peabody V.S. at 18.

Table 6:
Illustrative Delays Involving Other Meets from UP’s Root Cause Analysis¹⁴³

Delay Date	Delay Train	Delay Length	Delay Explanation
7/12/2022	1	102 minutes	{ [REDACTED] }
8/07/2022	2	22 minutes	{ [REDACTED] }
9/21/2022	2	16 minutes	{ [REDACTED] }
11/6/2022	2	90 minutes	{ [REDACTED] }

4. UP’s crew management practices cause substantial delay to *Sunset Limited* passengers.

In its Complaint, Amtrak alleged that *Sunset Limited* passengers experience a significant amount of delay because UP failed to undertake adequate crew planning.¹⁴⁴ More specifically, Amtrak alleged that *Sunset Limited* Trains were regularly delayed due to FTI when the crew of a UP freight train reached its maximum allowable hours of service while the UP train was occupying the main line, or when UP freight trains were given priority so that a freight crew did not reach its maximum allowable hours of service before a crew-change point.¹⁴⁵ The investigative record unequivocally confirms those allegations.

First, UP acknowledges that some of the Board-selected egregious and illustrative delays to *Sunset Limited* passengers occurred because UP permitted freight crews to “expire” (*i.e.*, to reach their maximum allowable hours of service) while occupying main lines. In some cases, it

¹⁴³ See UP Train 1 RCA at 380 (7/12/2022; 102-minute delay); UP Train 2 RCA at 279 (8/07/2022; 22-minute delay); UP Train 2 RCA at 409 (9/21/2022; 16-minute delay); UP Egregious Delay RCA at 42 (11/6/2022; 90-minute delay).

¹⁴⁴ Compl. & Pet. ¶¶ 135–36.

¹⁴⁵ *Id.* ¶ 136. As the Board knows, federal law permits (but obviously does not require) a freight crew to operate for up to 12 hours at a time. 49 U.S.C. § 21103(a)(2). If a crew exceeds the 12-hour limit, the FRA may take enforcement action, including by penalizing the railroad and the crew. See *id.* § 21303.

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appears that a failure to timely execute the “recrew” (*i.e.*, the replacement of the crew) compounded the delay. In others, it appears that UP inexplicably permitted crews to enter single-track territory very shortly before their expiration, limiting the operational adjustments available to mitigate delay. In all events, *Sunset Limited* passengers experienced preventable delays because UP did not appropriately manage crew hours of service. In Table 7, Amtrak provides examples of UP allowing crews to expire on the main track, drawing entirely on the root cause analysis that UP submitted in this proceeding.

**Table 7:
Illustrative Delays Involving Crew Expiration on Main Line from UP’s Root Cause Analysis¹⁴⁶**

Delay Date	Delay Train	Delay Length	Delay Explanation
1/21/2022	1	108 minutes	{ [REDACTED] }
9/23/2022	2	124 minutes	{ [REDACTED] }
11/14/2021	1	122 minutes	{ [REDACTED] }
4/03/2022	1	82 minutes	{ [REDACTED] }
9/20/2022	1	63 minutes	{ [REDACTED] }
12/31/2021	2	109 minutes	{ [REDACTED] }

Second, UP acknowledges that several of the Board-selected delays to *Sunset Limited* passengers were caused by UP prioritizing the movement of freight trains with crews nearing their maximum hours of service. In fact, the root cause analysis that UP prepared is replete with

¹⁴⁶ See UP Egregious Delay RCA at 6 (1/21/2022; 108-minute delay); UP Egregious Delay RCA at 37 (9/23/2022; 124-minute delay); UP Egregious Delay RCA at 26 (11/14/2021; 122-minute delay); UP Train 1 RCA at 141 (4/03/2022; 82- minute delay); UP Train 1 RCA at 25 (9/20/2022; 63-minute delay); UP Egregious Delay RCA at 27 (12/31/2021; 109-minute delay).

instances where UP intentionally delayed *Sunset Limited* passengers because a freight crew in the area was running short on service hours.¹⁴⁷ In Table 8, Amtrak provides examples of UP prioritizing trains with crews nearing hours of service limits, drawing entirely on the root cause analysis that UP submitted in this proceeding.

**Table 8:
Illustrative Delays Involving Prioritization of Trains with Crews Nearing Hours-of-Service Limits from UP’s Root Cause Analysis¹⁴⁸**

Delay Date	Delay Train	Delay Length	Delay Explanation
4/05/2022	1	105 minutes	{ [REDACTED] }
4/08/2022	1	30 minutes	{ [REDACTED] }
5/20/2022	1	28 minutes	{ [REDACTED] }
4/03/2022	2	26 minutes	{ [REDACTED] }
11/06/2022	2	90 minutes	{ [REDACTED] }
3/08/2022	1	31 minutes	{ [REDACTED] }

¹⁴⁷ { [REDACTED] } See Amtrak Exhibit 20, Amtrak and the HDC Operating Team: HDC Amtrak Guide (UP-SL-0012389 C), at 3 (UP-SL-0012931 C) (produced Dec. 19, 2023). { [REDACTED] } See Peabody V.S. at 50–51.

¹⁴⁸ See, e.g., UP Egregious Delay RCA at 12 (4/05/2022; 105-minute delay); UP Train 1 RCA at 176 (4/08/2022; 30-minute delay); UP Train 1 RCA at 299 (5/20/2022; 28-minute delay); UP Train 2 RCA at 45–46 (4/03/2022; 26-minute delay); UP Egregious Delay RCA at 42 (11/06/2022; 90-minute delay); UP Train 1 RCA at 70 (3/08/2022; 31-minute delay); UP Egregious Delay RCA at 13 (4/19/2022; 107-minute delay); UP Egregious Delay RCA at 34 (6/10/2022; 91-minute delay); UP Train 1 RCA at 272 (5/06/2022; 34-minute delay); UP Train 1 RCA at 299 (5/20/2022; 28-minute delay); UP Train 1 RCA at 368 (6/28/2022; 20-minute delay); UP Train 1 RCA at 414 (7/26/2022; 38-minute delay); UP Train 1 RCA at 153 (4/03/2022; 16-minute delay); UP Train 1 RCA at 176 (4/08/2022; 30-minute delay); UP Train 2 RCA at 39 (4/03/2022; 47-minute delay); UP Train 2 RCA at 45 (4/03/2022; 26-minute delay); UP Train 2 RCA at 218 (6/19/2022; 36-minute delay); UP Train 1 RCA at 7 (9/20/2022; 35-minute delay).

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Delay Date	Delay Train	Delay Length	Delay Explanation
4/19/2022	1	107 minutes	{ [REDACTED] }
6/10/2022	2	91 minutes	{ [REDACTED] }
5/06/2022	1	334 minutes	{ [REDACTED] }
5/20/2022	1	28 minutes	{ [REDACTED] }
6/28/2022	1	20 minutes	{ [REDACTED] }
7/26/2022	1	38 minutes	{ [REDACTED] }
4/03/2022	1	16 minutes	{ [REDACTED] }
4/08/2022	1	30 minutes	{ [REDACTED] }
4/03/2022	2	47 minutes	{ [REDACTED] }
4/03/2022	2	26 minutes	{ [REDACTED] }
6/19/2022	2	36 minutes	{ [REDACTED] }
9/20/2022	1	35 minutes	{ [REDACTED] }

Importantly, UP has the information required to mitigate or eliminate delays to *Sunset Limited* passengers that result from its failure to manage federal limitations on crew hours of service. As UP has explained to the Board:

When a crew goes on duty, their hours of service are tracked and updated in real time. The information appears on several types of electronic records that are updated in real time, so the Train Management Team can continuously monitor

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crew hours of service and plan to move the train off the mainline if the crew will expire before reaching a crew change point.

For example, the Train Management Team uses electronic “Train Sheets” and “On Duty Sheets” (among other data sources) that identify all on-duty trains in a particular area and report, among other information, remaining hours of service for the crew. On these reports, hours of service information is color-coded to draw attention to crews nearing expiration, so the Train Management Team can address the issue well before the crew expires.

In addition, CADX is programmed to alert dispatchers to hours of service issues by making the train symbol blink on dispatchers’ display screens when crews are within **three and a half hours of expiring**, and dispatchers can retrieve more detailed information on crew hours of service remaining through their CADX displays.

Union Pacific’s UP Vision system can be used to provide a broad overview of trains that are ahead of schedule or behind schedule and a function that identifies trains for which there is a recrew risk—i.e., trains with crews that might expire before reaching their designated crew change point.¹⁴⁹

Notwithstanding these systems, which permit real-time monitoring of freight crews, and also include fail-safes that provide UP personnel with 3.5 hours of notice that a recrew will be needed, UP acknowledges that many Board-selected egregious and illustrative delays to *Sunset Limited* passengers were caused by the expiration of freight crews or a decision to prioritize the movement of freight trains with crews nearing their maximum legal hours of service.

In sum, these examples show how UP prioritized the movement of freight trains over its network because UP was unwilling or unable to make operational decisions that appropriately accounted for its obligations to Amtrak, including the obligation to provide Amtrak passengers with preference over freight transportation.

¹⁴⁹ UP’s Sept. 2023 Resp. at 36–37 (emphasis added).

5. UP’s root cause analysis confirms that additional UP operational decisions and failures impose substantial delay on *Sunset Limited* passengers.

By requiring UP to provide a root cause analysis for a specific set of illustrative delays, the Board also elicited information about several additional operational failures that cause delay to *Sunset Limited* passengers and can reasonably be addressed by UP. For example, in its root cause analysis, UP describes how it ran *Sunset Limited* Trains on slower trackage, built a freight train on trackage Amtrak required to access a passenger station platform, and failed to clear up tracks, yards, and station platforms of trains or maintenance teams in advance of Amtrak’s arrival. These delays appear to reflect a complete disregard for Amtrak operations and federal law requiring UP to provide Amtrak trains with preference over freight transportation.¹⁵⁰ In Table 9, Amtrak provides examples of such operational failures, drawing entirely on the root cause analysis that UP submitted in this proceeding.

Table 9:
Illustrative Delays Involving Operational Issues from UP’s Root Cause Analysis¹⁵¹

Delay Date	Delay Train	Delay Length	Delay Explanation
11/9/2021	1	19 minutes	{ [REDACTED] }
2/08/2022	1	16 minutes	{ [REDACTED] }
8/10/2022	2	33 minutes	{ [REDACTED] }

¹⁵⁰ See *infra* Part V.

¹⁵¹ See UP Train 1 RCA at 25 (11/9/2021; 19-minute delay); UP Train 1 RCA at 53 (2/08/2022; 16-minute delay); UP Train 2 RCA at 313 (8/10/2022; 33-minute delay); UP Egregious Delay RCA at 28 (1/19/2022; 96 minutes); UP Train 1 RCA at 403 (7/28/2022; 52-minute delay); UP Train 1 RCA at 61 (9/25/2022; 84-minute delay); UP Train 1 RCA at 16 (9/20/2022; 99-minute delay); UP Train 1 RCA at 329 (6/03/2022; 32-minute delay); UP Train 1 RCA at 8 (9/20/2022; 16-minute delay); UP Train 2 RCA at 112 (5/06/2022; 125-minute delay); UP Train 1 RCA at 96 (10/11/2022; 142-minute delay).

Delay Date	Delay Train	Delay Length	Delay Explanation
1/19/2022	2	96 minutes	{ [REDACTED] }
7/28/2022	1	52 minutes	{ [REDACTED] }
9/25/2022	1	84 minutes	{ [REDACTED] }
9/20/2022	1	99 minutes	{ [REDACTED] }
6/03/2022	1	32 minutes	{ [REDACTED] }
9/20/2022	1	16 minutes	{ [REDACTED] }
5/06/2022	2	125 minutes	{ [REDACTED] }
10/11/2022	1	142 minutes	{ [REDACTED] }

6. UP’s submissions to the Board confirm that its policies, practices, and procedures compound delay to *Sunset Limited* passengers.

UP already has the information required to prevent or mitigate many of the Host-Responsible Delays that *Sunset Limited* passengers encounter during service. However, UP personnel repeatedly failed to do so. The investigative record demonstrates that these individual dispatching failures reflect systemic ones. As set forth below, UP has repeatedly failed to account for obligations to Amtrak in training or guiding personnel, constructing dispatching algorithms, scheduling and managing its railroad operations, and monitoring performance. These failures cause significant, cascading delays for Amtrak passengers when travelling on UP-Hosted Segments.

As an initial matter, there is no doubt that UP has the information required to evaluate delays in real-time, or that it does so. Amtrak is a scheduled railroad. Its trains depart from their

originating stations at consistent times, and Amtrak’s *Sunset Limited* schedules contain recovery and excess dwell time to help offset delays. UP has acknowledged that its personnel monitor passenger operations every minute of every day.¹⁵² A dedicated team reviews the movement of Amtrak trains over the UP network in real time, purportedly “to spot potential issues and help resolve them with the responsible desk.”¹⁵³ Individual dispatchers are also meant to support this process, by notifying supervisory personnel every time they decide to delay an Amtrak train.¹⁵⁴

Under the circumstances, UP personnel have everything they need to prevent or mitigate delays to *Sunset Limited* passengers, including the ability to identify and evaluate adjustments to freight operations that can help recover the passenger train and facilitate timelier arrival for passengers. Their inability or refusal to do so during the Complaint Period results in individual dispatching errors, discussed above, but it also reflects several broader failures.

First, during the Complaint Period, UP did not (and apparently still does not) provide dispatchers with adequate training, guidance, or supervision regarding the dispatching of Amtrak trains. UP reported that dispatchers were generally advised to weigh “a range of variables” in making dispatching decisions that involve Amtrak trains, and to consider how favoring Amtrak in individual decisions will affect other trains on the UP rail network.¹⁵⁵ { [REDACTED]

[REDACTED]

¹⁵² See UP’s Sept. 2023 Resp. at 8.

¹⁵³ See *id.* at 29.

¹⁵⁴ See *id.* at 32.

¹⁵⁵ *Id.* 31–32.

¹⁵⁶ See, e.g., UP’s Sept. 2023 Resp., General Code of Operating Rules (UP-SL-0011047_HC); HDC’s Train Held (DR) Policy (UP-SL-0000001_HC); Train Dispatcher Rules (UP-SL-10010691_C).

[REDACTED]

[REDACTED]

[REDACTED]}}

Second, UP acknowledges that during the Complaint Period (and continuing through to the present), its computer aided dispatching system “does not contain a set of rules that account for Amtrak’s legal preference,” and that UP’s dispatching algorithm assigned Amtrak and premium intermodal freight trains with equivalent priority.¹⁵⁹ UP also acknowledges that, although dispatchers can override computer-aided dispatching plans, most trains are set to automatic mode, which fails to recognize Amtrak’s right to preference.¹⁶⁰

Third, UP reported that during the Complaint Period (and continuing through to the present), UP used a “Train Schedule Builder” that lacks rules and programming to account for Amtrak’s preference rights and the corollary need to achieve the COTP that is expected under the Final Rule.¹⁶¹ Although that tool appears to refine schedules based on operational considerations for freight, such as the need for crew changes, fueling, inspection, pick-ups, and set-outs, UP does not mention any effort to refine schedules based on the risk of interference with Amtrak trains, and may in fact rely on historical run times that perpetuate the scheduling issues that generate FTI.¹⁶²

Finally, during the Complaint Period (and continuing through to the present), UP did not appear to have any system in place to monitor compliance with its federal legal obligation to

¹⁵⁷ See 2022 Train Dispatcher Score Card (UP-SL-0012239_HC) (produced on Dec. 6, 2023) (Amtrak Exhibit 3).

¹⁵⁸ UP’s Resp. & Objections to Amtrak’s First Set of Interrogs. at 9–10 (Oct. 13, 2023) (Amtrak Exhibit 4).

¹⁵⁹ UP’s Sept. 2023 Resp. at 34.

¹⁶⁰ *Id.* at 32–33.

¹⁶¹ *Id.* at 10–11.

¹⁶² *Id.*

comply with the COTP Minimum Standard or with Amtrak's statutory right to preference. Although UP appears to have many other compliance programs in place, including at least one (environmental) program that involves the use of an independent auditor for risk evaluation and scoring, UP has provided no evidence that during the Complaint Period it had any systematic measures to ensure that dispatching and more programmatic operating decisions are compliant with federal law. Indeed, UP's filings with its regulators never even mention its obligations to Amtrak or the risks of not complying with them.¹⁶³

In sum, the individual dispatching decisions that drove significant UP-Responsible Delay during the Complaint Period reflect UP's broader failures to appropriately account for Amtrak's passengers and operations in managing UP's railroad. These failures also violate Amtrak's statutory right to preference over freight transportation as further described in Part V, *infra*.

7. UP's root cause analysis confirms that freight train mechanical issues impose substantial delay on *Sunset Limited* passengers.

UP's root cause analysis for the Board-selected egregious and illustrative delays demonstrates that freight train mechanical issues also imposed recurring and significant delays on *Sunset Limited* passengers. In its evaluation of certain egregious delays to Amtrak passengers exceeding 90 minutes, UP blamed { [REDACTED] } [REDACTED] } When UP turned to its analysis of delays for the 40 illustrative *Sunset Limited* runs identified by the Board, it explained that actual or potential mechanical delays contributed to at least one delay on the overwhelming majority of runs. Again, these delays were typically significant, with many forcing *Sunset Limited* passengers to sit for

¹⁶³ See, e.g., Union Pacific R.R. Corp. Annual Report (Form 10-K) (Feb. 5, 2021), https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_up_10k_02052021.pdf; Union Pacific R.R. Corp., Annual Report (Form 10-K) (Feb. 4, 2022), <https://investor.unionpacific.com/static-files/040e5f24-ffad-4b24-931d-5712de40ad35>; Union Pacific R.R. Corp., Annual Report (Form 10-K) (Feb. 10, 2023), <https://investor.unionpacific.com/static-files/bd2f92f6-6823-47cb-982c-6778e2c16732>.

more than an hour, several requiring passengers to wait for more than three hours, and one requiring passengers to wait for more than eight-and-a-half hours. In Table 10, Amtrak provides examples of these issues, drawing entirely on the root cause analysis that UP submitted in this proceeding.

Table 10:
Illustrative Delays Involving Mechanical Issues from UP’s Root Cause Analysis¹⁶⁴

Delay Date	Delay Train	Delay Length	Delay Explanation
11/21/2021	1	173 minutes	[REDACTED]
2/1/2022	1	240 minutes	[REDACTED]
10/7/2022	1	97 minutes	[REDACTED]
11/8/2022	1	111 minutes	[REDACTED]
11/11/2022	1	171 minutes	[REDACTED]
11/29/2022	1	120 minutes	[REDACTED]
5/1/2022	2	280 minutes	[REDACTED]
6/12/2022	2	340 minutes	[REDACTED]

¹⁶⁴ See UP Egregious Delay RCA at 4 (11/21/2021; 173-minute delay); UP Egregious Delay RCA at 7 (2/1/2022; 240-minute delay); UP Egregious Delay at 20 (10/7/2022; 97-minute delay); UP Egregious Delay RCA at 21 (11/8/2022; 111-minute delay); UP Egregious Delay RCA at 22 (11/11/2022; 171-minute delay); UP Egregious Delay RCA at 24 (11/29/2022; 120-minute delay); UP Egregious Delay RCA at 32 (5/1/2022; 280-minute delay); UP Egregious Delay RCA at 35 (6/12/2022; 340-minute delay); UP Egregious Delay RCA at 41 (10/21/2022; 92-minute delay); UP Train 1 RCA at 323 (6/03/2022; 90-minute delay); UP Train 2 RCA at 343 (9/02/2022; 25-minute delay); UP Train 1 RCA at 126 (3/18/2022; 193-minute delay); UP Train 1 RCA at 150 (4/03/2022; 519-minute delay); UP Train 2 RCA at 385 (9/09/2022; 287-minute delay).

Delay Date	Delay Train	Delay Length	Delay Explanation
10/21/2022	2	92 minutes	[REDACTED]
6/03/2022	1	90 minutes	[REDACTED]
9/02/2022	2	25 minutes	[REDACTED]
3/18/2022	1	193 minutes	[REDACTED]
4/03/2022	1	519 minutes	[REDACTED]
9/09/2022	2	287 minutes	[REDACTED]

UP does not explain how long the pertinent trains were, and whether the frequency of these mechanical incidents has increased as the average train length on its network has increased.¹⁶⁵ As the recent Long Freight Trains Study noted, the implementation of long trains on a widespread basis has coincided with a spike in mechanical issues, including broken knuckles and repairing and reworking freight trains.¹⁶⁶ The result: increased delays for Amtrak passengers.¹⁶⁷ UP is silent on the steps it took during the Complaint Period to mitigate the number and magnitude of delays caused by freight mechanical issues, including with respect to procurement, maintenance, train construction, crew composition, and crew support. As Amtrak has previously explained to the

¹⁶⁵ At least some commentators have suggested that there may exist a correlation between freight train length and mechanical breakdowns like those described herein. See U.S. Gov’t Accountability Off., GAO-19-443, *Rail Safety: Freight Trains are Getting Longer, and Additional Information Is Needed to Assess Their Impact* (2019) (Amtrak Exhibit 5); see also Ben Guarino, *Longer and Longer Freight Trains Drive up the Odds of Derailment*, Sci. Am. (June 18, 2024), <https://www.scientificamerican.com/article/longer-freight-trains-are-more-likely-to-derail/>. So have representatives for railroad engineers and personnel. See Bill Stephens, *Hearing Focuses on Turning Around The Rail Industry’s Growth Problems*, Trains (Sept. 16, 2024), <https://www.trains.com/trn/news-reviews/news-wire/hearing-focuses-on-turning-around-the-rail-industrys-growth-problem/> (citing statement of Mark Wallace, Vice President of the Brotherhood of Locomotive Engineers and Trainmen).

¹⁶⁶ Long Freight Trains Study, *supra* note 119, at 70–71.

¹⁶⁷ *Id.*

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Board, Amtrak takes several steps to mitigate the risk of delay caused by its own locomotives and has been taking additional steps to reduce the frequency and length of delays, even though the average locomotive delay attributable to Amtrak is just 18 minutes long, and the median locomotive delay attributable to Amtrak is only five minutes.¹⁶⁸

C. UP And Other Host Railroads Must Continue Mitigating Slow Orders That Delay *Sunset Limited* Passengers.

After FTI, slow orders—that is, general directives that trains over a certain area of track operate at reduced speed—were the second-leading cause of delay minutes to *Sunset Limited* passengers during the Complaint Period.¹⁶⁹ However, the delay minutes attributable to slow orders pale in comparison to the delay minutes attributable to FTI during the Complaint Period.

Ensuring that host railroads continue to maintain their infrastructure to minimize slow orders and accompanying delay to *Sunset Limited* passengers will play an important role in achieving and sustaining compliance with the COTP Minimum Standard. The investigative record indicates that host railroads like BNSF and CN have addressed some slow orders on the route.¹⁷⁰ Limiting the number of slow orders along the *Sunset Limited* route is particularly important with respect to UP, which hosts the vast majority of the *Sunset Limited* service.¹⁷¹ Amtrak understands that railroad operating conditions will sometimes require passenger trains to reduce speed to

¹⁶⁸ See Amtrak’s Resp. to the Bd.’s Feb. 13, 2024 Questions at 5–7 (Apr. 15, 2024) (“Amtrak’s Apr. 2024 Resp.”); see also Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹⁶⁹ In total, slow orders generated approximately 9.9% of all delay minutes. See Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹⁷⁰ See BNSF’s Resp. to the Bd.’s Feb. 13, 2024 Decision at 4 (Apr. 15, 2024) (establishing that delays due to slow orders on trackage maintained by BNSF declined during Relevant Period); accord Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002) (same); Resp. of Ill. Cent. R.R. Co. to the Info. Requests in the Bd.’s Feb. 13, 2024 Decision at 3 (Apr. 15, 2024) (confirming that most restrictive slow orders in effect over pertinent segment during Complaint Period have been eliminated).

¹⁷¹ See Amtrak’s Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002) (reflecting that delay minutes due to slow orders rose from less than 1,900 minutes to more than 3,700 minutes during the Complaint Period).

operate safely, and Amtrak accounts for the possibility that host railroads will need to impose slow orders by building recovery time into its schedules.¹⁷² Although continuing to address track conditions that slow *Sunset Limited* Trains will mitigate delays to Amtrak passengers, and improve on-time performance, the investigative record confirms that compliance with federal regulatory standards cannot be achieved without addressing the primary cause of delay—FTI.

D. Amtrak Is Addressing Amtrak-Responsible Delay Where It Can Reasonably Do So.

As part of its investigation, the Board is also charged with determining “whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by ... Amtrak or other intercity passenger rail operators.” 49 U.S.C. § 24308(f)(1). Although *Sunset Limited* passengers also incurred Amtrak-Responsible Delays, those delays were nowhere close to the primary cause of delay during the Complaint Period.¹⁷³ Where Amtrak can reasonably address delays, it is taking steps to do so. As Amtrak has previously explained, it is deploying road foremen on trains and evaluating performance data to promote operation at maximum authorized speeds, working with conductors to reduce station dwell, managing fuel supply contractors to avoid delays at fuel pads, conducting state of good repair maintenance needed to mitigate passenger and baggage handling delays, extending support to locomotive engineers who experience train operation issues related to positive train control, and coordinating train servicing and inspection to mitigate initial terminal delays.¹⁷⁴ Amtrak is also supplementing existing practices and procedures designed to prevent locomotive failure by making a strategic

¹⁷² *Id.* at 54.

¹⁷³ *See id.*, Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).

¹⁷⁴ *See id.* at 87–88.

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investment to procure new locomotives.¹⁷⁵ Amtrak now anticipates deploying these new locomotives on the *Sunset Limited* next year and expects that these deployments will reduce the incidence of Amtrak locomotive failures.

There are, however, some delays charged to Amtrak that are outside of Amtrak's control. As one example, Amtrak-Responsible Delays include delays due to injured or sick passengers.¹⁷⁶ Moreover, some delays that are charged to Amtrak can be traced to underlying FTI. As Amtrak has previously explained, initial terminal delays can be driven by a host railroad's late delivery of the preceding *Sunset Limited* Train,¹⁷⁷ and Amtrak is sometimes forced to hold the *Sunset Limited* for connection with other trains that are delayed because of freight (or third-party) interference with the connecting train.¹⁷⁸

In short, Amtrak continually works to improve passenger service and mitigate its own delays. However, Amtrak anticipates that, in any passenger train schedule, Amtrak-Responsible Delays will consume some amount of the recovery, miscellaneous, and excess dwell time meant to offset the cumulative effect of ordinary and lawful delays. Moreover, with respect to the *Sunset Limited*, reasonable efforts to mitigate existing Amtrak-Responsible Delay will not solve the fundamental problem with service: the frequency and magnitude of FTI on UP-Hosted Segments of the service.

¹⁷⁵ During the Relevant Period, locomotive failure accounted for just over 1% of total delays and just over 2% of delay minutes for *Sunset Limited* passengers. Amtrak's Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002). Existing policies and procedures to mitigate the incidence and duration of locomotive failures are set out in Amtrak's April 15, 2024 submission. See Amtrak's Apr. 2024 Resp. at 5.

¹⁷⁶ See Amtrak's Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002) (indicating that sick or injured passengers account for approximately 2% of Amtrak-Responsible Delays).

¹⁷⁷ *Id.* at 7; see also *id.*, Detailed Delay Listing (AMTRAK_STB_NATIVE_0002) (indicating that in total initial terminal delays account for approximately 3% of Amtrak-Responsible Delays).

¹⁷⁸ *Id.* at 7; see also *id.*, Detailed Delay Listing (AMTRAK_STB_NATIVE_0002) (indicating that in total the need to hold trains for connections accounted for approximately 6.3% of Amtrak-Responsible Delay).

V. RAIL CARRIERS ARE REQUIRED TO PROVIDE AMTRAK WITH PREFERENCE OVER FREIGHT TRANSPORTATION.

The Board also directed Amtrak to address issues related to Amtrak’s statutory right to preference over freight transportation.¹⁷⁹ In 49 U.S.C. § 24308(c), Congress imposed an unequivocal obligation on host railroads to ensure that Amtrak passenger transportation “has preference over freight transportation in using a rail line, junction, or crossing.” That language reflects a clear choice: Congress identified two types of rail transportation—passenger and freight—and determined that passengers have priority “over” freight. That choice is fundamental and must be the first principle of railroad operations. Congress did not direct host railroads to merely accommodate Amtrak passengers; instead, Congress directed host railroads to prioritize Amtrak passengers “over” their own operations.

Congress also prescribed potential remedies in the event of a “failure to provide preference to Amtrak.” *Id.* § 24308(f)(2). What constitutes such a “failure” is likewise clear: when faced with a dispatching decision between Amtrak movements and freight movements, the host railroad fails to provide preference if it does not favor Amtrak movements. The host railroad can likewise fail to provide preference by not conforming its operating practices, procedures, and policies to reflect that Amtrak has priority over freight transportation. Finally, Congress accounted for practical concerns that may arise from its strict rule of preference by providing specific avenues for host railroads to seek relief. But UP has never sought relief through the mechanisms prescribed by statute, and it cannot evade its preference obligations here.

¹⁷⁹ August 2024 Order at 3 (noting that in light of the language of 49 U.S.C. § 24308(c) & (f)(2), “Amtrak should address what it alleges would constitute a ‘failure to provide preference to Amtrak’ under 49 U.S.C. § 24308(f)”).

A. What Constitutes “Preference” Under Section 24308(c).

1. The plain text of Section 24308(c) mandates that Amtrak passenger transportation “has preference over freight transportation.”

Over 50 years ago, Congress vested Amtrak with a right to preference over freight transportation. It did so in unequivocal terms: “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.” 49 U.S.C. § 24308(c) (emphasis added).

In interpreting this provision, the Board must “begin by analyzing the statutory language, assuming that the ordinary meaning of that language accurately expresses the legislative purpose.” *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) (internal quotation marks and bracket omitted); *cf. Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024) (“In an agency case as in any other ... there is a best reading all the same—the reading the court would have reached if no agency were involved.” (internal quotation marks omitted)). Because Congress did not separately define “preference” in the statute, the Board must give the term its ordinary meaning. *See Mac’s Shell Serv., Inc. v. Shell Oil Prods. Co. LLC*, 559 U.S. 175, 182 (2010); *see Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) (“When terms used in a statute are undefined, we give them their ordinary meaning.”); *Union Pac. R.R. Co. v. Surface Transp. Bd.*, 863 F.3d 816, 825 (8th Cir. 2017) (“In the absence of a statutory definition, we will give a term its ordinary dictionary meaning.”).

Looking first to contemporary dictionary definitions of “preference” at the time Congress enacted Section 24308(c), the ordinary meaning is plain. To “prefer” something meant “[t]o give advantage, priority, or privilege.” Prefer, *Black’s Law Dictionary* (4th rev. ed. 1968); *see also* Prefer, *The Random House Dictionary of the English Language* 1095 (College ed. 1968) (defining

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“prefer” as “to give priority”). Preference, in turn, meant “[t]he act of preferring; estimation or choice of one thing or person over another[.]” Preference, *Britannica World Language Dictionary* 994 (1960); *see also* Preference, *The Random House Dictionary of the English Language* 1045 (defining “preference” as “a practical advantage given to one over others”); Preference, *Webster’s New World Dictionary of the American Language* 1122 (2d College ed. 1970) (defining “preference” as “a giving of priority or advantage to one person, country, etc. over others”). The meaning of “preference” remained the same when Congress enacted PRIIA 35 years later and authorized the Board to “take appropriate action to enforce Amtrak’s *priority access rights*.” S. Rep. No. 110-67, at 11 (2007) (emphases added). At that time, Congress did not add any qualification or attempt to alter the definition of “preference.”

Given its plain meaning, what “preference” means in the operative sentence of Section 24308(c) is clear. By identifying two kinds of transportation—Amtrak passenger rail transportation and freight transportation—and determining unequivocally that “Amtrak *has preference over* freight transportation,” the statute leaves no room for ambiguity. Congress could have chosen to create a more flexible regime that qualified the preference right. But Congress made a different choice, speaking in specific terms that “Amtrak *has preference over*” freight transportation. When Congress determines—without qualification—that one thing “has preference over” another, agencies and courts alike must honor that choice and enforce the preference right as written. *See, e.g., Loper Bright*, 144 S. Ct. at 2266 (“In the business of statutory interpretation, if it is not the best [interpretation], it is not permissible.”); *Hardt*, 560 U.S. at 251 (in statutory interpretation, one “must enforce plain and unambiguous statutory language according to its terms”).

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Section 24308(c) further provides that Amtrak’s preference right applies to its use of “a rail line, junction, or crossing.” By using a singular, indefinite article (“a”) followed by a list of three nouns separated by the disjunctive “or,” Congress determined that, in making individual dispatching decisions at any rail line, junction, or crossing, a host carrier must ensure that Amtrak has preference over freight transportation. Again, the language that Congress used is paramount. The text does not authorize any balancing tests or extra-textual limitations on the scope of Amtrak’s preference right.¹⁸⁰ Any attempt to narrow the preference right—for example, to consider only aggregate delays of a passenger train across the host railroad’s network or to prioritize impacts on network fluidity—would be contrary to the statute’s use of singular and specific points at which preference must be afforded. Thus, under Section 24308(c), a host railroad must resolve individual dispatching decisions at a rail line, junction, or crossing in favor of Amtrak.¹⁸¹

Although the preference right unquestionably applies to individual dispatching decisions, it is important to note that a rail carrier also can violate Amtrak’s preference rights through systemic practices that subordinate Amtrak’s use of the carrier’s rail lines, junctions, or crossings to the carrier’s use. The text of the statute imposes an obligation on host rail carriers to prioritize Amtrak passengers over freight transportation, without limitation. Accordingly, in addition to resolving individual dispatching decisions in Amtrak’s favor, a host railroad also must have

¹⁸⁰ In 2015, the Board issued a proposed Policy Statement proposing to interpret the preference requirement such that “a host rail carrier need not resolve every individual dispatching decision between freight and passenger movements in favor of the passenger train.” *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Dkt. No. EP 728 at 3 (S.T.B. served Dec. 28, 2015) (“2015 Policy Statement”). After receiving public comment, the Board withdrew the Policy Statement, and it is of no force or effect. *Decision Withdrawing 2015 Policy Statement*, Dkt. No. EP 728 at 2–3 (S.T.B. served July 28, 2016).

¹⁸¹ As a report commissioned by the Association of American Railroads stated: “By law, Amtrak passenger trains operating over rail freight lines must be given priority; this means that when Amtrak trains meet or overtake freight trains, the freight trains are shunted to sidings or parallel lines until the passenger train has passed.” Cambridge Systematics, Inc., *National Rail Freight Infrastructure Capacity and Investment Study* at 4–6 (Sept. 2007).

internal procedures, practices, and personnel that facilitate rather than frustrate Amtrak’s priority of access to the enumerated infrastructure.

In sum, all host rail carriers must favor Amtrak passengers over freight transportation both when making individual dispatching decisions about access to a line, junction, or crossing, and when defining and implementing policies, practices, and procedures that dictate access to a line, junction, or crossing. This is the best reading of Section 24308(c) because it is the only one that gives meaning to every word Congress chose.

2. The history of Section 24308(c) reinforces the text’s mandatory preference requirement.

Historical context further bolsters Congress’s choice to provide Amtrak passengers with preference over freight transportation. In 1970, Congress enacted the Rail Passenger Service Act, 49 U.S.C. § 24101 *et seq.*, that created Amtrak to assume the intercity passenger rail service that private railroad companies had long been legally required to operate as common carriers.

The public bargain that created Amtrak and relieved the nation’s railroads of the enormous financial burden of operating unprofitable intercity passenger rail service included an important condition: the railroads would be required to provide Amtrak passengers traveling over their rail lines with “preference” over freight transportation. This requirement was consistent with longstanding industry practice. When the railroads operated their own passenger trains before the creation of Amtrak, they recognized that prioritizing trains carrying passengers over slower freight trains carrying cargo was critical to providing a viable and reliable passenger service. *See, e.g., Hearings on H.R. 709 et al., supra* note 6. Most railroads designated passenger trains as “First Class” trains in their employee timetables—which contain the operating instructions for specific railroad territories that railroad employees are obligated to follow—giving them priority over all trains of lower classes. As to the *Sunset Limited* in particular, back in 1950, Southern Pacific

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required freight trains to clear all main tracks “at least five minutes before the approach of important passenger trains; switch movements were not allowed on main tracks ... for five minutes before those trains arrived; and Southern Pacific rules expressly forbade the delay of a passenger train[] by a freight saw-by.” Plaintiff’s Post-Hearing Memorandum in Support of Motion for Preliminary Injunction at 4, *United States v. Southern Pacific Railway Co.*, No. 79-3394 (D.D.C. Feb. 22, 1980) (Amtrak Exhibit 21).

By the late 1960s, however, the Board’s predecessor agency, the Interstate Commerce Commission (“ICC”), recognized that “[t]he heavy financial burden of intercity rail passenger service” was “of such magnitude” that it “caused the carriers to place their passenger operations on an austere budget.” *Adequacies—Passenger Service—Southern Pacific Company Between California and Louisiana*, 335 I.C.C. 415, 432 (Decided Sept. 10, 1969). A hearing examiner found that Southern Pacific had deliberately downgraded the quality of the passenger service provided by the *Sunset Limited* by, among other things, failing to give the *Sunset Limited* priority over freight trains. The ICC urged Congress to ensure that passenger trains were “not relegated to a second-class service by comparison with routine freight traffic ... [and passenger trains] should not be shunted onto a siding as a matter of operating policy, to permit passage of freight trains.” *Id.* at 434.

The following year, Congress created Amtrak, and the presidents of four key railroads affirmed to Congress their commitment to *voluntarily* provide Amtrak passenger trains with “priority” or “preference” over freight trains. For example, the President of Santa Fe Railway—a predecessor to BNSF—told Congress that “this railroad company traditionally has given passenger train operations preference over freight service and would continue to afford Amtrak trains such

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priority.” *Hearings on H.R. 709 et al., supra* note 6, at 670 (Statement of John S. Reed, President, Santa Fe Railway).

Yet once relieved of the obligation to operate passenger trains themselves, those assurances from the railroad companies quickly faded away. Many railroads began to “sidetrack” Amtrak passenger trains, placing them in sidings so that freight trains could pass. With these new “sidetracking” practices, the average on-time performance of long-distance passenger rail trains (based on standards then in place) plummeted from over 70% in 1972 to 35% in 1973. *Financial Assistance to Amtrak: Hearings on H.R. 8351 Before the Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce*, 93d Cong. 29–32 (1973) (Amtrak Exhibit 6). The ICC thus proposed a rule providing that “Schedules shall be designed so as to provide expeditious service and the sidetracking of passenger trains for freight trains shall not be permitted except in [an] emergency.” *Adequacy of Intercity Rail Passenger Service*, 36 Fed. Reg. 23636, 23638 (proposed Dec. 11, 1971).

It was against this backdrop that Congress enacted the Amtrak Improvement Act of 1973, mandating that Amtrak has preference over freight traffic on any rail line, crossing, or junction. Amtrak Improvement Act of 1973, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552 (codified at 49 U.S.C. § 24308(c)). For many years after this 1973 enactment, only the Department of Justice could enforce Amtrak’s preference rights by bringing a suit for injunctive relief against host railroads in federal district court. Until this year,¹⁸² the Department of Justice had initiated only one such action, *United States v. Southern Pacific Railway Co.*, No. 79-3394 (D.D.C. 1979), which

¹⁸² In July, the Department of Justice sued Norfolk Southern Corporation for failure to provide Amtrak passenger trains on the *Crescent* route with their right to preference under Section 24308(c). See Complaint, *United States v. Norfolk S. Corp.*, No. 1:24-cv-02226 (D.D.C. July 30, 2024), ECF No. 1. On September 23, 2024, the court granted Norfolk Southern’s motion for extension of time to respond to the complaint; the response is now due December 27, 2024. See *id.* ECF No. 12.

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was targeted at the failure of Southern Pacific to provide preference to passengers on the *Sunset Limited*.

In 2008, Congress enacted PRIIA “to promote the expansion and improvement of intercity passenger rail service,” S. Rep. No. 110-67, at 7 (2007), and to address concerns about “poor service, unreliability, and delays resulting from freight traffic congestion,” *Ass’n of American Railroads*, 575 U.S. at 47. PRIIA provides Amtrak with the means to ensure adequate performance through a mandatory Board investigation, and it authorizes the Board to award damages and other appropriate relief against a host rail carrier for failing to provide Amtrak with its right to preference over freight transportation. 49 U.S.C. § 24308(f). Critically, when it created these additional mechanisms to enforce Amtrak’s right to preference, Congress could have modified the absolute nature of Amtrak’s right to preference. But Congress chose not to do so. Instead, fully aware of the current state of the railroad industry as of 2008—including all that had happened as a result of deregulation following the Staggers Act of 1980—Congress *strengthened* the passenger-preference right by authorizing additional paths to relief for Amtrak when rail carriers fail to provide preference to Amtrak passengers.

Historical context thus underscores the importance of Amtrak’s right to preference over freight transportation. Without a strict preference mandate, host railroads that operate for profit would be incentivized to direct their dispatchers to prioritize the movement of their freight traffic over the movement of Amtrak passengers, with disastrous consequences for intercity rail passenger service throughout the country. To avoid that result, Congress mandated in 1973 that Amtrak has preference over freight transportation—as all had expected at the time of Amtrak’s creation—and then 35 years later, reiterated that host railroads must uphold Amtrak’s right to preference or face investigation and enforcement under PRIIA.

B. What Constitutes “Failure To Provide Preference” Under Section 24308(f)(2).

1. The meaning of “failure to provide preference” is plain.

Given 49 U.S.C. § 24308(c)’s mandate that all rail carriers have an affirmative duty to provide Amtrak preference “over freight transportation in using a rail line, junction, or crossing,” the meaning of “failure to provide preference” under Section 24308(f)(2) is clear. When a rail carrier is faced with a decision between an Amtrak passenger train and a freight train in using a rail line, junction, or crossing, a decision that does not prioritize Amtrak passengers over freight constitutes a “failure to provide preference,” and satisfies a necessary condition for the Board to award damages or other relief under PRIIA. The governing statute in this case makes clear that in the event “the Board determines that delays or failures to achieve minimum standards investigated ... are attributable to a rail carrier’s *failure to provide preference to Amtrak over freight transportation* as required under subsection (c),” the Board may award damages and prescribe other relief. 49 U.S.C. § 24308(f)(2) (emphasis added).

Thus, if a host railroad does not resolve an individual dispatching decision at a rail line, junction, or crossing in favor of Amtrak, then the host has failed to provide preference over the freight train in using that rail line, junction, or crossing. And if the host’s systemic policies, practices, or procedures result in Amtrak not consistently receiving priority over freight, the host has likewise failed to provide preference. In either case, the Board may award damages and prescribe other appropriate relief under Section 24308(f). In turn, the quantity and severity of preference violations—as well as how deeply entrenched those violations are in a host’s practices—can inform the Board’s determination of the appropriate relief to which Amtrak is entitled.

2. Practical concerns do not change the meaning of preference, and Congress accounted for such concerns in Section 24308(c).

The structure of the statute reinforces a strict interpretation of Amtrak’s right to preference over freight transportation. Congress has chosen the mechanism for determining when operational or other practical concerns outweigh a rail carrier’s preference obligation—the preference relief application procedure in Section 24308(c). Congress provided that rail carriers could be relieved of their obligation to provide Amtrak with preference over freight transportation in only two circumstances: (1) “in an emergency,” or (2) when the “Board orders otherwise” “after an opportunity for a hearing under” the Administrative Procedure Act, and after a decision that “preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers.” 49 U.S.C. § 24308(c). Neither exception to the preference requirement applies here.

a. The “emergency” exception is inapplicable.

The “emergency” exception to the preference requirement is not applicable here. *See* 49 U.S.C. § 24308(c) (“*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[.]” (emphasis added)). Congress did not define “emergency” within Section 24308, so again the Board must look to the plain meaning of the term. *See Asgrow Seed Co.*, 513 U.S. at 187; *see also Artis v. District of Columbia*, 583 U.S. 71, 83 n.8 (2018) (statutory interpretation requires “giving each word its ordinary, contemporary, common meaning”).

An emergency is “[a] sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity.” Emergency, *Black’s Law Dictionary* (4th rev. ed. 1968). Put another way, “the commonplace meaning” of emergency is

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“an unforeseen combination of circumstances which calls for immediate action.” *St. Louis Sw. Ry. Co.-Temp. Auth.-Chicago, Rock Island & Pac. R.R. Co., Debtor (William M. Gibbons, Trusted) Between Santa Rosa, Nm, & St. Louis, Mo*, 360 I.C.C. 539, 545 (1979); accord *Emergency, Britannica World Language Dictionary* 413 (Funk & Wagnalls 1960) (“[a] sudden condition or state of affairs calling for immediate action”), *Emergency, Webster’s New World Dictionary* 232 (Elementary ed. 1966) (“a sudden happening that needs action or attention right away.”); *Emergency, Webster’s Seventh New Collegiate Dictionary* 270 (1963) (“an unforeseen combination of circumstances or the resulting state that calls for immediate action”).

In addition to the ordinary and contemporary meaning of the term, other parts of Title 49 illustrate what an “emergency” might entail. For example, in creating “emergency waivers” from compliance with the Secretary’s rail safety regulations, Congress defined the terms “emergency situation” and “emergency event” to mean “a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.” 49 U.S.C. § 20103(g)(5). And in authorizing an emergency relief program for public transportation, Congress defined “emergency” to mean “a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause.” *Id.* § 5324(a)(2).

The through line of these various definitions—whether ordinary meaning or as specifically defined elsewhere in Title 49—is that an “emergency” must be a sudden and unforeseeable event. There are no such “emergencies” that would justify the number and magnitude of delays at issue

in this proceeding, and therefore, the “emergency” exception to the preference obligation is inapplicable here.¹⁸³

b. The “Board-ordered” exception does not apply as there is no existing Board order excusing preference obligations.

The “Board-ordered” exception to Amtrak’s preference right is also inapplicable here, for the simple reason that there has never been *any* Board order relieving any rail carrier of its obligation to provide Amtrak with its right to preference over freight transportation.

Congress carefully crafted a five-step process that a rail carrier must go through to be relieved of its obligation to provide preference to Amtrak. To obtain relief: (1) a rail carrier must be “affected” by the preference obligation; (2) the rail carrier then must “apply to the Board for relief[]”; (3) the Board then must afford “an opportunity for a hearing under [the Administrative Procedure Act (“APA”)]”; (4) the Board must “decide[] that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers[]”; and finally (5) the Board must “establish the rights of the carrier and Amtrak on reasonable terms.” 49 U.S.C. § 24308(c).

No rail carrier has ever invoked this process or petitioned for such an order under the procedures in subsection (c), and the Board has never made a finding that providing preference for Amtrak service will materially lessen the quality of freight transportation provided to shippers. This subsection (f) proceeding does not provide an opportunity for a rail carrier to claim, for the first time, that it should be excused from its obligation to provide preference to Amtrak because otherwise the “quality of freight transportation provided to shippers” will be materially lessened.

¹⁸³ Delay codes already exist for emergencies such as weather events, trespassers, or injured passengers. *See* Amtrak’s Sept. 2023 Resp. at 2–9. Amtrak has and will continue to work with UP and other hosts, as well as the Board, when true emergencies involving safety or operational concerns arise. But no cognizable “emergency” justifies UP’s sustained abridgment of Amtrak’s right to preference, and no “emergency” explains the systemic preference violations addressed here.

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49 U.S.C. § 24308(c). “Proper respect for Congress cautions courts against lightly assuming that any of the statutory terms it has chosen to employ are ‘superfluous’ or ‘void’ of significance.” *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 53 (2024) (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)). If a rail carrier could simply claim this exception as a defense to a Section 24308(f) proceeding, there would be no reason for a host railroad to ever comply with Section 24308(c)’s explicit and specific preference relief procedure. And this would ignore the statutory language that the preference obligation applies “unless the Board orders otherwise *under this subsection*.” In other words, the only way to be excused from the preference obligation in subsection (c) is through the procedure provided under subsection (c).

This has long been the case. As the Department of Justice noted in its 1979 case against UP’s predecessor for its failure to provide preference to the *Sunset Limited*: “The Statute ... directs railroads which assert that problems are created by the effect of the preference upon freight operations to seek relief. ... In the absence of an order ... granting relief to a railroad, the statutory preference must be accorded, without regard to the effect of the preference on freight operations, except in an emergency.” Plaintiff’s Response to Defendant’s First Set of Interrogatories at 9, *United States v. S. Pac. Transp. Co.*, No. 79-3394 (D.D.C. 1980) (Amtrak Exhibit 7).

The bottom line is that rail carriers always have been—and still are—able to apply to the Board for relief from the preference requirement. They may obtain an order for relief if they can demonstrate to the Board’s satisfaction, following a hearing under the APA, that the quality of the freight transportation they provide to shippers is materially lessened by the requirement to afford preference to Amtrak over freight transportation in using a rail line, junction, or crossing. But absent an order from the Board following such a hearing, a rail carrier is not relieved of its

preference obligation and cannot claim for the first time as a defense in a Section 24308(f) investigation that it should be relieved of its obligation.

3. Section 24308(f) also accounts for practical concerns by vesting the Board with broad discretion over proper remedies.

Congress also has accounted for practical concerns in enforcing Amtrak's absolute right to preference by providing the Board with flexibility at the remedial stage. When the Board finds that a preference violation has caused a delay, Section 24308(f)(2) provides only that the Board "may" award damages as a result of the relevant preference violations, as well as prescribing other relief that the Board "determines to be reasonable and appropriate." The Board may consider evidence of practical effects when evaluating "reasonable and appropriate" relief. 49 U.S.C. § 24308(f)(2). For example, there may be instances where damages may not be appropriate for certain preference violations, but other equitable relief still may be appropriate depending on the facts and the host practice that resulted in the preference violation. The point is that the statute permits the Board to assess the evidence in determining what the appropriate relief may be for a violation of Amtrak's right to preference over freight transportation. But the statute does not permit the Board to rewrite Congress's strict mandate that Amtrak "has preference over freight transportation in using a rail line, junction, or crossing." *Id.* § 24308(c).

C. The Investigative Record Confirms That Delays Or Failures To Achieve Minimum Standards Were Attributable To UP's Failure To Provide Preference To Amtrak Over Freight Transportation.

A review of the investigative record confirms the allegations in Amtrak's Complaint: The delays or failures to achieve minimum standards that are the focus of this proceeding are attributable to UP's failure to provide preference to Amtrak over freight transportation, as required under Section 24308(c). These failures are evident in examining both UP's individual dispatching decisions and its systemic policies and practices.

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In Part IV, Amtrak explained how delays or failure to achieve minimum standards during the Complaint Period were due to causes that could reasonably be addressed by UP. Amtrak now explains how these delays or failures to achieve minimum standards also are attributable to UP's failure to provide preference to Amtrak over freight transportation. Amtrak herein identifies various categories of delay that involve failures to provide *Sunset Limited* passengers with preference over freight transportation and provides specific examples of such failures within each category. Amtrak likewise discusses the UP policies and practices that underlie these failures.

The examples that follow are illustrative of UP's general disregard for Amtrak's statutory right to preference over freight transportation throughout the Complaint Period, but they are by no means exhaustive. Rather, Amtrak has confined its analysis to providing the Board with some of the clearest examples of UP's failures from the subset of specific delays that were identified by the Board for the parties to address in their root cause analyses. This is not meant to be a comprehensive listing of each and every failure to provide Amtrak with preference over freight transportation during the Complaint Period, nor even of every failure identified in UP's own root cause analysis. Amtrak assumes that in this Board-led investigation, the Board will independently determine that there were many additional delays or failures to achieve minimum standards that were attributable to UP's failure to provide preference to Amtrak over freight transportation during the Complaint Period. For the Board's reference, along with this brief, Amtrak has included as Appendix 1 a table that identifies additional delays that appear to involve failures to provide Amtrak with preference over freight transportation as required by statute, from UP's root cause analysis.

1. UP's individual dispatching decisions demonstrate a failure to provide Amtrak with preference over freight transportation in using UP rail lines.

As detailed below, UP's root cause analysis demonstrates that UP has failed to provide Amtrak with preference over freight transportation in making operational and dispatching decisions related to: (1) non-fitting trains; (2) meets and follows; (3) crew expirations; and (4) the management of traffic on its rail lines. In many cases, the failure to provide Amtrak with preference involved more than one operational or dispatching decision related to these issues, compounding the effect of each failure on Amtrak and its passengers.

a. UP has failed to provide Amtrak with preference over freight transportation by operating non-fitting trains in a manner that caused substantial delay to *Sunset Limited* passengers.

As discussed extensively in Part IV, UP's own root cause analysis of Board-selected Host-Responsible Delays acknowledges that a significant portion of delay imposed on *Sunset Limited* passengers is attributable to UP's operation of non-fitting trains in territory shared with *Sunset Limited* Trains. UP has acknowledged that during the Complaint Period, it ran more than 37,000 trains that would not fit into at least one of the sidings they passed on the *Sunset Limited* route.¹⁸⁴ As the Long Freight Trains Study noted: "A host railroad that is aware of [] a mismatch between the length of its freight trains and the infrastructure available on the route segment to accommodate meets and passes with Amtrak trains would seem to conflict with the passenger railroad's statutory right for dispatching preference."¹⁸⁵ Predictably, UP operating a significant volume of non-fitting trains on trackage shared with *Sunset Limited* Trains led to clear and frequent

¹⁸⁴ Union Pacific R.R. Co.'s Amended Resp. to App'x A, Part IV, Request No. 15 at 3 (Aug. 12, 2024).

¹⁸⁵ Long Freight Trains Study, *supra* note 119, at 70.

failures to provide Amtrak with preference over freight transportation in using UP's rail lines during the Complaint Period.

First, the decision to run a significant volume of non-fitting trains led to UP dispatchers "side tracking" Amtrak, a decision that involves placing Amtrak passengers in a siding while freight traffic receives priority over the main line.¹⁸⁶ The regularity with which railroads side-tracked Amtrak passenger trains provided the very impetus for enacting the Amtrak Improvement Act of 1973, whereby Congress mandated Amtrak's preference rights. UP's own submissions confirm that *Sunset Limited* passengers were regularly denied preference over freight transportation in this manner. As examples:

- [REDACTED] }¹⁸⁷
- [REDACTED] }¹⁸⁸
- [REDACTED] }¹⁸⁹
- [REDACTED] }¹⁹⁰

¹⁸⁶ See *supra* Part IV.B.2.
¹⁸⁷ UP Train 2 RCA at 158 (5/25/2022; 46-minute delay).
¹⁸⁸ *Id.* at 160 (5/25/2022; 30-minute delay). In this case, UP also notes that [REDACTED] }.
¹⁸⁹ *Id.* at 265 (8/03/2022; 13-minute delay).
¹⁹⁰ *Id.* at 256 (8/03/2022; 101-minute delay).

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Again, these are just a few of the instances in which UP acknowledges that it operated non-fitting trains such that dispatchers were forced to sidetrack Amtrak and thereby give preference to freight trains over Amtrak in using UP's rail lines—a direct violation of 49 U.S.C. § 24308(c).

Second, the practice of operating non-fitting trains in the vicinity of the *Sunset Limited* has also forced Amtrak to stop on the main line for meets with freight trains. In some cases, this occurs because Amtrak must wait for oncoming non-fitting trains to exit single-track territory. For example, {{ [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]}}

In other cases, Amtrak passengers were made to wait on single-track territory for an oncoming non-fitter to reach and enter a siding of sufficient length. {{ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

¹⁹¹ UP Train 1 RCA at 399 (7/12/22; 42-minute delay); Peabody V.S. at 18.

¹⁹² Peabody V.S. at 18.

¹⁹³ *Id.*

¹⁹⁴ UP Train 1 RCA at 400 (7/12/22; 62-minute delay); Peabody V.S. at 48–49.

¹⁹⁵ Peabody V.S. at 48–49.

[REDACTED]

[REDACTED]}}

Third, the practice of operating non-fitting trains along the *Sunset Limited* route, during *Sunset Limited* operations, regularly forced Amtrak passengers to follow behind slow-moving freight trains.¹⁹⁷ These follows often occurred when UP operated non-fitting trains in single-track territory where there were no available sidings long enough to facilitate an overtake. For example,

{ [REDACTED]

[REDACTED]

[REDACTED] }¹⁹⁸ { [REDACTED]

[REDACTED]

[REDACTED] }}.¹⁹⁹ As another example, { [REDACTED]

[REDACTED]

[REDACTED] } { [REDACTED]

[REDACTED] }}²⁰⁰ In each of these cases,

and others like them, UP operated non-fitting trains in a manner that prioritized the forward movement of freight over passengers, and thus, denied Amtrak preference over freight transportation.

Fourth, the practice of regularly operating non-fitting trains along the *Sunset Limited* route during the Complaint Period also denied Amtrak preference by forcing Amtrak passengers to incur

¹⁹⁶ *Id.* at 49.

¹⁹⁷ *See supra* Part IV.B.3.

¹⁹⁸ UP Train 1 RCA at 70–71 (9/25/22; 50-minute delay).

¹⁹⁹ Peabody V.S. at 20.

²⁰⁰ UP Train 1 RCA at 436 (9/22/22; 168-minute delay); Peabody V.S. at 20.

delay as freight trains needlessly sat on the main line. UP's own submissions reference instances in which trains that had issues with crews reaching their maximum hours of service blocked the main line because they could not fit into nearby sidings.²⁰¹ For example, {

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }²⁰² As another example, {

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }²⁰³ In these cases, conforming the length

of trains to available infrastructure while operating in the vicinity of Amtrak would have permitted UP to recrew its trains in sidings, thereby allowing Amtrak to proceed.²⁰⁴ UP instead decided to dispatch non-fitters onto single-track territory knowing the *Sunset Limited* was expected and thereby prioritized the movement of freight over the movement of people.

In sum, UP's practice throughout the Complaint Period of running non-fitting trains in a manner that interfered with Amtrak's priority access to UP rail lines violated Amtrak's statutory right to preference over freight transportation.

²⁰¹ See *supra* Parts IV.B.4 & 5.

²⁰² UP Egregious Delay RCA at 6 (1/21/2022; 108-minute delay).

²⁰³ UP Egregious Delay RCA at 37 (9/23/2022; 124-minute delay).

²⁰⁴ Although UP makes repeated reference to trains that [REDACTED] }.

b. UP has failed to provide Amtrak with preference over freight transportation in handling numerous meets and follows involving *Sunset Limited* Trains.

The investigative record also confirms that *Sunset Limited* passengers regularly experienced significant delays when meeting or following freight trains.²⁰⁵ UP's own submissions illustrate that, in many cases, these delays evince a failure to provide Amtrak with preference over freight transportation.

As an initial matter, UP frequently explains Board-selected Host-Responsible Delays by [REDACTED] } But Amtrak is a scheduled railroad and its passenger trains operate at considerably higher speeds than their freight counterparts. Federal law requires that UP plan for these operational realities and ensure that freight schedules and infrastructure are configured to facilitate Amtrak's priority access to UP rail lines.

During the Complaint Period, UP dispatchers regularly failed to make decisions that would have facilitated Amtrak's priority access to UP rail lines. In some cases, dispatchers failed to make use of sidings that would have permitted an overtake. For example, UP stated that it cannot explain why on { [REDACTED]

[REDACTED] } }²⁰⁶ UP has also failed to explain why, { [REDACTED]

²⁰⁵ See *supra* at Part IV.B.3.

²⁰⁶ UP Train 1 RCA at 156 (4/06/2022; 43-minute delay).

[REDACTED]

[REDACTED]}}

In other cases, UP forced Amtrak passengers to follow freight trains rather than making operational adjustments to favor Amtrak operations. For example, UP's own submissions show that on March 13, 2022, [REDACTED]

[REDACTED]}.²⁰⁷ As another example, UP's own submissions show that on September 10, 2022, [REDACTED]

[REDACTED] } { [REDACTED]

[REDACTED]}}²⁰⁸ These cases and others like them have one thing in common: a UP decision to prioritize the forward movement of freight over Amtrak passengers.

In addition to regularly requiring Amtrak passengers to follow a slower-moving freight train, UP dispatchers frequently failed to prioritize Amtrak trains during meets with freight counterparts. UP's own submission demonstrates that *Sunset Limited* passengers were delayed during meets without any explanation for why the relevant freight trains were occupying track during the scheduled approach of *Sunset Limited* Trains. Some examples were discussed above and involved non-fitters.²⁰⁹ Others include:

- UP acknowledged that, on August 7, 2022, { [REDACTED] }
[REDACTED] }²¹⁰

²⁰⁷ UP Train 1 RCA Supplement at 96 (10/11/2022; 142-minute delay); Peabody V.S. at Ex. 6.

²⁰⁸ UP Train 2 RCA at 11 (3/13/2022; 15-minute delay).

²⁰⁹ UP Train 2 RCA at 369 (9/10/2022; 60-minute delay).

²¹⁰ Peabody V.S. at Ex. 6.

²¹¹ UP Train 1 RCA at 399 (7/12/22; 42-minute delay); UP Train 1 RCA at 400 (7/12/22; 62-minute delay).

²¹² UP Train 2 RCA at 279 (8/07/2022; 22-minute delay); Peabody V.S. at Ex. 6.

- UP admitted that on July 13, 2022, { [REDACTED] }
[REDACTED]
[REDACTED] }
- [REDACTED]
[REDACTED] }²¹⁴
- [REDACTED] }²¹⁵ {
[REDACTED] }

In other cases, UP { [REDACTED] }

[REDACTED] }²¹⁶ The delays caused by each of these decisions is attributable to UP's failure to provide Amtrak passengers with preference over freight transportation.

The recurring FTI that eastbound Train 2 encounters when it enters UP territory is particularly inexplicable given the statutory directive to provide preference to Amtrak over freight transportation. UP knows when Train 2 is scheduled to depart from its origin point in Los Angeles, and Train 2 travels less than one mile before it reaches UP territory. Nevertheless, Train 2 encounters significant FTI from UP shortly after entering UP trackage, sometimes before making its first station stop. For example, on August 3, 2022, Amtrak Train 2 left Los Angeles on time.

²¹³ UP Train 1 RCA at 380 (7/13/2022; 102-minute delay).
²¹⁴ UP Train 2 RCA at 60 (4/11/2022; 45-minute delay).
²¹⁵ See, e.g., UP Egregious Delay RCA at 42 (11/06/2022; 90-minute delay).
²¹⁶ See, e.g., Peabody V.S. at 18, 48–49; UP Train 1 RCA at 399 (7/12/22; 42-minute delay) ({ [REDACTED] }
[REDACTED] }); UP Train 1 RCA at 400 (7/12/22; 62-minute delay) ({ [REDACTED] }
[REDACTED] }).

But shortly after its departure, Train 2 met { [REDACTED] } As a result, Amtrak's Train 2 was operating approximately one hour late before it reached its very first station stop, even though it departed Los Angeles exactly as scheduled.²¹⁷ Indeed, UP frequently subjected passengers on Train 2 to a failure to provide preference. { [REDACTED] } [REDACTED] } UP's own submissions also { [REDACTED] } [REDACTED] }.²¹⁹ Train 2's passengers thus learn very quickly after departing Los Angeles the lack of priority that UP accords to Amtrak.

In sum, UP's operating practices and dispatching decisions with respect to meets and follows during the Complaint Period repeatedly evinced a failure to provide Amtrak with preference over freight transportation, and were particularly egregious with respect to Train 2.

c. UP has failed to provide Amtrak with preference over freight transportation through inadequate planning for the expiration of crews in territory occupied or proximate to *Sunset Limited* Trains.

The investigative record confirms that *Sunset Limited* passengers experienced a significant amount of delay during the Complaint Period because UP did not adequately account for Amtrak's

²¹⁷ UP Train 2 RCA at 256 (8/03/2022; 61-minute delay). UP's root cause analysis also confirms that { [REDACTED] } [REDACTED] } UP Train 2 RCA at 257 (8/03/2022; 53-minute delay); UP Train 2 RCA at 260 (8/03/2022; 46-minute delay) [REDACTED] }).

²¹⁸ Peabody V.S. at 55.

²¹⁹ See, e.g., UP Train 2 RCA at 279 (8/07/2022; 22-minute delay); UP Train 2 RCA at 206 (6/19/22; 39-minute delay); UP Train 2 RCA at 60 (4/10/2022; 45-minute delay); UP Train 2 RCA at 5 (3/13/2022; 20-minute delay); UP Train 2 RCA at 112 (5/06/22; 125-minute delay).

operations in planning for the expiration of its freight crews.²²⁰ UP's own submissions confirm that many resulting delays reflect a failure to provide Amtrak with preference over freight transportation when UP prioritized compliance with hours-of-service requirements over compliance with preference requirements.

First, UP acknowledges that delays occurred because it permitted freight crews to continue operating on main line tracks until they reached maximum allowable hours of service, resulting in the obstruction of Amtrak trains and main lines. In some of these cases, UP dispatchers inexplicably permitted crews approaching their hours-of-service limits to enter single-track territory ahead of Amtrak. These decisions favored the forward movement of freight trains over Amtrak and resulted in severe delays to *Sunset Limited* passengers in violation of Amtrak's statutory right to preference. As just a couple of examples:

- UP acknowledges that on September 24, 2022, Amtrak passengers were delayed for over two hours because the crew of the UP train had reached its hours-of-service limit. UP stated that {
[REDACTED] }²²¹ {
[REDACTED] }²²² }
- {
[REDACTED] }²²³
{
[REDACTED] }²²⁴

²²⁰ See *supra* at Part IV.B.4.

²²¹ UP Egregious Delay RCA at 37 (9/24/2022; 124-minute delay).

²²² UP Egregious Delay RCA at 37 (9/24/2022; 124-minute delay).

²²³ UP Train 1 Delay RCA at 25 (9/23/2022; 63-minute delay).

²²⁴ UP Train 1 Delay RCA at 25 (9/23/2022; 63-minute delay); Peabody V.S. at Ex. 6.

Second, UP readily admits that several of the Board-selected delays to *Sunset Limited* passengers occurred because its dispatchers chose to prioritize the movement of freight trains with crews *nearing* their maximum hours of services. In a particularly frank admission, UP acknowledged that { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }²²⁵

These were not isolated incidents. As discussed in Part IV, UP’s root cause analysis is replete with concessions that UP favored freight trains in conflicts with Amtrak because of concerns about freight crew hours of service.²²⁶ In each of these cases, UP’s unwillingness or inability to implement a recrew plan that appropriately accounted for Amtrak operations violated Amtrak’s statutory right to preference over freight transportation.

d. UP has failed to provide Amtrak with preference over freight transportation in managing traffic over its rail lines.

Sunset Limited passengers also experienced a significant amount of delay during the Complaint Period because UP failed to effectuate Amtrak’s preference rights in managing train movements over its rail lines.²²⁷ Again, UP’s own submissions confirm that many of these delays reflect a failure to provide Amtrak with preference over freight transportation.

As one example, UP chose to prioritize the movement of freight transportation by dispatching freight trains over faster trackage and relegating faster-moving Amtrak passenger trains to slower trackage. Indeed, UP admits that { [REDACTED]

²²⁵ UP Egregious Delay RCA at 12 (4/05/2022; 105-minute delay).

²²⁶ See, e.g., *supra* Part IV Table 8 (Illustrative Delays Involving Prioritization of Trains with Crews Nearing Hours-of Service Limits from UP’s RCA).

²²⁷ See *supra* at Part IV, generally.

[REDACTED]

[REDACTED]

[REDACTED]²²⁸ Likewise, UP admits that [REDACTED]

[REDACTED]

[REDACTED]²²⁹ It did much the

same thing on February 8, 2022, [REDACTED]

[REDACTED]²³⁰ In each

of these instances, [REDACTED]

[REDACTED]

As another example, UP repeatedly failed to prioritize the movement of Amtrak passenger trains by clearing maintenance teams, yard tracks, and tracks adjacent to station platforms sufficiently in advance of Amtrak's arrival. Indeed, UP admits that [REDACTED]

[REDACTED]

[REDACTED]²³¹

In another case, [REDACTED]

[REDACTED]

[REDACTED]²³²

UP also admits that [REDACTED]

[REDACTED]. In some cases, this involved [REDACTED]

²²⁸ UP Train 1 Delay RCA at 76 (2/11/2022; 18-minute delay).

²²⁹ UP Train 2 Delay RCA at 313 (8/11/2022; 33-minute delay).

²³⁰ UP Train 1 Delay RCA at 53 (2/08/2022; 16-minute delay).

²³¹ UP Train 2 Delay RCA at 28 (1/20/2022; 96-minute delay).

²³² UP Train 1 Delay RCA at 16 (9/20/2022; 99-minute delay).

[REDACTED]

[REDACTED] }.²³³ In other cases, it involved advancing [REDACTED] while Amtrak and its passengers were made to sit and wait for a meet.²³⁴ In view of these dispatching decisions, it is not surprising that, on average, { [REDACTED] [REDACTED] } }.²³⁵

In these and many other dispatching decisions over the Complaint Period, UP demonstrated a patterned disregard for Amtrak operations and federal law requiring UP to provide Amtrak with preference over freight transportation. Over and over, passengers were made to sit and wait because UP impermissibly favored its own freight operations over passenger movements.

2. UP's policies, practices, and procedures evince a failure to provide Amtrak with preference over freight transportation in using UP rail lines.

Rail carriers are required to provide Amtrak with preference over freight transportation not only when making individual dispatching decisions, but also in their systemic practices and procedures. UP's own submissions establish that UP repeatedly failed to do so throughout the Complaint Period. As demonstrated below, UP's submissions to the Board show that UP: (1) has given dispatchers instructions that do not adequately account for Amtrak's statutory right to preference and failed to hold dispatchers accountable for violations of federal law; (2) utilized a movement-planning algorithm that does not account for Amtrak's statutory right to preference; (3) built freight schedules without considering Amtrak's statutory right to preference; and (4) did

²³³ See *id.* at 77 (2/11/2022; 18-minute delay); UP Train 2 Delay RCA at 313 (8/11/2022; 33-minute delay); UP Train 1 Delay RCA at 53 (2/08/2022; 16-minute delay).

²³⁴ See, e.g., *supra* notes 193–95, 217–18 and accompanying text.

²³⁵ See Peabody V.S. at Table 17.

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not have any internal program to ensure compliance with UP's statutory and regulatory obligations with respect to Amtrak's preference rights.

- a. **UP incorrectly instructs its dispatchers to weigh a “range of variables” and does not hold dispatchers responsible for providing Amtrak with preference over freight transportation.**

Contrary to its assertions, UP did not appropriately train its dispatchers on Amtrak's preference rights. As UP told the Board, during the Complaint Period (and continuing to the present), UP instructs its dispatchers that when they are attempting to resolve potential conflicts between trains, the dispatchers should consider “a range of variables,” including “each train's priority, schedule, crew hours of service, and impacts on other trains.”²³⁶ UP states that “[d]ispatchers are expected to develop and execute tactical plans with the objective of keeping Amtrak trains moving. *However, they are also taught that Amtrak's preference does not mean they should disregard impacts to other trains or the network as a whole to ensure Amtrak trains are never slowed or stopped en route.*”²³⁷ This weighing of a “range of variables” is not consistent with the unequivocal congressional mandate to provide Amtrak with preference over freight transportation, as explained above.

Moreover, UP's response with respect to how it instructs dispatchers on Amtrak's preference rights is not consistent with other responses received by the Board. For example, BNSF reported that “BNSF trains its dispatchers to prioritize passenger trains above all other train types. ... BNSF dedicates a portion of its Train Dispatcher's and Control Operator's Manual to passenger train operations. That manual explicitly requires that dispatchers ‘[d]o not delay passenger trains for freight trains or maintenance work unless approved by the Chief Dispatcher.’ Dispatchers must

²³⁶ UP's Sept. 2023 Resp. at 31–32.

²³⁷ UP's Sept. 2023 Resp. at 31–32 (emphasis added).

also plan in advance to avoid delay to passenger trains. All passenger train delays are to be reported to the Chief Dispatcher.”²³⁸

In contrast, UP admits that it sometimes deliberately makes decisions to delay Amtrak trains. UP states that “[i]f a decision is made to delay an Amtrak train, dispatchers must inform their Corridor Manager, who in turn notifies Union Pacific’s Amtrak Corridor Desk.”²³⁹ Although Amtrak requested that UP provide Amtrak with all of the relevant correspondence between dispatchers and their Corridor Managers, and between Corridor Managers and the Amtrak Corridor Desk with respect to the referenced decisions to delay Amtrak trains, UP’s scant production in response to this request did not come close to answering for the thousands of FTI delays during the Complaint Period. Indeed, there was almost no such dispatcher correspondence.²⁴⁰

In addition to its failure to adequately train its dispatchers to give preference to Amtrak trains when resolving potential conflicts between trains, UP also failed to adequately address preference responsibilities in applicable dispatching policies and when evaluating its dispatchers.

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²³⁸ BNSF’s Sept. 2023 Resp. at 26–27 (citing Train Dispatcher New Hire Training Materials, Module 1, at BNSF-SUNSET-0003785 in response to the same Board request).

²³⁹ UP’s Sept. 2023 Resp. at 31–32.

²⁴⁰ UP has represented that communication between dispatchers and corridor managers occurs orally or through an instant messaging application, raising serious questions about whether UP adequately documents and retains documentation of decisions that implicate compliance with federal law. *See* Union Pacific R.R. Co.’s Reply to Renewed Mot. To Compel at 10–11, Feb. 9, 2024.

²⁴¹ *See* UP’s Sept. 2023 Resp., General Code of Operating Rules (UP-SL-0011047_HC); HDC’s Train Held (DR) Policy (UP-SL-0000001_HC).

[REDACTED]

[REDACTED] }}.²⁴²

UP also appears to disregard compliance with the preference right in evaluating its dispatchers. {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }} does UP hold dispatchers accountable for their responsibility to provide Amtrak with preference over freight transportation. UP has further reported that despite the thousands of FTI delays to Amtrak trains during the Complaint Period, no disciplinary actions were taken against any dispatcher for any dispatching decision related to a *Sunset Limited* Train.²⁴⁴

Given UP’s lack of attention to how dispatchers are affirmatively trained, instructed, evaluated, or disciplined with respect to their obligation to provide Amtrak trains the preference to which they are entitled—and UP’s stated position on what UP considers to be Amtrak’s preference right—it is little wonder that during the Complaint Period, dispatchers regularly delayed Amtrak trains for freight operations in violation of federal law.

b. UP admits that its computer-aided dispatching system “does not contain a set of rules that account for Amtrak trains’ legal preference.”

Although UP relies on human dispatchers, UP reported that the default arrangement during the Complaint Period (and to the present) is that trains on the UP network are dispatched via a computer-aided dispatching system. As part of its computer-aided dispatching system, UP uses

²⁴² *Id.*, Train Dispatcher Rules (UP-SL-00010691_C).

²⁴³ See 2022 Train Dispatcher Score Card (UP-SL-0012239_HC) (produced on Dec. 6, 2023) (Amtrak Exhibit 3).

²⁴⁴ Resp. & Objections to Amtrak’s First Set of Interrogs. at 9–10 (Oct. 13, 2023) (Amtrak Exhibit 4).

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what it calls a “Movement Planner Algorithm.”²⁴⁵ UP admits that the “Movement Planner algorithm does not contain a set of rules that account for Amtrak trains’ legal preference.” Moreover, “[i]n the Movement Planner algorithm, Amtrak trains and Union Pacific’s premium intermodal trains are assigned the highest numeric priority.”²⁴⁶ During the Complaint Period, UP thus systematically defaulted to a computer-aided dispatching system that provides UP premium intermodal trains the same priority as Amtrak trains. This obviously means that Amtrak was not provided preference “over” freight transportation in UP’s planning algorithm. And it stands in contrast to historical practices when the railroads still operated their own passenger service, which was designated “First Class” and given automatic priority over freight traffic.²⁴⁷

UP admits that although “dispatchers have choices about how they use the plans generated by Movement Planner,” on the UP network, “[m]ost trains are set to ‘automatic’” mode, which means that the computer-aided dispatching system that does not recognize Amtrak’s right to preference is “automatically control[ling] signals and switches.”²⁴⁸ UP states that because its computer-aided dispatching system does not account for Amtrak’s right to preference, “[d]ispatchers are therefore required to give particular attention to automated dispatching suggestions in territories where Amtrak trains are operating.”²⁴⁹ However, UP does not explain whether, how, or when dispatchers are trained to override a computer-aided dispatching system decision so as to account for Amtrak’s legal right to preference.

²⁴⁵ UP’s Sept. 2023 Resp. at 34.

²⁴⁶ *Id.*

²⁴⁷ *See supra* Parts I, V.

²⁴⁸ UP’s Sept. 2023 Resp. at 33.

²⁴⁹ *Id.* at 34.

UP's computer-aided dispatching system thus defaults to a regime that—by design—does not recognize Amtrak's statutory right to preference over premium intermodal freight transportation. In other words, UP's disregard for Amtrak's right to preference is ingrained in the very system UP uses to control its entire network. It is thus a predictable result that during the Complaint Period, Amtrak trains were regularly delayed for premium intermodal trains and other freight transportation in violation of Amtrak's statutory rights.

c. UP does not provide Amtrak with preference over freight transportation when building freight schedules.

During the Complaint Period (and continuing through the present) UP also failed to account for Amtrak's preference rights when building freight schedules. UP uses a "Train Schedule Builder" that lacks rules and programming to account for Amtrak's preference rights and the corollary need to achieve the COTP that is expected under the Final Rule.

UP's Train Schedule Builder uses a limited set of rules and algorithms to populate train schedules.²⁵⁰ Nowhere does UP indicate that any of these rules and algorithms require accounting for Amtrak's preference right, or for the need to ensure that passenger trains satisfy the COTP Minimum Standard. In fact, it appears that UP's Train Schedule Builder relies heavily on average run times over a specific pair of points where UP is already ignoring Amtrak's preference rights, which could have the effect of either ignoring the need to account for Amtrak trains' legal right to preference over freight transportation, or simply perpetuating the scheduling issues that generate FTI in the first place.²⁵¹ It also appears that UP's Train Schedule Builder refines the basic schedule based on the need for "crew changes, fueling, inspection, pick ups, and set-outs."²⁵² Again, UP

²⁵⁰ *Id.* at 10.

²⁵¹ *Id.*

²⁵² *Id.*

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does not mention any effort to refine schedules based on risk of interference with Amtrak trains. That oversight affects both *Sunset Limited* Trains and is particularly clear with respect to the volume of early route delays that Train 2 encounters,²⁵³ which often torpedo any prospect of delivering passengers on time.²⁵⁴

UP has stated that it relies on UP personnel to “account for potential conflicts with existing freight and passenger train schedules when they develop a schedule for a new train start or change an existing schedule.”²⁵⁵ UP indicated that its network operations and dispatch teams work together as necessary to develop scheduling adjustments to mitigate conflicts.²⁵⁶ But for reliance on individuals to be effective or address gaps in computer-assisted scheduling, the individuals need to be suitably trained. UP has not provided evidence showing whether, how, and when personnel are trained or instructed to adjust freight schedules to account for Amtrak’s right to preference.

In discovery, Amtrak asked UP to explain what weight UP places on Amtrak’s preference rights in assessing the impacts on other trains operating and expecting to operate in the geographic area when planning departure times for unscheduled trains. UP responded that it “do[es] not treat Amtrak’s preference rights or Amtrak’s ability to achieve customer on-time performance differently for purposes of determining departure times of unscheduled trains than [UP] treat[s] Amtrak’s preference rights for other dispatching purposes.”²⁵⁷ In other words, it appears that UP places as low a priority on Amtrak’s preference rights for scheduling as it does for all other dispatching purposes.

²⁵³ See *supra* Part V.

²⁵⁴ See *supra* Part IV; accord Amtrak’s Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022).

²⁵⁵ UP’s Sept. 2023 Resp. at 21.

²⁵⁶ *Id.*

²⁵⁷ Resp. & Obj. to Amtrak Second Set of Interrogs. at 6 (Dec. 19, 2023) (Amtrak Exhibit 8).

Given the lack of attention paid to Amtrak’s right to preference over freight transportation in building freight schedules, it is not surprising that during the Complaint Period, Amtrak trains regularly experienced conflicts with UP trains that resulted in violations of Amtrak’s statutory rights.

d. UP does not have any internal controls to ensure compliance with its federal-law obligation to provide Amtrak with preference over freight transportation.

During the Complaint Period (and continuing to the present) UP did not have any system in place to monitor compliance with its federal law obligation to provide Amtrak with preference over freight transportation, nor did it have any compliance officer responsible for ensuring adherence to federal law. However, when it comes to *other* statutory and regulatory obligations under federal law, UP apparently recognizes the importance of having a compliance program. For example, UP’s website discusses its “Environmental Governance & Compliance Program,” where UP “performs a programmatic environmental risk review” “facilitated by an independent auditor who examines information...for risk evaluation and scoring” and the “company then allocates resources to address those risk[s].”²⁵⁸ Similarly, UP has a compliance program for applicable federal anti-bribery and anti-corruption laws. This program requires that UP employees with responsibilities in these areas take annual trainings on their obligations and provide a certification that they are complying with federal law.²⁵⁹

In contrast, UP has no such compliance program with respect to its obligations under Section 24308. Indeed, UP does not appear to address how it plans to meet its statutory and

²⁵⁸ Environmental Governance & Compliance, Union Pacific R.R. Co., <https://www.up.com/aboutup/environment/governance/index.htm> (last visited Oct. 4, 2024).

²⁵⁹ Union Pacific, *Anti-Bribery and Anti-Corruption Policy* 8 (Oct. 1, 2024), https://www.up.com/cs/groups/public/@uprr/@law/documents/up_pdf_natedocs/pdf_up_exec_conduct_fcpa.pdf.

regulatory obligations to Amtrak in any discussion of UP's compliance programs or risk assessments. Nor is UP's organizational structure set up to ensure that UP meets its federal law obligations with respect to Amtrak. UP does not have any high-level employee responsible for monitoring UP's performance with regard to implementing Amtrak's statutory right to preference over freight transportation, nor does UP appear to have any Amtrak-related internal goals or performance measures in this respect.²⁶⁰ Furthermore, in response to the Board's question about efforts to improve passenger service and on-time performance of Amtrak trains, UP failed to identify a single program or plan pertaining to UP's compliance with federal law regarding preference.²⁶¹

Because UP does not have any compliance program in place, nor does UP hold anyone responsible internally for failures to provide Amtrak with its statutory right to preference over freight transportation, it is not surprising that during the Complaint Period UP routinely failed to provide Amtrak with that right.

VI. THE BOARD HAS BROAD AUTHORITY TO AWARD DAMAGES AND OTHER RELIEF.

In its August 2024 Order, the Board asked several interrelated questions with respect to its remedial authority in this proceeding.²⁶² As discussed below, the Board's authority here is broad—Congress enacted PRIIA Section 213 to improve Amtrak performance, to deter violations of

²⁶⁰ See UP's Sept. 2023 Resp. at 29–32 (identifying other performance measures but not an employee accountable for Amtrak performance; identifying team that monitors Amtrak trains on UP's network but no accountable individual); see also Resp. & Objections to Amtrak's First Set of Interrogs. at 9–10 (Oct. 13, 2023) (Amtrak Exhibit 4).

²⁶¹ UP's Sept. 2023 Resp. at 28–29.

²⁶² See August 2024 Order at 3–4 (directing Amtrak to address (1) The extent of the Board's legal authority to award damages; (2) Whether the authority in Section 24308(f)(2) is limited to damages for the failures to provide preference that would cause Amtrak to fall below 80% for any two consecutive calendar quarters; and (3) Whether the Board has authority to award damages for any delays attributable to the host rail carrier's failure to provide preference, even if the host rail carrier's failures to provide preference would not, standing alone, cause Amtrak to fall below 80% for any two consecutive calendar quarters).

Amtrak's preference rights, and to remedy violations of those rights. The Board has authority both to award damages and to prescribe other forms of relief to redress harms that are attributable to preference violations. These principles apply to any and all Amtrak delays that are attributable to the host rail carrier's failure to provide preference, even if those failures to provide preference would not, standing alone, cause COTP to fall below 80% for any two consecutive calendar quarters.

A. The Board Has Broad Authority Both To Award Damages And Prescribe Other Relief.

As an initial matter, in its most recent Order, the Board referenced only its authority to “award damages.”²⁶³ However, the plain text of the statute makes clear that the Board's authority extends beyond an award of damages. Section 24308(f)(2) provides that, if the Board finds that a host rail carrier has violated Amtrak's right to preference, the Board is not limited to awarding damages, but also may broadly “prescribe[e] such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.” 49 U.S.C. § 24308(f)(2). Paragraph three of Section 24308(f) then provides topics for the Board's consideration when the Board is “awarding damages and prescribing other relief.” 49 U.S.C. § 24308(f)(3) (captioned “Damages *and* relief” (emphasis added)). And one of the mandates for the Board's consideration is “what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.” 49 U.S.C. § 24308(f)(3)(B).

Accordingly, it is clear that the Board's remedial authority is not limited to “damages” and instead encompasses broad equitable authority to, among other things, impose any and all

²⁶³ *Id.* at 3.

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measures the Board determines would “adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.” 49 U.S.C. § 24308(f)(3)(B). The only statutory limit is that the measures the Board prescribes must be “reasonable and appropriate.” 49 U.S.C. § 24308(f)(2). Although Amtrak is not briefing the full extent of the Board’s remedial authority at this stage given that the Board has deferred remedial considerations to Stage Two of this proceeding, *see* July 2023 Decision at 12, such measures might include things like prescribing specific operating requirements or changes to a rail carrier’s practices, mandating training programs for rail carrier personnel, or installing a monitor to oversee a rail carrier’s compliance with its preference obligations. These potential measures are offered only as illustrative examples, and the Board will have a better opportunity to consider these issues based upon the concrete examples and proof developed in Stage One of this proceeding showing the causes of delays and failures to provide preference to Amtrak’s *Sunset Limited* Trains. At this stage, however, Amtrak simply clarifies that the Board’s remedial authority is not limited to awarding damages—Congress plainly intended more.

B. The Board Has Authority To Award Damages And Prescribe Other Relief For Any Delays That Are Attributable To A Failure To Provide Preference.

Nor is the Board’s remedial authority limited to situations in which failures to provide preference cause Amtrak to fall below 80% for any two consecutive calendar quarters. The Board clearly has authority to award damages and prescribe other relief for any and all delays that are attributable to the host rail carrier’s failure to provide preference, even if those failures to provide preference would not, standing alone, cause Amtrak COTP to fall below 80% for any two consecutive calendar quarters. August 2024 Order at 3–4. That is clear from the plain text and structure of the statute as well as the legislative history.

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First, the text is clear that damages and other relief are available for *any* delays attributable to a preference violation. “If the Board determines that delays *or* failures to achieve minimum standards investigated ... are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation ... the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate.” 49 U.S.C. § 24308(f)(2) (emphasis added). By using the disjunctive “or” to separate “delays” from “failure to achieve minimum standards,” Congress authorized the Board to award damages and other relief for all delays attributable to failure to provide preference, not just those that would cause Amtrak COTP to fall below 80% for two consecutive calendar quarters. A contrary reading of the statute would impose limits that have no basis in the text and would render Congress’s repeated inclusion of “delays or” superfluous. “Statutes must be interpreted, if possible, to give each word some operative effect,” *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 209 (1997), and to reach the best reading of Section 24308(f), the Board is obliged “to give effect ... to every word Congress used,” *National Ass’n of Manufacturers v. Department of Defense*, 583 U.S. 109, 128–29 (2018) (citation omitted). Giving every word Congress chose meaning, the Board has authority to award appropriate relief for delays that are attributable to preference violations, even if the host rail carrier’s failures to provide preference would not alone cause Amtrak COTP to fall below 80% for any two consecutive calendar quarters.

Second, the statutory structure reinforces the plain text. The 80% on-time performance threshold for an investigation is just that—a trigger for the Board’s investigation. *See* 49 U.S.C. § 24308(f)(1); *see also* *Union Pacific R.R. Co.*, 863 F.3d at 820 (describing the 80% on-time performance measure as a “trigger” for a Board investigation). It does not limit whether the Board may award damages or other relief *after* the Board has conducted an investigation. Again,

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Congress could have limited relief to only those violations and delays that violate minimum standards, but it did not. Rather, Congress made clear that damages and other relief could be awarded when a host causes “delays *or* failures to achieve minimum standards,” not only in Section 24308(f)(2), but also throughout Section 24308(f). Indeed, Congress identically used the disjunctive “or” in Section 24308(f)(3) and Section 24308(f)(4) to separate “delays” from “failure to achieve minimum standards.” *See* 49 U.S.C. § 24308(f)(3) (“In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as ... the extent to which Amtrak suffers financial loss as a result of *host rail carrier delays or failure to achieve minimum standards*[.]” (emphasis added)); 49 U.S.C. § 24308(f)(4) (providing that “damages shall be used for capital or operating expenditures on the routes over which *delays or failures to achieve minimum standards* were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).” (emphasis added)).

Third, the legislative history supports this reading. PRIIA authorized the Board, if it “determines that delays to passenger trains are the result of freight railroads not providing priority access to Amtrak, as currently required under law,” to “*take appropriate action to enforce Amtrak’s priority access rights*.” S. Rep. No. 110-67, at 11 (2007). Thus, the Board’s authority was tied to remedying “delays to passenger trains” without any requirement that particular delays be tied to particular performance thresholds.

Finally, Amtrak notes that although the Board has broad authority to prescribe relief for any and all delays that are attributable to preference violations, the Board is not *required* to do so. As noted above, the Board has broad discretion to determine appropriate relief, and the Board might determine that damages or other relief are not appropriate in certain circumstances.

VII. THE *SUNSET LIMITED* SCHEDULES CONTAIN MORE THAN ENOUGH TIME TO ENSURE PASSENGERS REACH THEIR DESTINATIONS ON TIME.

In its August 2024 Order, the Board directed the parties to address four interrelated questions regarding the *Sunset Limited* schedules.²⁶⁴ Amtrak addresses each of these questions below. In short, the *Sunset Limited* schedules provide for more than enough time to deliver Amtrak’s passengers to their destinations absent the kinds of egregious UP-Responsible Delays that have occurred here. Both the governing statute and regulations make clear that it is appropriate for the Board to issue relief to Amtrak in this case notwithstanding UP’s repeated efforts to obtain longer schedules that would entrench existing delays to Amtrak passengers.

A. UP Approved The *Sunset Limited* Schedules And Lengthening Them Would Invite More UP-Responsible Delay.

Since issuance of the Final Rule, Amtrak and its host railroad partners have certified more than 95% of published train schedules. *See* Verified Statement of Yoel Weiss (“Weiss V.S.”) ¶ 15. Approximately 85% of long-distance schedule segments have also been certified. *See id.* With respect to the *Sunset Limited*, all host railroads have certified that the existing schedules for Trains 1 and 2 are aligned with the COTP Metric and Minimum Standards, except for UP.²⁶⁵

²⁶⁴ *See* August 2024 Order at 5 (directing Amtrak to address (1) What specific change was sought to the *Sunset Limited* schedules and what non-binding dispute resolution specified in 49 C.F.R. § 273.3 did Amtrak and UP engage in regarding the schedule; (2) Whether Amtrak or UP did not consent to participation in the dispute resolution process under § 273.3(1)(ii) or (iii) for the *Sunset Limited* schedules? (3) Why the *Sunset Limited* schedules were reported as disputed instead of uncertified?; and (4) If the published train schedule is not a disputed schedule or certified schedule under 49 C.F.R. § 273.3, whether any joint letter and status report been transmitted under 49 C.F.R. § 273.5(c)(2), including to the Chairman of the Board, and, if not, what is the explanation for that and the plan for compliance?). The Board also directed Amtrak and UP to produce any documents associated with the specific change(s) sought. Amtrak has attached those documents to its brief. *See* Amtrak Exhibits 6–16.

²⁶⁵ *See* Amtrak’s Sept. 2023 Resp., CN Certification (AMTRAK_STB_0000685), BNSF Certification (AMTRAK_STB_0000683), SCRRRA Certification (AMTRAK_STB_0000710); *accord* BNSF’s Sept. 2023 Resp. at 9 (confirming certification). Amtrak understands that CN now asserts that it is not a host of the *Sunset Limited*, despite certifying the *Sunset Limited*’s schedule in April 2021. *See* CN’s Resp. to Compl. & Pet. at 27 (Letter from M. Matteucci to J. Blair) (“Assuming there are no changes to the arrival or start times at the beginning of CN’s portion of the route, CN believes the schedules for the trains on its portion of the Wolverine, Blue Water, Lincoln, Texas Eagle, and *Sunset Limited* services are ready to be certified. We can therefore certify the schedules for 5 of the 7 services and 20 of the 26 daily trains that operate over CN’s lines in the United States during normal operations.”).

Rather than certify the schedule, UP advocated for lengthening it. Amtrak rejected UP's proposals,²⁶⁶ which would impede Amtrak's ability to operate a trip-time competitive service (as mandated by Congress),²⁶⁷ impede Amtrak's ability to drive ridership and revenues, increase Amtrak's costs, and which are not necessary to deliver passengers to their destination on time.

As background, Amtrak added considerable recovery time to the *Sunset Limited* schedule when the parties renegotiated their operating agreement in 1998,²⁶⁸ with the expectation that on-time performance would improve. Amtrak added another 3.5 hours to the Train 1 and 2 schedules in 2005,²⁶⁹ with the same expectation. After Congress passed PRIIA and affirmed Amtrak's statutory right to preference, UP began addressing FTI on UP-Hosted Segments of the route, and the parties agreed to pare back some amount (well less than half) of the time added in 2005.²⁷⁰

Since UP last approved the *Sunset Limited* schedules in 2009,²⁷¹ UP has not identified any changes in rail infrastructure along the route that would affect *Sunset Limited* schedules. Moreover, the current *Sunset Limited* schedules—which are considerably longer than the 42-hour schedule from when Southern Pacific ran the service in 1950, even though the current route is approximately 75 miles shorter²⁷²—account for the possibility of unplanned and unanticipated delays that may

²⁶⁶ UP has represented to the Board that the schedule it would propose today is not the same as the one it last presented to Amtrak in November 2021. See UP's Sept. 2023 Resp. at 20.

²⁶⁷ See 49 U.S.C. § 24101(b) (“The mission of Amtrak is to provide efficient and effective intercity passenger rail mobility consisting of high quality service that is trip-time competitive with other intercity travel options.”).

²⁶⁸ Amtrak's Sept. 2023 Resp. at 58.

²⁶⁹ *Id.*; Amtrak Suppl. Resp. at 8–10.

²⁷⁰ Amtrak's Sept. 2023 Resp. at 58; Amtrak Suppl. Resp. at 8–10.

²⁷¹ As UP acknowledges, Amtrak cannot unilaterally change the schedule skeleton. UP's Sept. 2023 Resp. at 11.

²⁷² Compare *Sunset Limited, Southern Pacific Lines, Aug. 20, 1950*, Streamliner Sched., <http://www.streamliner-schedules.com/concourse/track9/sunset195008.html>, with Amtrak's Suppl. Resp., Amtrak Schedule Skeleton (AMTRAK_STB_NATIVE_0014.2).

occur during service through the use of recovery, miscellaneous, and excess dwell time that can mitigate the operational impact of delays. The amount and distribution of such time within the *Sunset Limited* schedules were designed to allow host railroads to deliver Amtrak passengers to their destinations on time. Although UP claims that the existing schedules are not achievable, the data demonstrates otherwise. During the Complaint Period, 16 *Sunset Limited* runs achieved the COTP Minimum Standard,²⁷³ and the frequency of runs that have met the COTP Minimum Standard has risen considerably during the pendency of this investigation.

1. The specific changes to the schedule requested by UP are unjustified.

On December 18, 2020, Amtrak contacted UP about certifying the *Sunset Limited* schedule. UP refused to certify and asked Amtrak to add significantly more time to the schedule. *See* Weiss V.S. ¶ 2 (Amtrak Exhibit 9). Over the next seven months, UP made three proposals reflecting specific changes that would have lengthened passenger schedules for Train 1 and Train 2 by anywhere from 81–133 minutes and 79–96 minutes, respectively. Weiss V.S. ¶¶ 3, 10, 12 (detailing specific changes sought) (Amtrak Exhibits 10, 11, 11-1, 18, and 18-1). Each UP proposal included modest increases to pure run time, and the addition of substantial recovery time. *Id.*

Amtrak considered but rejected each of the proposals. In addition to lacking analytic support, *see* Amtrak’s Sept. 2023 Resp. at 70, the UP proposals were and remain inconsistent with Amtrak’s statutory mandate. Congress established Amtrak “to provide efficient and effective intercity passenger rail mobility consisting of high-quality service that is trip-time competitive with other intercity travel options.” 49 U.S.C. § 24101(b). Amtrak must offer competitive schedules to satisfy that statutory mandate, effectuate the public interest in efficient and effective

²⁷³ *See* Amtrak’s Sept. 2023 Resp., Detailed COTP, Lateness, and Arrival Data (AMTRAK_STB_NATIVE_0022).

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intercity passenger rail, and provide a viable transportation service to those served by its long-distance trains, many of whom have no other means of public transportation for their trips.

The abysmal on-time performance of the *Sunset Limited* that led Amtrak to file its Complaint illustrates that lengthening Amtrak schedules to accommodate a host railroad's poor performance and failure to comply with Amtrak's preference rights does not produce acceptable on-time performance. Since 1996, when the *Sunset Limited* began operating over its current route on UP, the *Sunset Limited's* schedule has been lengthened by five hours and 45 minutes westbound and four-and-a-half hours eastbound.²⁷⁴ UP sought, and Amtrak added, a significant amount of time to the *Sunset Limited* schedules in 1998 and again in 2005.²⁷⁵ As a result, schedules in both directions are now many hours longer than they were in 1950 and in 1996. But that has done nothing to improve on-time performance for Amtrak passengers, which ranged from a low of 7% to a high of just 40% during the four quarters of the Complaint Period. See Amtrak's Sept. 2023 Resp. at 58.

After Amtrak initiated this investigation, UP offered reasons for seeking even more time to deliver *Sunset Limited* passengers to their destinations.²⁷⁶ But UP generally failed to substantiate its reasoning. For example, UP did not identify any rail infrastructure or similar changes that might affect schedules since the parties last approved the *Sunset Limited* schedules, and UP offered no support for its assertions that several segments lack sufficient pure run time or sufficient time for renews. Claims about congestion were similarly conclusory. And there are other reasons to disregard UP's stated basis for seeking a longer schedule.

²⁷⁴ Compare *Sunset Limited 1996 Schedule*, Museum of Ry. Timetables, <http://www.timetables.org/full.php?group=19961110n&item=0041> (last visited Oct. 4, 2024), 1 *with* Amtrak's Suppl. Resp., Amtrak Schedule Skeleton (AMTRAK_STB_NATIVE_0014.2).

²⁷⁵ Amtrak's Sept. 2023 Resp. at 58; Amtrak Suppl. Resp. at 8.

²⁷⁶ See UP's Sept. 2023 Resp. at 11–18

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First, UP asserts that lengthening the schedule is necessary to address potential delay on segments that are single-tracked and may have limited sidings.²⁷⁷ Yet that assertion turns on an unwarranted assumption: That relevant delays are lawful and cannot adequately be mitigated through operational adjustments, such as eliminating or at least reducing the number of non-fitting trains dispatched during *Sunset Limited* service, better managing freight crews, or adjusting freight schedules. As Amtrak has explained, that assumption is wrong and completely disregards Congress's choice about the respective priorities of freight and passenger transportation. *See supra* Parts IV and V. Lengthening the schedule is no answer to deficient on-time performance given the history of UP's continued abysmal performance during prior schedule lengthenings. Rather, the answer is to put in place practices and procedures that will end UP's consistent violations of Amtrak's rights to preference over freight transportation. In short, UP must conform its operations to satisfy its statutory obligation to provide preference to Amtrak trains, not the other way around.

Second, UP makes the related assertion that lengthening schedules is necessary to address potential congestion around terminals or between Houston and Beaumont.²⁷⁸ UP provides no detail about where congestion occurs or what drives it. Moreover, its representation turns on another unwarranted assumption: that congestion-related delays to passenger trains are lawful, and that the

²⁷⁷ *See, e.g., id.* at 15 (risk of delay to Train 1 between San Antonio and Del Rio because route is single tracked with limited sidings); *id.* (risk of delay to Train 1 on single-track segments between Alpine and El Paso); *id.* at 16 (risk of delay to Train 1 on single-track near Yuma); *id.* (risk of delay to Train 1 on single-track near Thermal); *id.* (risk of delay to Train 1 on single-track near Pomona); *id.* (risk of delay to Train 2 on single-track near Yuma); *id.* at 17 (risk of delay to Train 2 on single-track between El Paso and Alpine); *id.* (risk of delay to Train 2 on single-track near Del Rio); *id.* (risk of delay to Train 2 between Del Rio and San Antonio because route is single tracked with limited sidings).

²⁷⁸ *See, e.g.,* UP's Sept. 2023 Resp. at 15 (risk of delay to Train 1 because of congestion in El Paso terminal area); *id.* at 16 (risk of delay to Train 1 because of congestion in Yuma terminal area); *id.* (risk of delay to Train 1 because of congestion in terminal near West Colton); *id.* (risk of delay to Train 2 because of congestion in Yuma terminal area); *id.* at 17 (risk of delay to Train 2 because of congestion in El Paso terminal area); *id.* at 18 (risk of delay to Train 2 between Houston and Beaumont notwithstanding the routing delay that UP frequently imposes to maintain its preference for directional running).

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congestion cannot be addressed by (among other things) modifying UP's operating plan, improving UP's service levels, or expanding UP's workforce.²⁷⁹ Again, UP should be required to fully comply with preference obligations in delivering *Sunset Limited* passengers to their destination—and to address the root causes of congestion-related delay—rather than lengthening the schedule.

Requiring UP to implement operating and other adjustments before modifying the schedule is particularly appropriate because UP recently demonstrated that it can address congestion on its network. After the Board pressed UP on the significant and disproportionate number of embargos placed across its network, UP made operating and personnel adjustments that improved service and reduced the number of embargos by more than 80% during the pendency of the Board inquiry.²⁸⁰ The episode confirms that UP can address congestion on its network, and further, that Board intervention and monitoring is necessary to drive UP to make those operational and personnel adjustments.

Third, UP offers an assortment of misplaced reasons for disagreeing with the existing schedule. As examples:

- UP asserts that lengthening the schedule is necessary because the irregular arrival of *Sunset Limited* Trains at Iowa Junction causes delay when working trains must clear for Amtrak. *See, e.g.*, UP September Submission at 13. However, UP knows where *Sunset Limited* Trains are and can plan accordingly. *See* Part IV, *supra*. While BNSF has primary responsibility for dispatching the *Sunset Limited* between Live Oak and Iowa Junction, UP has acknowledged that it jointly owns and dispatches that track. It has also acknowledged that BNSF dispatchers contact UP when Train 1 is about an hour or so from Iowa Junction, providing more than sufficient notice of the Train's arrival.²⁸¹ Lengthening schedules does

²⁷⁹ *See supra* Part IV.

²⁸⁰ *Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes*, No. EP 772, at 1 (S.T.B. served Apr. 17, 2024).

²⁸¹ *See* UP's Sept. 2023 Resp. at 40.

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not address the primary cause of irregular Amtrak arrivals: Host-Responsible Delays to Amtrak passengers that can reasonably be addressed by UP.

- UP complains about the miscellaneous adjustment made at Iowa Junction, UP's Sept. 2023 Resp. at 13, ignoring that the *Sunset Limited* travels on track that UP jointly owns and has some role in dispatching before the relevant interchange and also ignoring what it has long known—that the interchange at Iowa Junction is expected to occur at 1:53 p.m.
- UP asserts that more recovery time is needed for operations between Lake Charles and Beaumont because *Sunset Limited* Trains pass over drawbridges between Lake Charles and that station. UP September Submission at 14, 18. However, delays attributable to maritime traffic on that segment drove just *34 minutes* of delay during the year-long Complaint Period for all *Sunset Limited* Trains. See Amtrak's Sept. 2023 Resp., Detailed Delay Listing (AMTRAK_STB_NATIVE_0002).
- UP asserts that more recovery time is needed for Train 1 in Beaumont because of time required for the hand-off with CPKC-owned track over the Neches River Bridge. UP's Sept. 2023 Resp. at 14. Once more, UP knows where *Sunset Limited* Trains are and should not require additional time to coordinate this brief handoff with CPKC. And in this case, UP acknowledges that it contacts CPKC to coordinate the handoff approximately one hour before it is expected to occur, which should provide more than enough time to execute a handoff without delay. UP's Sept. 2023 Resp. at 40–41.
- UP asserts that the amount of recovery time at certain stations is low in relation to its ridership and weighing under the COTP Metric. UP's Sept. 2023 Resp. at 15 (Yuma); *id.* at 16–17 (Maricopa and Tucson). Although not necessary to deliver satisfactory on-time performance, and although UP should be required to address Host-Responsible Delay and its failure to comply with Amtrak's statutory preference rights before existing time is redistributed, Amtrak is willing to consider any appropriate reallocation of existing recovery time, as indicated in its two prior scheduling proposals to UP.
- UP also asserts that the schedule lacks sufficient dwell time at stations between San Antonio and Del Rio. UP's Sept. 2023 Resp. at 15. However, the *Sunset Limited* does not service passenger stations between those locations and Amtrak therefore interprets this as a request to reallocate recovery time to these areas. Amtrak reiterates that it is open to appropriate reallocations of recovery time, but forcing Amtrak passengers to dwell while freight trains conclude their operations at stations in this area is inconsistent with Amtrak's statutory right to preference over freight transportation.
- UP asserts that more time is required to permit Amtrak to refuel at Kirby. UP's Sept. 2023 Resp. at 18. However, the *Sunset Limited* schedule already contains sufficient recovery and/or miscellaneous time to address minor delays in refueling when they occur. For example, the Train 1 schedule includes 25 minutes of recovery time at San Antonio and the Train 2 schedule includes 46 minutes of miscellaneous and recovery time before COTP is measured at Houston. See Amtrak's Sept. 2023 Resp., Detailed Dwell Time Data Table (AMTRAK_STB_NATIVE_0009). When refueling delays occur, they ordinarily consume a small portion of this recovery and/or miscellaneous time.

Fourth, UP asserts that compliance with the COTP Metric and Standard requires lengthening the schedule because on-time performance is now measured at each station rather than contractual checkpoints. That argument is a red herring. The contractual mechanisms used to incentivize on-time performance do not preclude host railroads from delivering passengers on time under existing schedules, which were heavily negotiated and approved by Amtrak and UP. As discussed above, the actual explanations UP offers for its belief that *Sunset Limited* schedules must get longer to align with the COTP Minimum Standard lack substantiation and merit and would sanction continued preference violations.

2. Amtrak's offers to reallocate recovery and dwell time adequately addressed UP's concerns.

By accommodating rather than addressing the root causes of poor performance, lengthening the schedule invites UP to perpetuate practices that make it difficult to run trip-time competitive service. During the parties' exchange on certification of the *Sunset Limited* schedules, however, Amtrak offered to reallocate recovery and dwell time to accommodate UP operating practices. Weiss V.S. ¶¶ 9, 11 (detailing specific changes sought) (Amtrak Exhibits 12, 12-1, and 17). Among other things, Amtrak's proposal for Train 1 would have reduced and reallocated time at Houston and San Antonio and increased the amount of recovery time at Lake Charles, Beaumont, El Paso, and Maricopa.²⁸² Similarly, Amtrak's proposal for Train 2 would have reduced and reallocated recovery time from Palm Springs and Sanderson, while increasing recovery time at Yuma, Maricopa, Del Rio, Beaumont, and Lake Charles.²⁸³

²⁸² See Amtrak's Sept. 2023 Resp., Amtrak Proposal to UP (AMTRAK_STB_0000687); accord UP's Sept. 2023 Resp. at 14 (expressing belief that it may be possible to reduce and redistribute scheduled recovery and/or station dwell at Houston and San Antonio).

²⁸³ See Amtrak's Sept. 2023 Resp., Amtrak Proposal to UP (AMTRAK_STB_0000687); accord UP's Sept. 2023 Resp. at 16–17 (expressing belief that it may be possible to reduce and redistribute recovery time from Palm Springs and Sanderson).

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Although Amtrak remains willing to reallocate recovery time, it is important to recognize that UP is fully capable of running the *Sunset Limited* on time under the existing schedules. During the Complaint Period, the *Sunset Limited* achieved the 80% COTP Minimum Standard on 16 runs.²⁸⁴ During the pendency of this proceeding, runs that meet the 80% COTP Minimum Standard have occurred more frequently. Since Amtrak filed its Complaint, Train 1 satisfied the Minimum Standard on 32% of runs and Train 2 on 19% of runs.

That *Sunset Limited* passengers can arrive on time under the schedule is hardly surprising. The *Sunset Limited* schedules have abundant recovery time, which is built into the schedule to ensure that UP and other host railroads can run *Sunset Limited* Trains to schedule. In fact, Trains 1 and 2 contain more than five and six hours of recovery time (respectively), which is distributed across intermediate stops and provides the time required for *Sunset Limited* Trains to operate on each segment of the route.²⁸⁵ As a percentage of pure running time, the recovery time and miscellaneous time on the *Sunset Limited*'s schedules exceed that of almost every other long-distance route, almost always by several percentage points.

To further minimize the operational consequences of delays, Amtrak has included extra dwell time at several stations. As one example, Train 1 dwells at San Antonio for 160 minutes, even though Amtrak generally requires 90 minutes or less of dwell time to perform normal work.²⁸⁶ This excess dwell time is designed to get Train 1 back on schedule after unexpected delays and to enable UP to run the train to schedule at subsequent stops.

²⁸⁴ See Amtrak's Sept. 2023 Resp., Detailed COTP, Lateness and Arrival Data (AMTRAK_STB_NATIVE_0022).

²⁸⁵ Amtrak includes the considerable amount of miscellaneous time built into the Train 1 schedule, which provides an opportunity for hosts to recover the train. See Compl. & Pet. ¶¶ 98, 102.

²⁸⁶ See Amtrak's Sept. 2023 Resp. at 56.

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As a consequence of the considerable recovery, miscellaneous, and excess dwell time, *Sunset Limited* passengers should reasonably expect to arrive at their destination on time, notwithstanding incidental delays or slowdowns. Put differently, the *Sunset Limited* schedule is already aligned with the COTP Metric and Standard. Challenges in meeting scheduled arrival times during the Complaint Period are due largely to causes that can be addressed by UP without changing the existing schedule.

B. Amtrak Properly Reported The Schedule As Disputed Under The Applicable Regulations And Disputed Schedules Are Subject To Investigation Under Section 24308(f).

The Board also asked about the current reported status of the *Sunset Limited* schedules, which Amtrak properly reported as disputed under the Final Rule. Although Amtrak and UP have not completed non-binding dispute resolution regarding the schedule, the Final Rule does not require such completion before applying the COTP Minimum Standard or before the Board proceeds with an investigation under Section 24308(f), which expressly empowers the Board to consider “schedule” as one of the factors in its investigation. In fact, the Final Rule contemplates that Amtrak and its host railroads may not complete the non-binding dispute resolution process at all. The Board’s authority to issue relief in this proceeding is not contingent on having a certified schedule for the *Sunset Limited*.

1. Amtrak properly reported the schedule as “disputed.”

Under the Final Rule, schedules are disputed when Amtrak or one of its host railroads seek a specific change through non-binding dispute resolution. 49 C.F.R. § 273.3. The regulations further provide that if either party disputed a published passenger schedule within six months of when the Final Rule was issued, application of the COTP Minimum Standard would be deferred for three months. 49 C.F.R. § 273.5(a)(3)(ii); *accord* Final Rule, 85 Fed. Reg. at 72979.

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On December 18, 2020, following issuance of the Final Rule, Amtrak contacted UP and proposed that UP certify the published schedules for the *Sunset Limited* (Amtrak Exhibit 9). On April 9, 2021, within six months of the issuance of the Final Rule, UP responded with a proposal seeking specific changes to the schedules for both Train 1 and Train 2. Weiss V.S. ¶ 3 (detailing specific changes sought) (Amtrak Exhibit 10). One week later, UP informed Amtrak that it was initiating the non-binding dispute resolution process contemplated under the regulations for Train 1 and Train 2. Weiss V.S. ¶ 4 (Amtrak Exhibit 13).

Within thirty days, and subject to agreement about the process for non-binding dispute resolution, Amtrak consented to participate in mediation about the schedules. At that point, Amtrak was obligated to report the *Sunset Limited* passenger schedules as disputed in its May 17, 2021 notification to the FRA Administrator (Amtrak Exhibit 14). Amtrak was also required to defer application of the COTP Minimum Standard to *Sunset Limited* Trains until October 1, 2021. Consistent with FRA regulations, Amtrak has continued to report the *Sunset Limited* schedules as disputed because the parties did not subsequently agree to certify the schedule. *See* 49 C.F.R. § 273.3(2) (once a “published train schedule is reported as a disputed schedule under § 273.5(c)(1), then it remains a disputed schedule until reported as a certified schedule”). Accordingly, because the *Sunset Limited* schedules for Trains 1 and 2 have been and remain disputed, the reporting provisions of 49 C.F.R. § 273.5(c)(2) requiring Amtrak and the host railroad to transmit a joint letter and status report to the Chair of the Board and others on “uncertified” schedules are inapplicable.²⁸⁷

²⁸⁷ An “uncertified schedule” is “a published train schedule that has not been reported as a certified schedule or a disputed schedule under § 273.5(c)(1).” 49 C.F.R. § 273.4.

2. The Board should address the schedule as part of its investigation.

The Final Rule contemplates that parties may not complete non-binding dispute resolution for disputed schedules, and indeed notes that a disputed schedule can be subject to investigation by the Board. The governing statute and regulations make clear that an expeditious investigation and the issuance of relief to Amtrak are appropriate here.

By design, the Final Rule did not specify a process for non-binding dispute resolution.²⁸⁸ After informing the FRA Administrator that UP disputed the *Sunset Limited* schedules and after agreeing to participate in mediation with UP about the schedules, Amtrak then engaged in good faith discussions with UP about the mediation process.²⁸⁹ Although the parties did not ultimately reach agreement on a process for non-binding dispute resolution, and therefore never engaged in such a process, Amtrak nonetheless has continued to engage with UP on matters related to schedules for *Sunset Limited* Trains. For example, the parties agreed to relocate a fueling location from Tucson to Santa Teresa and made corresponding modifications to the existing schedule—even though it is disputed—to facilitate that operational adjustment.²⁹⁰

At this point, the parties do not have any further obligation to mediate their dispute over the schedule. Instead, the Board’s investigation is the proper forum for any such dispute. The Final Rule expressly contemplated that published train schedules for which a specific change is sought would be designated as disputed, with no assurance that a dispute resolution process would be

²⁸⁸ See Final Rule, 85 Fed. Reg. at 72979 (“[T]he final rule does not require Amtrak or a host railroad to engage in a dispute resolution process, nor does the final rule attempt to prescribe the process the parties use if they do choose to engage a dispute resolution process.”); *accord* 49 C.F.R. § 273.3.

²⁸⁹ The parties also continued to exchange proposals for the schedule, *Weiss V.S.* ¶¶ 8–12 (detailing specific changes sought) (Amtrak Exhibits 11, 11-1, 12, 12-1, 16, 16-1, 17, 18, 18-1).

²⁹⁰ See Amtrak’s Sept. 2023 Resp. at 60.

completed before the COTP Minimum Standard became binding.²⁹¹ The FRA emphasized in the Final Rule that its regulations were intended to encourage—but not require—Amtrak and its host railroads to engage in non-binding dispute resolution before the COTP Minimum Standard became binding. *See* Final Rule, 85 Fed. Reg. at 72979–80.

The FRA’s decision not to prescribe a specific process for non-binding dispute resolution or to require that parties mediate disputed schedules reflected a careful effort to balance host-railroad interests and Amtrak interests in a manner consistent with PRIIA Section 207. *See* Final Rule, 85 Fed. Reg. at 72980. Perhaps because the FRA contemplated precisely this scenario—one in which a host railroad disputes a schedule already aligned with the COTP Minimum Standard and has not reached agreement with Amtrak on the applicable processes for mediation—the FRA ultimately determined that any delay in application of the COTP Minimum Standard should only be temporary. *Id.* That decision reflected sound policy. As the FRA recognized, it was also compelled by PRIIA, which does not require dispute resolution or schedule certification and expressly contemplates that Board investigations may include Board review of the extent to which schedules contribute to delay. *Id.* (“Section 207 does not require schedule certification and, indeed, Section 213 acknowledges that STB investigations may include STB review of the extent to which scheduling contributed to delay.”).

VIII. RECOMMENDATIONS.

The Board has stated that Stage One of this proceeding “is for determining whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably

²⁹¹ *See, e.g.*, 49 C.F.R. § 273.3 (defining a disputed schedule to include schedules for which specific changes are sought but one party has not indicated within thirty days of initiation that it will participate in the process); *accord* Final Rule, 85 Fed. Reg. at 72980 (“[A] host railroad or Amtrak may initiate a timely non-binding dispute resolution process regardless of whether the party agrees to participate in that process, which would only temporarily delay application of the OTP Standard to a train.”).

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be addressed by a rail carrier over whose tracks the *Sunset Limited* operates, by Amtrak, or by another intercity passenger rail operator, *and for making resultant recommendations for service improvement.*” August 2024 Order at 5 (emphasis added); *see* 49 U.S.C. § 24308(f)(1). Amtrak has herein explained how the delays or failures to achieve minimum standards during the Complaint Period were due to causes that could reasonably be addressed by UP—the rail carrier over whose tracks the *Sunset Limited* operates for almost the entirety of its route. Amtrak has also explained how these delays or failures to achieve minimum standards during the Complaint Period were attributable to UP’s failure to provide preference to Amtrak over freight transportation.

Based on all of the foregoing, Amtrak offers the following set of initial recommendations the Board should make to improve the *Sunset Limited* service:

- (1) Except in the event of an emergency, rail carriers should not run trains that do not fit into available sidings on rail lines where the rail carrier knows or expects Amtrak trains are or will soon be operating.
- (2) Except in the event of an emergency, rail carriers should not dispatch freight trains ahead of Amtrak trains on main tracks where there is a reasonable likelihood that an Amtrak train will “catch up” and be forced to follow the freight train, thereby delaying the Amtrak train.
- (3) Except in the event of an emergency, in the event of “meets” between Amtrak and freight trains, rail carriers should place freight trains in available sidings and make use of available crossovers in multi-track territory so as to avoid delays to Amtrak trains.

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- (4) Except in the event of an emergency, rail carriers should not make dispatching decisions that result in Amtrak trains meeting freight trains on main lines where no siding is available that can accommodate the freight train.
- (5) Except in the event of an emergency, rail carriers should not allow crews to reach their maximum allowable hours of service while their train is occupying a main line in advance of an Amtrak train and should not prioritize the forward movement of a freight train over an Amtrak train because the freight crew is approaching its maximum allowable hours of service.
- (6) Except in the event of an emergency or when agreed to by Amtrak in advance, rail carriers should not route Amtrak trains on slower trackage or over slower routings when faster trackage or routings are or could be made available.
- (7) Except in the event of an emergency or when agreed to by Amtrak in advance, rail carriers should not reroute or delay an Amtrak train in order to adhere to the carrier's directional operating preferences.
- (8) Except in the event of an emergency or when agreed to by Amtrak in advance, rail carriers should ensure that rail lines are clear of maintenance crews or working trains in advance of the arrival of an Amtrak train.
- (9) Except in the event of an emergency, rail carriers should not position freight trains in a manner that would block station platforms from being accessed by Amtrak trains.
- (10) Rail carriers should require dispatchers to seek approval from supervisory personnel for any dispatching decision that is likely to delay an Amtrak train and

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should further require that such approval be provided only in the event of an emergency.

- (11) Rail carriers should ensure that any computer-aided dispatching system for routes over which Amtrak operates is appropriately programmed to recognize and account for Amtrak's statutory right to preference over freight transportation and that dispatchers are instructed to override the system when necessary to provide preference to Amtrak trains.
- (12) Rail carriers should ensure that computer-aided train-schedule-building systems for routes over which Amtrak operates are appropriately programmed to recognize and account for Amtrak's statutory right to preference over freight transportation and that personnel are instructed to override the system when necessary to provide preference to Amtrak trains.
- (13) Rail carriers should minimize slow orders that impact Amtrak trains.
- (14) Rail carriers should adequately maintain freight trains to avoid breakdowns that impact Amtrak trains.
- (15) Rail carriers should provide continuous training for all personnel with any responsibility for or over dispatching on the importance of Amtrak's right to preference over freight transportation in accordance with how that right is explained in Part V.
- (16) Rail carriers should establish systems to regularly evaluate all personnel with any responsibility for or over dispatching to monitor and measure their compliance with their federal statutory and regulatory obligations to Amtrak.

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- (17) Rail carriers should establish internal compliance programs with reporting up to a senior compliance officer to ensure compliance with their federal statutory and regulatory obligations to Amtrak.
- (18) Rail carriers should preserve dispatching playbacks for a minimum of two years.
- (19) Rail carriers should document any decisions that result in delay to an Amtrak train, in a fashion that facilitates Board oversight, and preserve documentation for a minimum of two years.

Amtrak recognizes that at Stage One of this proceeding, the Board will be making only “recommendations” to improve the service, quality, and on-time performance of the *Sunset Limited*. Amtrak looks forward to providing the Board with further information at Stage Two of this proceeding on an award of damages against UP, including an order prescribing such other relief to Amtrak as the Board determines to be reasonable and appropriate to address violations of Amtrak’s right to preference over freight transportation. *See* 49 U.S.C. § 24308(f)(2).

CONCLUSION

Amtrak respectfully requests that the Board enter its determination that *Sunset Limited* delays or failures to achieve minimum standards during the Complaint Period were due to causes that could reasonably be addressed by UP and therefore enter the recommendations set forth above to improve the service, quality, and on-time performance of the *Sunset Limited*. Moreover, Amtrak respectfully requests that the Board enter its determination that *Sunset Limited* delays or failures to achieve minimum standards were attributable to UP’s failure to provide preference to Amtrak over freight transportation as required under 49 U.S.C. § 24308(c). Accordingly, Amtrak further respectfully requests that the Board move expeditiously to Stage Two to determine damages and other appropriate relief, including equitable measures to deter UP from taking future actions which may reasonably be expected to result in delays to Amtrak on the *Sunset Limited* route.

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Dated: October 7, 2024

William Herrmann
Executive Vice President and General
Counsel
NATIONAL RAILROAD PASSENGER
CORPORATION
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 253-2763

Respectfully submitted,

/s/ Jessica Ring Amunson
Jessica Ring Amunson
Alex Trepp
Eleanor R. Slota
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

Andrew L. Osborne
Jocelyn A. Sitton
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 222-9350

*Counsel for National Railroad Passenger
Corporation*

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that copies of this document are simultaneously being provided by email to all parties identified on the service list for this proceeding, Docket Number NOR 42175.

October 7, 2024

/s/ Jessica Ring Amunson
Jessica Ring Amunson

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APPENDIX 1

UP Source Document	Delay Date	Page	Train No.	Delay Length
PRIORITIZATION OF FREIGHT TRANSPORTATION OVER AMTRAK PASSENGERS IN MEETS, FOLLOWS, CROSSOVERS, AND DELAYS INVOLVING NON-FITTING TRAINS				
Train 1 ¹	11/9/2021	6	1	27 Minutes
Train 1	11/9/2021	11	1	10 Minutes
Train 1	11/9/2021	18	1	14 Minutes
Train 1	11/9/2021	20-21	1	21 Minutes
Train 1	11/9/2021	23	1	7 Minutes
Train 1	11/9/2021	26	1	24 Minutes
Train 1	2/8/2022	38	1	18 Minutes
Train 1	2/8/2022	42	1	6 Minutes
Train 1	2/8/2022	45	1	6 Minutes
Train 1	2/8/2022	48	1	2 minutes
Train 1	3/8/2022	62	1	30 Minutes
Train 1	3/8/2022	70	1	31 Minutes
Train 1	3/8/2022	71	1	11 Minutes
Train 1	3/8/2022	72	1	27 Minutes
Train 1	3/8/2022	76	1	9 Minutes
Train 1	3/8/2022	78	1	24 Minutes
Train 1	3/8/2022	80	1	12 Minutes
Train 1	3/11/2022	88	1	31 Minutes
Train 1	3/11/2022	90	1	25 Minutes
Train 1	3/11/2022	93-94	1	40 Minutes
Train 1	3/11/2022	95	1	9 Minutes
Train 1	3/18/2022	115	1	11 Minutes
Train 1	3/18/2022	128	1	44 Minutes
Train 1	3/18/2022	133	1	85 Minutes
Train 1	3/18/2022	136	1	16 Minutes
Train 1	3/18/2022	138	1	10 Minutes
Train 1	4/3/2022	145	1	17 Minutes
Train 1	4/3/2022	148	1	7 Minutes
Train 1	4/3/2022	156	1	43 Minutes
Train 1	4/3/2022	158	1	7 Minutes
Train 1	4/3/2022	159	1	18 Minutes

¹ All references to Train 1 herein are to UP Host-Responsible Delays AMT1, Sept. 9, 2024. UP addressed delays between November 9, 2021 to September 2, 2022 in one filing and delays between September 20, 2022 to October 11, 2022 in another.

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 1	4/3/2022	163	1	18 Minutes
Train 1	4/3/2022	163	1	26 Minutes
Train 1	4/3/2022	163	1	31 Minutes
Train 1	4/3/2022	165	1	18 Minutes
Train 1	4/3/2022	168	1	25 Minutes
Train 1	4/8/2022	176	1	30 Minutes
Train 1	4/8/2022	177	1	77 Minutes
Train 1	4/8/2022	181	1	19 Minutes
Train 1	4/8/2022	181	1	30 Minutes
Train 1	4/8/2022	186	1	19 Minutes
Train 1	4/8/2022	186	1	6 Minutes
Train 1	4/8/2022	188	1	24 Minutes
Train 1	4/8/2022	190	1	32 Minutes
Train 1	4/8/2022	191	1	20 Minutes
Train 1	4/24/2022	193	1	31 Minutes
Train 1	4/24/2022	194	1	7 Minutes
Train 1	4/24/2022	201	1	21 Minutes
Train 1	4/24/2022	205	1	48 Minutes
Train 1	4/24/2022	209	1	15 Minutes
Train 1	4/24/2022	210	1	9 Minutes
Train 1	4/24/2022	213	1	24 Minutes
Train 1	5/1/2022	238	1	51 Minutes
Train 1	5/1/2022	241	1	21 Minutes
Train 1	5/1/2022	247	1	15 Minutes
Train 1	5/1/2022	247	1	34 Minutes
Train 1	5/6/2022	252	1	14 Minutes
Train 1	5/6/2022	257	1	15 Minutes
Train 1	5/6/2022	263	1	37 Minutes
Train 1	5/6/2022	270	1	13 Minutes
Train 1	5/6/2022	272	1	19 Minutes
Train 1	5/6/2022	272	1	23 Minutes
Train 1	5/20/2022	281	1	24 Minutes
Train 1	5/20/2022	290	1	19 Minutes
Train 1	5/20/2022	292	1	12 Minutes
Train 1	5/20/2022	293	1	10 Minutes
Train 1	5/20/2022	294	1	10 Minutes
Train 1	5/20/2022	295	1	10 Minutes
Train 1	5/20/2022	296	1	6 Minutes
Train 1	5/20/2022	299	1	28 Minutes
Train 1	5/20/2022	300	1	17 Minutes
Train 1	5/20/2022	301	1	20 Minutes
Train 1	5/20/2022	304	1	51 Minutes

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 1	5/20/2022	308	1	14 Minutes
Train 1	5/20/2022	309	1	15 Minutes
Train 1	5/20/2022	310	1	13 Minutes
Train 1	6/3/2022	314	1	15 Minutes
Train 1	6/3/2022	319	1	6 Minutes
Train 1	6/3/2022	335	1	10 Minutes
Train 1	6/28/2022	349	1	10 Minutes
Train 1	6/28/2022	350	1	11 Minutes
Train 1	6/28/2022	351	1	40 Minutes
Train 1	6/28/2022	353	1	25 Minutes
Train 1	6/28/2022	353	1	6 Minutes
Train 1	6/28/2022	357	1	9 Minutes
Train 1	6/28/2022	358	1	13 Minutes
Train 1	6/28/2022	360	1	9 Minutes
Train 1	6/28/2022	364	1	55 Minutes
Train 1	6/28/2022	369	1	69 Minutes
Train 1	6/28/2022	373	1	29 Minutes
Train 1	6/28/2022	375	1	59 Minutes
Train 1	6/28/2022	375	1	9 Minutes
Train 1	7/1/2022	399	1	42 Minutes
Train 1	7/1/2022	400	1	62 Minutes
Train 1	7/12/2022	377	1	50 Minutes
Train 1	7/12/2022	380	1	102 Minutes
Train 1	7/12/2022	386	1	14 Minutes
Train 1	7/12/2022	399	1	42 Minutes
Train 1	7/12/2022	400	1	62 Minutes
Train 1	7/28/2022	403	1	52 Minutes
Train 1	7/28/2022	409	1	8 Minutes
Train 1	7/28/2022	410	1	6 Minutes
Train 1	7/28/2022	412	1	6 Minutes
Train 1	7/28/2022	418	1	21 Minutes
Train 1	7/28/2022	422	1	11 Minutes
Train 1	7/28/2022	424	1	25 Minutes
Train 1	9/2/2022	436	1	109 Minutes
Train 1	9/20/2022	6	1	7 Minutes
Train 1	9/20/2022	8	1	16 Minutes
Train 1	9/20/2022	12	1	63 Minutes
Train 1	9/20/2022	13-14	1	19 Minutes
Train 1	9/20/2022	17	1	13 Minutes
Train 1	9/20/2022	19	1	11 Minutes
Train 1	9/20/2022	20-21	1	26 Minutes
Train 1	9/20/2022	22-23	1	31 Minutes

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 1	9/22/2022	436	1	109 Minutes
Train 1	9/22/2022	436	1	59 Minutes
Train 1	9/22/2022	441	1	10 Minutes
Train 1	9/22/2022	441	1	17 Minutes
Train 1	9/22/2022	448	1	17 Minutes
Train 1	9/23/2022	35-36	1	22 Minutes
Train 1	9/23/2022	37-38	1	16 Minutes
Train 1	9/23/2022	41-42	1	38 Minutes
Train 1	9/23/2022	43-44	1	13 Minutes
Train 1	9/23/2022	48	1	13 Minutes
Train 1	9/23/2022	53-54	1	23 Minutes
Train 1	9/23/2022	55-56	1	70 Minutes
Train 1	9/23/2022	57	1	31 Minutes
Train 1	9/23/2022	58	1	35 Minutes
Train 1	9/25/2022	61	1	84 Minutes
Train 1	9/25/2022	62-63	1	38 Minutes
Train 1	9/25/2022	69	1	35 Minutes
Train 1	9/25/2022	70-71	1	50 Minutes
Train 1	9/25/2022	72	1	6 Minutes
Train 1	9/25/2022	77-78	1	38 Minutes
Train 1	9/25/2022	81	1	9 Minutes
Train 1	10/11/2022	91-92	1	26 Minutes
Train 1	10/11/2022	93	1	7 Minutes
Train 1	10/11/2022	96	1	142 Minutes
Train 1	10/11/2022	98	1	19 Minutes
Train 1	10/11/2022	101	1	52 Minutes
Train 1	10/11/2022	105-106	1	32 Minutes
Train 1	10/11/2022	109	1	8 Minutes
Train 1	10/11/2022	111	1	20 Minutes
Train 2 ²	3/13/2022	5-6	2	20 Minutes
Train 2	3/13/2022	7	2	34 Minutes
Train 2	3/13/2022	10-12	2	15 Minutes
Train 2	3/13/2022	19	2	26 Minutes
Train 2	3/13/2022	22	2	13 Minutes
Train 2	3/13/2022	23-24	2	16 Minutes
Train 2	3/13/2022	33	2	48 Minutes
Train 2	4/3/2022	41-42	2	18 Minutes
Train 2	4/3/2022	45-46	2	26 Minutes
Train 2	4/10/2022	60-61	2	27 Minutes

² All references to Train 2 herein are to UP Host-Responsible Delays AMT2, Sept. 9, 2024.

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 2	4/10/2022	62-63	2	35 Minutes
Train 2	4/10/2022	73-74	2	16 Minutes
Train 2	4/10/2022	76-77	2	20 Minutes
Train 2	4/10/2022	86-88	2	36 Minutes
Train 2	4/15/2022	97-98	2	319 Minutes
Train 2	4/15/2022	99	2	13 Minutes
Train 2	4/15/2022	105	2	3 Minutes
Train 2	5/6/2022	112-114	2	125 Minutes
Train 2	5/6/2022	116-118	2	161 Minutes
Train 2	5/6/2022	121-122	2	34 Minutes
Train 2	5/6/2022	123	2	30 Minutes
Train 2	5/11/2022	140	2	7 Minutes
Train 2	5/25/2022	151	2	12 Minutes
Train 2	5/25/2022	152	2	30 Minutes
Train 2	5/25/2022	153	2	25 Minutes
Train 2	5/25/2022	158-159	2	46 Minutes
Train 2	5/25/2022	160-161	2	30 Minutes
Train 2	5/25/2022	162	2	16 Minutes
Train 2	5/25/2022	165	2	16 Minutes
Train 2	6/3/2022	180	2	24 Minutes
Train 2	6/3/2022	181-82	2	140 Minutes
Train 2	6/3/2022	183	2	30 Minutes
Train 2	6/3/2022	184	2	6 Minutes
Train 2	6/19/2022	207	2	39 Minutes
Train 2	6/19/2022	209	2	22 Minutes
Train 2	6/19/2022	209	2	24 Minutes
Train 2	6/19/2022	211	2	35 Minutes
Train 2	6/19/2022	216	2	10 Minutes
Train 2	6/19/2022	220	2	24 Minutes
Train 2	6/19/2022	221	2	89 Minutes
Train 2	6/22/2022	239	2	15 Minutes
Train 2	6/22/2022	252	2	41 Minutes
Train 2	8/3/2022	256	2	53 Minutes
Train 2	8/3/2022	256	2	8 Minutes
Train 2	8/3/2022	257	2	53 Minutes
Train 2	8/3/2022	260	2	46 Minutes
Train 2	8/3/2022	265	2	13 Minutes
Train 2	8/3/2022	265	2	27 Minutes
Train 2	8/3/2022	269	2	93 Minutes
Train 2	8/3/2022	271	2	25 Minutes
Train 2	8/3/2022	272	2	20 Minutes
Train 2	8/3/2022	272	2	9 Minutes

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 2	8/3/2022	274	2	17 Minutes
Train 2	8/7/2022	279	2	22 Minutes
Train 2	8/7/2022	289	2	14 Minutes
Train 2	8/7/2022	292	2	34 Minutes
Train 2	8/7/2022	293	2	11 Minutes
Train 2	8/7/2022	294	2	7 Minutes
Train 2	8/7/2022	295	2	19 Minutes
Train 2	8/10/2022	307	2	64 Minutes
Train 2	8/10/2022	312	2	13 Minutes
Train 2	8/10/2022	320	2	9 Minutes
Train 2	8/10/2022	321	2	29 Minutes
Train 2	8/10/2022	326	2	40 Minutes
Train 2	9/2/2022	334	2	7 Minutes
Train 2	9/2/2022	335	2	6 Minutes
Train 2	9/2/2022	336	2	8 Minutes
Train 2	9/2/2022	337	2	16 Minutes
Train 2	9/2/2022	339	2	46 Minutes
Train 2	9/2/2022	341	2	9 Minutes
Train 2	9/2/2022	345	2	174 Minutes
Train 2	9/2/2022	347	2	12 Minutes
Train 2	9/2/2022	348	2	30 Minutes
Train 2	9/2/2022	351	2	32 Minutes
Train 2	9/2/2022	353	2	37 Minutes
Train 2	9/2/2022	360	2	18 Minutes
Train 2	9/2/2022	362	2	41 Minutes
Train 2	9/9/2022	366-367	2	71 Minutes
Train 2	9/9/2022	371	2	60 Minutes
Train 2	9/9/2022	372-373	2	14 Minutes
Train 2	9/9/2022	381	2	13 Minutes
Train 2	9/9/2022	383	2	26 Minutes
Train 2	9/9/2022	385	2	15 Minutes
Train 2	9/21/2022	392	2	24 Minutes
Train 2	9/21/2022	394	2	27 Minutes
Train 2	9/21/2022	396-397	2	17 Minutes
Train 2	9/21/2022	407-408	2	27 Minutes
Train 2	9/21/2022	409	2	16 Minutes
Train 2	9/21/2022	411-412	2	81 Minutes
Train 2	9/21/2022	416	2	7 Minutes
Train 2	9/25/2022	431	2	8 Minutes
Train 2	9/25/2022	432	2	21 Minutes
Train 2	9/25/2022	435	2	26 Minutes
Train 2	9/25/2022	441	2	13 Minutes

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 2	9/25/2022	442	2	40 Minutes
Train 2	9/25/2022	448	2	11 Minutes
Train 2	10/5/2022	460	2	10 Minutes
Train 2	10/5/2022	463	2	10 Minutes
Train 2	10/5/2022	468	2	13 Minutes
Train 2	10/26/2022	490	2	8 Minutes
Train 2	10/26/2022	495	2	45 Minutes
Train 2	10/26/2022	504	2	42 Minutes
Train 2	12/7/2022	510	2	14 Minutes
Train 2	12/7/2022	511	2	14 Minutes
Train 2	12/7/2022	522	2	14 Minutes
Train 2	12/7/2022	523	2	99 Minutes
Train 2	12/7/2022	524	2	19 Minutes
Train 2	12/7/2022	528	2	31 Minutes
90+ Minutes ³	11/12/2021	5	1	96 Minutes
90+ Minutes	11/14/2021	26	2	122 Minutes
90+ Minutes	1/21/2022	6	1	108 Minutes
90+ Minutes	3/27/2022	11	1	122 Minutes
90+ Minutes	4/26/2022	14	1	100 Minutes
90+ Minutes	7/19/2022	17	1	130 Minutes
90+ Minutes	8/24/2022	36	2	100 Minutes
90+ Minutes	9/23/2022	37	2	124 Minutes
90+ Minutes	10/21/2022	40	2	93 Minutes
90+ Minutes	11/6/2022	42	2	90 Minutes
90+ Minutes	11/15/2022	23	1	105 Minutes
PRIORITIZATION OF FREIGHT CREWS OVER AMTRAK PASSENGERS				
Train 1	11/9/2021	5	1	36 Minutes
Train 1	3/8/2022	70	1	31 Minutes
Train 1	3/11/2022	93-94	1	40 Minutes
Train 1	3/18/2022	130	1	10 Minutes
Train 1	3/18/2022	136	1	16 Minutes
Train 1	4/3/2022	141	1	16 Minutes
Train 1	4/3/2022	141	1	82 Minutes
Train 1	4/3/2022	153	1	16 Minutes
Train 1	4/3/2022	154	1	28 Minutes
Train 1	4/8/2022	176	1	30 Minutes
Train 1	4/24/2022	220	1	53 Minutes
Train 1	5/1/2022	223	1	35 Minutes

³ All references to 90+ Minutes herein are to UP Select Delay of 90 Minutes or More, Sept. 9, 2024.

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 1	5/20/2022	299	1	28 Minutes
Train 1	6/3/2022	318	1	22 Minutes
Train 1	6/3/2022	328	1	80 Minutes
Train 1	6/28/2022	358	1	13 Minutes
Train 1	6/28/2022	360	1	9 Minutes
Train 1	6/28/2022	368	1	20 Minutes
Train 1	7/26/2022	414	1	38 Minutes
Train 1	9/20/2022	7	1	35 Minutes
Train 1	9/20/2022	25	1	63 Minutes
Train 1	9/23/2022	43-44	1	13 Minutes
Train 2	4/3/2022	39	2	47 Minutes
Train 2	4/3/2022	45-46	2	26 Minutes
Train 2	4/10/2022	62-63	2	35 Minutes
Train 2	4/15/2022	99	2	13 Minutes
Train 2	4/15/2022	106	2	13 Minutes
Train 2	5/6/2022	112	2	56 Minutes
Train 2	5/6/2022	112-114	2	125 Minutes
Train 2	5/6/2022	116-118	2	161 Minutes
Train 2	5/6/2022	119	2	11 Minutes
Train 2	6/3/2022	181-82	2	140 Minutes
Train 2	6/19/2022	218	2	36 Minutes
Train 2	6/22/2022	238	2	22 Minutes
Train 2	9/9/2022	366-367	2	71 Minutes
Train 2	9/9/2022	383	2	26 Minutes
Train 2	9/25/2022	439	2	8 Minutes
Train 2	12/7/2022	509	2	72 Minutes
90+ Minutes	11/12/2021	3	1	123 Minutes
90+ Minutes	11/14/2021	26	2	122 Minutes
90+ Minutes	12/31/2021	27	2	109 Minutes
90+ Minutes	1/21/2022	6	1	108 Minutes
90+ Minutes	3/27/2022	31	2	140 Minutes
90+ Minutes	4/5/2022	12	1	105 Minutes
90+ Minutes	4/19/2022	13	1	107 Minutes
90+ Minutes	6/10/2022	34	2	91 Minutes
90+ Minutes	6/24/2022	15	1	98 Minutes
90+ Minutes	9/23/2022	37	2	124 Minutes
PRIORITIZATION OF FREIGHT TRANSPORTATION OVER AMTRAK PASSENGERS IN OPERATIONS DECISIONS				
Train 1	11/9/2021	25	1	19 Minutes
Train 1	2/8/2022	53	1	16 Minutes

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UP Source Document	Delay Date	Page	Train No.	Delay Length
Train 1	3/8/2022	77	1	18 Minutes
Train 1	3/18/2022	131	1	25 Minutes
Train 1	6/3/2022	329	1	32 Minutes
Train 1	6/28/2022	346	1	37 Minutes
Train 1	9/20/2022	16	1	99 Minutes
Train 1	9/20/2022	24	1	26 Minutes
Train 1	9/25/2022	66	1	36 Minutes
Train 1	10/11/2022	99	1	21 Minutes
Train 2	4/15/2022	100	2	23 Minutes
Train 2	5/6/2022	128-129	2	29 Minutes
Train 2	5/11/2022	136	2	19 Minutes
Train 2	5/25/2022	157	2	19 Minutes
Train 2	6/19/2022	224	2	20 Minutes
Train 2	6/22/2022	235	2	20 Minutes
Train 2	6/22/2022	250	2	29 Minutes
Train 2	8/3/2022	264	2	27 Minutes
Train 2	8/7/2022	287	2	20 Minutes
Train 2	8/10/2022	313	2	33 Minutes
Train 2	8/10/2022	329	2	22 Minutes
Train 2	9/2/2022	358	2	25 Minutes
Train 2	9/9/2022	376	2	12 Minutes
Train 2	9/21/2022	398-399	2	21 Minutes
Train 2	10/26/2022	485	2	21 Minutes
90+ Minutes	1/19/2022	28	2	96 Minutes
90+ Minutes	3/6/2022	30	2	130 Minutes