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SERVICE DATE – JULY 11, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42175

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

Digest:<sup>1</sup> The Board institutes an investigation into the substandard on-time performance of the *Sunset Limited*, Amtrak Trains 1 and 2, a long-distance passenger service between New Orleans, La., and Los Angeles, Cal.

Decided: July 9, 2023

Under section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub. L. No. 110-432, 122 Stat. 4848, codified at 49 U.S.C. § 24308(f)(1), the Board may initiate an investigation if the “on-time performance” (OTP) of any intercity passenger train averages less than 80% for any two consecutive calendar quarters.<sup>2</sup> Upon complaint by Amtrak or another eligible complainant, the Board “shall” initiate such an investigation. 49 U.S.C. § 24308(f)(1). The purpose of an investigation is to determine whether and to what extent delays or failures to achieve minimum standards are due to causes that could reasonably be addressed by the passenger rail operator or the host railroad. Following the investigation, should the Board determine that Amtrak’s substandard performance is “attributable to” the rail carrier’s “failure to provide preference to Amtrak over freight transportation as required” by 49 U.S.C. § 24308(c), the Board may award damages or other appropriate relief from the host railroad(s) to Amtrak. 49 U.S.C. § 24308(f)(2). If the Board finds it appropriate to award damages to Amtrak, Amtrak must use the award “for capital or operating expenditures on the routes over which delays” were

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The Board may also investigate if “the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters,” 49 U.S.C. § 24308(f)(1). This second authority to investigate relies on minimum standards set by the FRA. The sole minimum standard established by the FRA under section 207 consists of OTP at no less than 80 percent, which is already stated by the statute as the first basis for an investigation.

the result of the host railroad's failure to grant the statutorily required preference to passenger transportation. 49 U.S.C. § 24308(f)(4).

Section 207 of PRIIA requires the Federal Railroad Administration (FRA) and Amtrak to jointly develop metrics and standards for intercity passenger rail service quality, including OTP. After a lengthy administrative and court history, the FRA promulgated a final rule that defined OTP.<sup>3</sup> *Metrics and Minimum Standards for Intercity Passenger Rail Service (FRA Metrics)*, 85 Fed. Reg. 72,971 (Nov. 16, 2020) (codified at 49 C.F.R. part 273). PRIIA also requires the FRA to issue quarterly reports containing data on OTP and related service quality metrics, which the FRA first issued under 49 C.F.R. Part 273 on February 14, 2022. *See* Intercity Passenger Rail Service Quality & Performance Reports, [railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and](https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and) (last visited July 11, 2023).

On December 8, 2022, Amtrak submitted a Complaint and Petition for Board Investigation and Other Relief requesting that the Board initiate an investigation of the OTP on its *Sunset Limited* service (herein referred to as the Complaint or Amtrak's Complaint). The *Sunset Limited* is a 1,997-mile-long Amtrak passenger train service that runs three times weekly, in each direction, between New Orleans, La., and Los Angeles, Cal. The route travels mostly over track hosted by Union Pacific Railroad Company (UP). Amtrak alleges that the *Sunset Limited*'s "delays and failures to achieve minimum standards are attributable to UP's failure to provide preference to Amtrak over freight transportation as required by 49 U.S.C. § 24308(c)."<sup>4</sup> Accordingly, Amtrak requests that the Board initiate an investigation pursuant to 49 U.S.C. § 24308(f), and that it award damages and other appropriate relief. (Amtrak Compl. 64.) Amtrak also filed a separate motion proposing a procedural framework for the proceeding.

As discussed below, the Board will initiate an investigation.

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<sup>3</sup> The OTP (also known as "Customer" OTP) metric "is the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route." 49 C.F.R. § 273.5(a)(1).

<sup>4</sup> 49 U.S.C. § 24308(c) states:

Preference Over Freight Transportation.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms.

## BACKGROUND

According to Amtrak, the *Sunset Limited* is the oldest continuously operating, named passenger train in the country, which began in 1894 on the Southern Pacific Railroad and was continued by Amtrak upon its creation in 1971. (Amtrak Compl. 9.) The *Sunset Limited* has two trains—eastbound (Train 2) and westbound (Train 1)—both of which are the subject of Amtrak’s Complaint. (*Id.* at 28-29.) The route has 22 scheduled stops in five states: Louisiana, Texas, New Mexico, Arizona, and California. (*Id.* at 9.) According to Amtrak, UP serves as the contractual host for 89% of the route and has sole or joint ownership of more than 98% of the route. (*Id.* at 36.)

Following Amtrak’s December 8, 2022 filings, the Board granted a request from UP for a 30-day extension to file replies. Compl. & 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 1 (STB served Dec. 21, 2022). On January 27, 2023, replies were received from UP along with two other railroads: BNSF Railway Company (BNSF), and Canadian National Railway Company, operating through its subsidiary Illinois Central Railroad Company (CN).

Additionally, on February 1, 2023, Norfolk Southern Railway Company (NSR) submitted a request to be added as a party of record to this proceeding. While NSR is not named in Amtrak’s Complaint, NSR states that its intent is to follow this proceeding and participate to the extent that processes and principles adopted here may impact NSR as a potential future party to cases brought under 49 U.S.C. § 24308(f). (NSR Comment 3, Feb. 1, 2023.)

On February 3, 2023, Amtrak filed a response to the replies of UP, CN, and BNSF. Amtrak also noted that it does not object to NSR being added to the service list, but it does object to NSR being granted intervenor status.<sup>5</sup> (Amtrak Reply 1 n.1.)

On March 2, 2023, the Association of American Railroads (AAR) submitted a comment stating that “it is important for all parties involved to know with certainty how the matter will proceed and what will be required of each party.” (AAR Comment 2, Mar. 3, 2023.)

On April 13, 2023, the United States Department of Transportation (DOT) and the FRA (DOT/FRA) filed a comment expressing the belief that “it is imperative that the Board conduct a

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<sup>5</sup> NSR states that because a procedural schedule has not yet been adopted by the Board, NSR believes it does not need to file a petition to intervene. (NSR Comment 1 n.1, Feb. 1, 2023.) Because NSR has not submitted an actual petition to intervene, there is no need to make such a ruling now. However, under the Board’s rules, only parties to the proceeding will be permitted to participate in discovery, challenge data, submit substantive arguments, and/or access confidential/highly confidential information.

focused and time-limited investigation, and that a lengthy, protracted adversarial proceeding would not conform to the relevant statutory direction in 49 U.S.C. § 24308(c) to conduct an investigation, nor would it serve the interests of the public or of the parties.” (DOT/FRA Comment 1, Apr. 13, 2023.)

On April 26, 2023, NSR filed a comment responding in opposition to the April 13, 2023 DOT/FRA comment. On May 11, 2023, AAR also submitted a comment responding in opposition to the same DOT/FRA comment.

*Complaint and Petition for Board Investigation and Other Relief.*

In support of its request for the Board to initiate an investigation, Amtrak lists the OTP data for the *Sunset Limited* trains as follows:

Sunset Limited Train 1		Sunset Limited Train 2	
1Q 2022	40%	1Q 2022	40%
2Q 2022	24%	2Q 2022	35%
3Q 2022	10%	3Q 2022	11%
4Q 2022	11%	4Q 2022	7%
1Q 2023*	31%	1Q 2023*	26%
2Q 2023**	45%	2Q 2023**	38%

(Amtrak Compl. 29.) Further, Amtrak provides the following yearly OTP averages for the *Sunset Limited* route for several years prior to the implementation of the FRA Metrics: 2021 (27%), 2020 (30%), 2019 (20%), 2018 (45%), and 2017 (55%). (Id. at 34.) Amtrak asserts that these substandard Customer OTP figures are a result of issues within UP’s control.

Amtrak claims that *Sunset Limited* trains experience an extraordinary amount of host-responsible delay on UP-hosted segments. It alleges that over 74% of delays on UP-hosted segments in fiscal year 2022 were attributable to UP. (Id. at 37-38.) Further, Amtrak’s Complaint states that delays related to freight train interference (FTI) account for a disproportionate share of delays on UP-hosted segments: 72% for Train 1 and 65% for Train 2. (Id. at 40-41.) Amtrak alleges that many FTI delays are the result of UP dispatching *Sunset Limited* trains behind slower-moving freight trains, forcing *Sunset Limited* trains to wait in sidings while a freight train passes, or stopping passenger trains to allow a freight train to proceed first. (Id. at 41.)

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\* Amtrak filed a status report on March 13, 2023, with 1Q 2023 OTP data.

\*\* Amtrak filed a status report on April 18, 2023, with 2Q 2023 OTP data.

According to Amtrak, many of the delays the *Sunset Limited* trains encounter are caused by UP's operational practices. Specifically, Amtrak alleges that UP fails to maintain sidings long enough to accommodate all its freight trains, which results in Amtrak trains getting stuck following a freight train or waiting in sidings. (Id. at 59.) As an example, Amtrak claims that there is a more than 450-mile segment of the route where there are no sidings that can accommodate trains longer than 10,000 feet. (Id.)

Amtrak also claims that UP fails to plan adequately for the expiration of freight crews, which results in passenger trains being stopped behind freight trains while they undergo crew changes, another operational practice that Amtrak alleges causes delays. (Id. at 60.) Amtrak also claims that its trains are routed to a longer and slower route between Houston, Tex., and Beaumont, Tex., even though this is not the route specified by its operating agreement with UP. (Id. at 60-61.) Lastly, Amtrak claims that UP fails to coordinate with other railroads about the location and handoff of Amtrak trains, which results in greater delays because it precludes other railroads from clearing routes for passenger trains. (Id. at 61-62.)

UP, BNSF, and CN each filed replies to Amtrak's Complaint.

In its reply, UP generally objects to Amtrak's Complaint. UP argues that the *Sunset Limited*'s OTP problems signify that the schedule is not in alignment with the OTP standards developed in FRA Metrics.<sup>6</sup> (UP Reply 3, 5, Jan. 27, 2023.) UP states that it has proposed changes to the schedule that, it claims, would make it reliable and achievable, but alleges that Amtrak has refused to implement those changes. (Id. at 5.) As a result, UP asserts that, "Amtrak is asking the Board to commence litigation based on schedules that are not realistic and not compatible with the FRA's metrics and standards." (Id.)

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<sup>6</sup> In FRA Metrics, 85 Fed. Reg. at 72,979, the FRA recognized that Amtrak and the host carriers may need to adjust the then-existing schedules to align with the Customer OTP metric being adopted there. As a result, the FRA delayed application of the Customer OTP standard for six months after publication of the final rule to allow Amtrak and the host carriers time to negotiate new schedules. (Id.) Schedules on which Amtrak and the host carriers are in agreement are designated "certified" while those on which a change has been sought and nonbinding dispute resolution has been initiated are "disputed." A third "uncertified" category covers agreements which have not been reported as "certified" or "disputed." See 49 C.F.R. § 273.3. Under FRA Metrics, routes with "disputed" train schedules were not reported during the first quarter where Customer OTP was reported by the FRA, but now all trains are included in the FRA's quarterly reports. Amtrak is required to report the number of certified, uncertified, and disputed schedules, by train, by route, and by host railroad on an annual basis. The *Sunset Limited* schedule is "disputed" as it relates to UP. FRA, Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations Covering the Quarter Ending September 2022 (Fourth Quarter of Fiscal Year 2022), at 116, [railroads.dot.gov/elibrary/fy22-q4-service-quality-report](https://railroads.dot.gov/elibrary/fy22-q4-service-quality-report).

UP argues that under Amtrak’s proposal, the Board would presuppose that the *Sunset Limited* is failing to achieve minimum OTP standards because of delays and Amtrak would have the Board investigate only the causes of delays. (*Id.*; *see also* CN Reply 5 n.5, Jan. 27, 2023 (arguing that Amtrak incorrectly implies that the FRA settled the question of what information is required for this proceeding in *FRA Metrics*)). Instead, UP argues that the Board should start with evaluating whether the schedule is realistic and compatible with FRA’s OTP metric. (UP Reply 5-6.)

In its reply, CN notes that it owns only 2.2 miles of track over which the *Sunset Limited* service operates (less than one-tenth of one percent of the total route miles) and that there are no passenger stations on this segment. (CN Reply 7.) CN also notes that it has leased this line to the New Orleans Public Belt Rail Corporation (NOPB),<sup>7</sup> which has responsibility for maintaining the line—though CN notes that it retained the right to dispatch the line. (*Id.* at 8 (citing *New Orleans Pub. Belt R.R.—Lease & Operation Exemption—Line of Ill. Cent. R.R.*, FD 36362 (STB served Dec. 13, 2019)).) CN also argues that it is not a “host” for the *Sunset Limited* because under FRA’s rules regarding OTP, a “host” is defined as “a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.” (CN Reply 8 (quoting 49 C.F.R. § 273.3).) CN notes that it has no operating agreement with Amtrak regarding the *Sunset Limited* service and that Amtrak does not pay CN to use its tracks. (*Id.*) Instead, CN explains that UP has trackage rights over this line and that Amtrak operates using UP’s trackage rights. (*Id.* at 8-9.)<sup>8</sup> Finally, CN notes that its personnel in charge of Amtrak matters have no recollection of Amtrak having raised concerns about the *Sunset Limited* service and that the Complaint includes no allegations against CN regarding poor service or delays. (*Id.* at 9.) For these reasons, CN argues that it would be unreasonable to require it to commit resources to participate actively in this proceeding. (*Id.* at 10.)

BNSF does not object to an investigation and states that it “stands ready to participate in this proceeding, and preserves its rights to substantively respond once the Board has established a procedure for conducting its investigation.” (BNSF Reply 2, Jan. 27, 2023.) Nonetheless, BNSF objects to Amtrak’s proposed procedures and framework for an investigation. (*Id.* at 1-2.)

### *Proposed Procedures and Framework.*

Amtrak proposes that the Board split this proceeding into two phases. The first phase would be an investigative fact-finding phase to determine whether delays or substandard OTP are attributable to a host railroad’s failure to provide preference to Amtrak. (Amtrak’s Mot. 5-6, Dec. 8, 2022.) If the Board finds a failure to provide preference, then the Board would receive

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<sup>7</sup> CN also claims that NOPB owns five miles of track over which the *Sunset Limited* travels, including the Huey P. Long Bridge, but that Amtrak failed to identify NOPB as a host or serve it with the Complaint. (CN Reply 7.)

<sup>8</sup> According to CN, UP pays CN a small flat annual fee for Amtrak’s operation of the *Sunset Limited* service via UP’s trackage rights over the CN-owned line. (CN Reply 9 n.15.)

additional evidence concerning appropriate damages and issue damages in the second phase. (Id.) Under Amtrak’s proposal, during the second phase the Board would make recommendations for improving service, quality, and OTP. (Id.)

Amtrak requests that the Board begin its investigation by:

(i) authorizing Board staff to conduct preliminary fact-finding; (ii) directing the authorized staff members to request documents from Amtrak; (iii) directing the preservation of relevant host railroad records; (iv) directing the authorized staff members to request documents from host railroads; and (v) interviewing witnesses, making site visits, and gathering and evaluating any other relevant data; and entering an appropriate protective order to facilitate prompt production.

(Id. at 15.) Amtrak also recommends that the Board set a period of 60 days to obtain all requested documents. (Id. at 7.) Lastly, Amtrak lists documents that it states are likely to aid in the Board’s investigation and lists personnel at the host railroads whom the Board should consider interviewing. (Id. at 11-13.)

In their replies, UP, BNSF, and CN all urge the Board to reject Amtrak’s proposed procedures. Instead, they argue the Board should adopt a procedural schedule similar to the one the Board issued in National Railroad Passenger Corp.—Section 213 Investigation of Substandard Performance of Rail Lines of Canadian National Railway (CN Investigation), NOR 42134 (STB served Jan. 3, 2013).<sup>9</sup> (UP Reply 2, Jan. 27, 2023; BNSF Reply 2, Jan. 27, 2023; CN Reply 2-6, Jan. 27, 2023.) UP notes that in CN Investigation, the Board found that the investigation “should be adjudicated using the established procedures governing complaints and the encompassing discovery and motion practice guidelines” as set forth in the Board’s regulations. (UP Reply 6 (quoting CN Investigation, NOR 42134, slip op. at 3).) UP also takes issue with Amtrak’s proposal to bifurcate the proceeding into an investigative phase and remedial phase because those determinations are inextricably connected and bifurcation would be inefficient. (Id. at 7-8.)

Lastly, UP argues that Amtrak’s proposed procedures would not provide notice of the specific allegations against UP and an opportunity to defend itself by gathering and presenting evidence in its defense before it is subject to damages, thus depriving UP of due process. (Id. at 8-9.) It cites to the Board’s regulations for conducting investigations under 49 C.F.R. § 1122.5(d), in which the Board can institute a formal proceeding only after it reviews the recommendations and summary of findings of the investigators. (Id. at 9.) For these reasons,

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<sup>9</sup> In that proceeding Amtrak petitioned the Board to initiate an investigation into the substandard performance of the Illini/Saluki service under 49 U.S.C. § 24308(f). That proceeding, however, was dismissed without prejudice before it reached the discovery phase. See Nat’l R.R. Passenger Corp.—Section 213 Investigation of Substandard Performance of Rail Lines of Can. Nat’l Ry., NOR 42134 (STB served Apr. 13, 2018).

UP argues that the Board should adopt the procedures it used in CN Investigation. However, it also urges the Board to first order the parties to engage in mediation. (Id. at 10.)

In its reply, CN also raises objections regarding Amtrak's proposed procedures, arguing that such procedures are contrary to the Board's decision in CN Investigation, improperly bifurcate the proceeding, and create due process concerns. (CN Reply 2-6, Jan. 27, 2023.) CN contends that Amtrak's proposed procedures would require the Board's staff to assume the litigants' role and undertake the tasks of developing a record rather than the parties doing so, even though the Board has recognized that the parties themselves are in the best position to understand and develop such issues and create a strong, well-supported record. (Id. at 3, 5.) CN argues that the procedures adopted by the Board in CN Investigation, which were based on the agency's complaint procedures, included necessary safeguards such as the right to be presented with adverse evidence, to confront and cross-examine adverse witnesses (which may be provided through depositions), the requirement that evidence be given under oath or the equivalent, and the right to obtain relevant information and documents through discovery from other participants in the proceeding. (Id. at 6.)

BNSF, like UP and CN, raises concern that Amtrak's proposed procedures do not provide the host carriers with proper due process. (BNSF Reply 1-2, Jan. 27, 2023.) Accordingly, BNSF also encourages the Board to impose a process similar to that in CN Investigation. (Id. at 2.) BNSF states that the fact that the OTP metrics and standards have changed since CN Investigation has no impact on the procedures that should be used. (Id.)

AAR notes that in CN Investigation "the Board identified an efficient, well-understood, and fair procedure, which provided clarity for all parties." (AAR Comment 2, Mar. 3, 2023.) AAR suggests that abandoning the process laid out in CN Investigation "would inject unnecessary controversy and uncertainty into the process for these matters." (Id.)

Amtrak provides three arguments against the respondents' proposed procedural framework. First, it argues that the adversarial, party-directed litigation process requested by the respondents is contrary to the plain meaning of the statute. (Amtrak Reply 2-3, Feb. 3, 2023.) Amtrak notes that the Board "shall initiate" an investigation and "the Board shall obtain information from all parties involved." (Id. (quoting 49 U.S.C. § 24308(f)(1).) Second, Amtrak points out that agencies like the Federal Communications Commission, the Federal Election Commission, and the Federal Energy Regulatory Commission all perform agency-led efforts to investigate when a complaint is received and there is no reason for the Board to proceed any differently when conducting an investigation. (Id. at 3.) Third, Amtrak contends that the procedures proposed by the respondents would add unnecessary delay to the proceeding and preclude the Board from focusing the parties on key issues. (Id. at 4.)

Further, Amtrak argues that the Board's prior party-directed adversarial litigation approach adopted in CN Investigation is no longer appropriate due to two changed circumstances. (Id.) First, in the intervening years since CN Investigation, the "FRA has promulgated metrics to guide the Board in investigating the causes of substandard on-time



performance.” (Id.) Second, Amtrak asserts that the Board now has investigative personnel dedicated to enforcing section 213. (Id. at 5.)

Lastly, Amtrak asks the Board to reject UP’s request for Board-sponsored mediation at this time. (Id. at 6-8.)

## DISCUSSION AND CONCLUSIONS

### Initiation of Investigation.

Section 24308(f)(1) states in part:

If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, . . . the Surface Transportation Board . . . may initiate an investigation, or upon the filing of a complaint by Amtrak . . . , the Board shall initiate such an investigation, 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 or reasonably addressed by Amtrak or other intercity passenger rail operators.

Here, Amtrak asserts in its Complaint that Customer OTP has fallen below the statutorily prescribed threshold of 80% for the last four quarters that have been reported by the FRA. Indeed, the FRA’s quarterly Metrics and Standards data reflect OTP levels well below 50% for all four quarters for Train 1 and Train 2 of the *Sunset Limited*. See Intercity Passenger Rail Service Quality & Performance Reports, [railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and](https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and) (last visited July 11, 2023).

No party disputes that the statutory trigger for initiation of an investigation under 49 U.S.C. § 24308(f) has been met. UP asserts that Amtrak’s schedules are unrealistic and incompatible with the FRA’s metrics and standards but does not dispute that Customer OTP is below 80% for more than two quarters. Further, in FRA Metrics, 85 Fed. Reg. at 72,979, the FRA anticipated that there would be disagreement over schedules, but decided quarterly Customer OTP reporting would still be done even without a consensus on schedules.<sup>10</sup>

Accordingly, the Board finds that the standard necessary to begin an investigation under 49 U.S.C. § 24308(f) has been met and, as required by the statute, the Board will initiate an investigation.

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<sup>10</sup> Trains with a “disputed” schedules were given a grace period and not included in the Q4 2021 data, which was the first Customer OTP data reported by the FRA. The *Sunset Limited* trains fell into that category.

Parties to this investigation.

CN contends that it should not be required to participate as an active party to this proceeding. CN argues that it is not a “host” for the *Sunset Limited* because it does not fall under the FRA Metrics definition of that term. 49 C.F.R. § 273.3. It is not necessary for the Board to determine whether CN is a “host” carrier under FRA Metrics because the Board’s investigation is not limited to “hosts.” Rather, when carrying out an investigation, the Board “**shall** obtain information from **all parties involved.**” 49 U.S.C. § 24308(f)(1) (emphasis added). Because of its ownership of the EBJ-Southport Segment over which the *Sunset Limited* service operates, CN is an involved party to the investigation, even though the segment it owns is a small part of the overall route. While CN leases the segment to NOPB, CN retains dispatching authority, which could bear on the investigation. Because the Board finds that CN is an involved party to this investigation, CN will be required to respond to the Board’s interrogatories and request for documents, as discussed below.

For the same reason, both NOPB and the Southern California Railroad Authority (SCRRA) will be considered involved parties to the investigation. While NOPB was not named as a host in Amtrak’s Complaint,<sup>11</sup> NOPB is listed in Amtrak’s “Map 3: New Orleans Area Handoffs for Sunset Limited Route” as being the owner of the “Huey P. Long Bridge (XEB-XWB),” which is “hosted and dispatched by UP.” (Amtrak Compl. 12.) Amtrak’s Complaint also identifies SCRRA as a host carrier because it owns the final 12.6 miles of track over which the *Sunset Limited* service operates, from El Monte, Cal., to Los Angeles Union Station. Amtrak served a copy of the Complaint on SCRRA, (*id.* at 10), but SCRRA did not file a reply. As necessary parties to the investigation, NOPB and SCRRA will also be required to respond to the Board’s interrogatories and request for documents.

As discussed above, the Board has identified the entities from which it will obtain information based on their involvement with the *Sunset Limited*. The Board also recognizes that this investigation may be of interest to individuals or organizations outside of this proceeding, particularly during the period when the parties are submitting argument and evidence. Nonetheless, to keep the investigation and proceeding orderly and manageable, the Board will assess petitions to intervene under the 49 C.F.R. § 1112.4 standard so that the proceeding is not unduly broadened.

In this investigation, if any party outside of Amtrak, BNSF, UP, SCRRA, CN, or NOPB wishes to participate in discovery, challenge data, submit substantive arguments, and/or access confidential/highly confidential information, it must submit, and the Board must first rule on a petition to intervene.

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<sup>11</sup> The Board is today serving a copy of this decision and the complaint on NOPB.

Procedural Framework.

As discussed above, the Board derives its authority to investigate in this proceeding from 49 U.S.C. § 24308(f). The Board has significant discretion regarding how to structure its investigation. The statute does not specify the procedural framework to be used in such an investigation, nor does it foreclose the procedures the Board adopted in CN Investigation.

In CN Investigation, the Board directed that the proceeding be “adjudicated using the established procedures governing complaints and the encompassing discovery and motion practice guidelines set forth in” the generally applicable Board rules. CN Investigation, NOR 42134, slip op. at 3. The decision reasoned that “[t]hese procedures have been thoroughly developed and interpreted through numerous litigations before the agency, and therefore provide a complete and ascertainable structure for the parties in moving forward in this type of litigation. This proceeding was initiated by Amtrak, and the Board’s standard practice in complaint-type proceedings is to have the record built through party-directed discovery.” Id.

UP, BNSF, and CN have all urged the Board to adopt the same procedural approach here as the Board did in CN Investigation. In contrast, Amtrak requests a Board-led investigation consisting of two phases, with Board staff authorized to perform investigative actions. The Board will adopt a procedural framework that is similar to the one used in CN Investigation, with some modifications.

The Board concludes that certain aspects of the data and information development in this proceeding should be directed by the Board rather than the parties, as there have been significant developments in the regulatory structure and data environment related to OTP since CN Investigation. Over ten years have passed since the procedural schedule in CN Investigation was ordered. In that time, Congress directed the agency to create a passenger rail program “with primary responsibility for carrying out the Board’s passenger rail responsibilities.” Infrastructure Investment & Jobs Act, Pub. L. No. 117-58 (2021) (pursuant to which the Board has established an Office of Passenger Rail). The Board has also continued to develop data expertise within its Office of Economics, which now has a Section of Data Analytics. In addition, pursuant to FRA Metrics, unprecedentedly detailed passenger train performance data are now publicly available from FRA, with statistics covering service quality, OTP, financial metrics, run-time metrics, station-specific performance, and delays.<sup>12</sup> Access to this data and the Board’s increased capabilities regarding data analytics and passenger rail will enable the Board to further focus the investigation. Accordingly, the Board now has specific data requirements, questions, and instructions to guide development of the record. Nonetheless, the Board sees value in allowing the parties to pursue discovery and further develop the record through the submission of evidence and the presentation of arguments.

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<sup>12</sup> Intercity Passenger Rail Service Quality & Performance Reports, [railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and](https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and) (last visited July 11, 2023).

UP, BNSF, and CN all claim that respondents in a passenger OTP investigation must have an opportunity to present evidence and argument in order to ensure due process. In fact, CN argues that, if the Board does not adopt the procedures it used in CN Investigation, it would need to conduct a rulemaking to consider and adopt rules and procedures to safeguard the due process rights of parties. (CN Reply 6.) As an initial matter, the Board need not conduct a rulemaking to alter the case-processing procedures it adopted in CN Investigation, which, as here, was a complaint proceeding and not a rulemaking. See Nat'l Whistleblower Ctr. v. Nuclear Regulatory Comm'n, 208 F.3d 256, 262-63 (D.C. Cir. 2000) (holding that agency could adopt new standard governing extensions of time in adjudicatory proceeding without conducting notice and comment rulemaking); JEM Broadcasting Co. v. FCC, 22 F.3d 320, 326-28 (D.C. Cir. 1994) (agency's adoption of a case processing rule was procedural and did not require notice and comment rulemaking). Because this investigation will include ample opportunity for all parties to present evidence and argument, the freight carriers' objections to an approach that would not permit presentation of evidence and argument are not relevant. The Board's approach here contains both the critical elements of the CN Investigation procedural schedule that the freight railroads have requested and a Board-led component.

Amtrak suggests the Board split the investigation into two phases—investigatory and remedial—for efficiency purposes. Under Amtrak's proposal, the bulk of the investigation would be done in the first phase. The second phase would consist of the Board assigning damages (if necessary); and making recommendations for improving service, quality, and OTP as required by PRIIA. UP argues that the process should not be bifurcated because the investigatory phase is inextricably linked to the Board providing recommendations (part of the second phase).

UP is correct that making determinations about the causes of delay is logically connected to making recommendations for improvements. Combining initial fact finding, receipt of evidence, presentation of arguments, the Board's determination of delay causes, and recommendations for improvements into one stage is both logical and efficient. But UP does not specifically address whether potential damages should be addressed in the second of a two-stage process. Rather than suggest when the Board should potentially assign damages, UP indicates that it plans to challenge the Board's authority to assign damages. UP states that it "does not concede the Board could award damages or any other relief under the statutory preference provision. The provision is unconstitutionally vague . . . ." (UP Reply 8 n.25.)

Awarding damages and prescribing other relief should not be combined with earlier steps. If it becomes necessary, the fact finding, evidence, and argument required to assess damages and prescribe other relief would be a time-consuming process for both the parties and the Board. In this initial case, which will necessarily address novel issues, it would be wasteful and premature for the Board to develop the record needed to assess damages and relief before it determines whether there is a violation of Amtrak's statutory preference. Accordingly, the Board will separate this investigation into two stages where the second stage is used, if necessary, to determine damages and prescribe other relief.

Based on the discussion above, the procedural framework for this investigation is as follows:

- **Investigation liaison.** Following the issuance of this decision, the Board will appoint a Board employee as the investigation liaison for the parties. The liaison will play a role analogous to the liaison used in rate reasonableness matters, where the liaison answers questions about the process and intervenes informally if it would help resolve discovery and other issues and keep the process moving smoothly.
- **Technical conference.** The investigation liaison will contact the parties within three business days of service of this decision to schedule a technical conference. This conference will provide guidance on the manner and format for the parties' responses to the Board.
- **Investigative Questions and Document Requirements.** Appendix A contains a list of interrogatories and document submission requirements for the parties. Parts I and II of Appendix A are directed towards all parties, and the remainder applies only to certain parties or a single party. The basis for these questions and document requirements is discussed in the next section.
- **Further Board inquiries.** Appendix A contains the Board's initial investigatory questions and is not determinative of the entirety of the Board's inquiry. After receiving the parties' responses, the Board may issue more interrogatories and/or document requirements or otherwise seek further information.
- **Party-led discovery.** Parties may engage in traditional discovery for a period of 120 days, unless shortened by agreement of all parties as discussed below.<sup>13</sup> The Board will appoint an Administrative Law Judge to handle any discovery disputes that arise from the traditional party-led discovery process. As in all litigation before the Board, the Board strongly encourages the parties to meet and confer to resolve discovery disputes before seeking formal relief.
- **Procedural schedule.** Once the Board is satisfied that the record is adequately developed, the investigation liaison will reach out to parties for information about the status of party-led discovery. If less than 120 days have passed since service of this decision, the investigation liaison will ask the parties whether they are finished with discovery. Next, the Board will issue a procedural schedule that will include an opening statement from Amtrak (~45 days after discovery ends), an opportunity for replies (~30 days after Amtrak's opening is due), and a rebuttal from Amtrak (~15 days after replies are due).

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<sup>13</sup> Concurrently, the parties should work to assemble and submit their responses to Appendix A and any future Board investigative inquiry.

- **End of Stage One.** After the parties have presented their case-in-chief, the Board will 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 *Sunset Limited* operates or reasonably addressed by Amtrak or other intercity passenger rail operators. If necessary, the Board will also review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays. The Board will also make recommendations regarding reasonable improvement measures identified in the course of its investigation. The Board will issue a decision with its findings, including whether delays or failure to achieve minimum standards are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation as required under 49 U.S.C. § 24308(c), and recommendations.
- **Stage Two—Damages and other relief.** If the Board determines that delays are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation as required under 49 U.S.C. § 24308(c), the Board's decision at the end of Stage One will include an order for further information if necessary. The format of Stage Two will follow a similar format to Stage One where parties will engage in discovery concurrent with a Board-led inquiry, followed by a presentation of arguments. If necessary, the Board will also provide additional recommendations regarding reasonable improvement measures during this stage.

The procedural framework adopted here is based on the particular issues raised in this case. The Board will use this proceeding to inform future on-time-performance cases and will look for opportunities to make such proceedings more expeditious. The Board will also remain open to input from litigants in future proceedings to increase efficiency and shorten the investigative and decisional timelines, if practicable.

*Investigative Questions and Document Requirements.*

As discussed earlier, the Board will conduct its initial fact finding by directing the parties to answer interrogatories and produce documents. The initial questions and requests are contained in Appendix A.

Congress has provided guidance in 49 U.S.C. § 24308(f) as to what the Board should investigate and what determinations it should make, and Appendix A is designed to elicit the information needed to address those statutory concerns. Issues raised by the parties in their argument and evidence may also provide the basis for a portion of the Board's inquiry.

Data presented by multiple parties concerning the same trains, locations, and events can be difficult for both the Board and the parties to cross reference externally if, for example, trains are identified by different names, or different time zones are used among the parties. Therefore,

the Board has included specific instructions and particular questions to harmonize the data to the greatest extent possible.

To reduce the burden on the parties and to promote efficiency, the Board has included specific instructions regarding geographic location information and data. Part II of Appendix A requires the parties to assist in developing a uniform system for determining geographic locations on the *Sunset Limited* by providing station locations and mileposts with a designated prefix. For the purpose of this investigation and proceeding, these uniform milepost prefixes and numbers shall be used by all parties when referencing locations. (Without this uniform standard, one party might refer to a milepost as a specific reference point while another party might refer to cumulative mileage on the route up to that location for that same reference point.)

The Board recognizes that SCRRA, NOPB, and CN have associations with the *Sunset Limited* service over relatively short portions of tracks. Accordingly, the interrogatories and document requirements directed to those entities are necessarily more limited than those directed to UP and BNSF. If there are items in Appendix A that parties cannot answer or do not have data for, they should so indicate in their responses.

Lastly, the answers and responsive documents produced in response to the Board's inquiry will be e-filed through the Board's website and then placed directly into the public record for this proceeding unless otherwise required. Any document that a party claims to contain confidential or highly confidential material should be marked "Confidential" or "Highly Confidential," and a redacted public version should be submitted and marked "Public." The Board recognizes that this differs from the rules for Board-initiated investigations at 49 C.F.R. § 1122.6, which do not apply to investigations under 49 U.S.C. Subtitle V, Part C. Investigations under 49 U.S.C. Subtitle IV, Part A, in contrast to those here, are non-public until the Board issues an Order to Show Cause and begins a formal proceeding. 49 C.F.R. § 1122.5. Here, the existence of a complaint is already a matter of public record (unlike the beginning of Subtitle IV investigations). Moreover, the trigger for a § 24308(f) investigation is based on information that is already publicly available, while Subtitle IV investigations are generally intended to remain confidential until the fact finding and investigatory phases are complete. *See* 49 C.F.R. § 1122.6. In the interest of transparency and efficiently compiling the record here, the Board will make the investigative record public, except as otherwise indicated below.

#### Protective Order.

Amtrak requests that the Board issue a protective order "that generally tracks orders issued in other Board proceedings, while recognizing that Amtrak and host railroads may need to seek modifications of the protective order to ensure that in-house personnel can access highly confidential documents where necessary and appropriate." (Amtrak's Mot. 8.)

The Board agrees that there appears to be good reason to grant a protective order. However, the Board's general practice is for parties to submit draft protective orders for the Board to review and issue. *See Pioneer Indus. Ry.—Change in Operator Exemption—in Peoria*

Cnty., Ill., FD 36638 (STB served Oct. 19, 2022); Burns Harbor Shortline R.R.—Operation Exemption—in Porter Cnty., Ind., FD 36610 (STB served Aug. 4, 2022); Growth Resources of Wellsboro Foundation—Aban. Exemption—in Tioga Cnty., Penn., AB 1320X (STB served June 24, 2022). Moreover, Amtrak has specific concerns in mind and notes it may need to seek modifications to a protective order issued by the Board. Amtrak therefore will be directed to submit a draft protective order.

Records Retention.

Amtrak requests that the Board direct UP and any other host railroads it considers relevant to the investigation to preserve relevant records, including suspending any automated deletion policies. (Amtrak’s Mot. 4, 9.) Amtrak also suggests that the Board consider requiring each host railroad to designate a point of contact who is responsible for overseeing the preservation of records. (*Id.* at 9.)<sup>14</sup> Amtrak notes that under 49 C.F.R. § 1220.6, host carriers are already required to preserve certain records, including “[d]ispatchers’ sheets, registers, and other records pertaining to movement of transportation equipment” for three years. As noted, UP, BNSF, and CN generally oppose Amtrak’s proposed procedures, though none of those parties specifically address records retention.

Under 49 U.S.C. § 11144(c), “[t]he Board may prescribe the time period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars.” In addition, under 49 U.S.C. § 24308(f) in carrying out an investigation such as the one here, “the Board shall obtain information from all parties involved.”#Here, the parties may possess records that are relevant to the Board’s investigation and that they would otherwise not be required to retain. Accordingly, the Board will order all documents and/or data that relate to the subject matter of this investigation be preserved during the pendency of this proceeding (including any appeals) by Amtrak, CN, UP, BNSF, SCRRRA, and NOPB. Regardless of the retention periods stated in Part 1220 and regardless of any parties’ ongoing document retention policy or other data destruction practices, parties must preserve such documents, even if they claim those documents or data are protected from discovery by privilege or otherwise.

The Board expects the parties to implement this records preservation order professionally and thus does not see the need, at this time, to require the parties to designate a point of contact responsible for overseeing this activity.

Mediation.

UP requests, and Amtrak opposes (at this time), Board-sponsored mediation. While the Board favors alternative dispute resolution whenever possible, the nature of the dispute suggests

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<sup>14</sup> Amtrak notes that any such requirement should apply to all parties, though it states that it has already implemented steps to preserve pertinent documents. (Amtrak’s Mot. 9 n.15.)



that mediation prior to record development likely would not be beneficial. Accordingly, the Board will deny UP's request to order mediation at this time.

Administrative Law Judge.

The Board has signed a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of administrative law judges on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge Thomas McCarthy to entertain and rule upon party-led discovery matters and to resolve initially any disputes concerning party-led discovery in this proceeding that are filed after the service date of this decision. The parties are directed to send copies of all their filings and documents in this proceeding, including submissions already filed with the Board, to Judge McCarthy at 1331 Pennsylvania Avenue, N.W., Suite 520N, Washington, DC 20004-1710, and at [ctolbert@fmshrc.gov](mailto:ctolbert@fmshrc.gov) and [cbrightwell@fmshrc.gov](mailto:cbrightwell@fmshrc.gov).

It is ordered:

1. An investigation is initiated.
2. An investigation liaison will be appointed by July 14, 2023.
3. A technical conference will be held at a date to be determined by the investigation liaison in consultation with the parties.
4. NOPB is added as a party of record to this proceeding and is directed to respond to Appendix A, Part V, by August 25, 2023.
5. Amtrak is directed to respond to Appendix A, Part III, by August 25, 2023.
6. UP and BNSF, individually, are directed to respond to Appendix A, Part IV, by August 25, 2023.
7. CN and SCRRRA, individually, are directed to respond to Appendix A, Part V, by August 25, 2023.
8. UP, BNSF, SCRRRA, Amtrak, CN and NOPB are directed to respond to Appendix A, Part II, by July 18, 2023.
9. All answers and documents submitted in response to Appendix A will, unless marked "Confidential" or "Highly Confidential," be included in the public record. Any document that a party claims to contain confidential or highly confidential material shall be marked

“Confidential” or “Highly Confidential,” and a redacted public version shall be submitted and marked “Public.”

10. The Board hereby ratifies the loan of Administrative Law Judge Thomas McCarthy to the office of administrative law judge in the Surface Transportation Board, under terms and conditions prescribed in 5 U.S.C. § 3344 and 5 C.F.R. § 930.208, and the Board today approves his appointment as the Board’s own action under the Constitution. Judge McCarthy is assigned to entertain and rule upon discovery matters and to resolve initially any disputes concerning discovery in this proceeding that are filed after the service date of this decision.

11. In addition to filing pleadings with the Board and serving copies on parties of record, parties must send a copy of all filings and documents, including submissions already filed with the Board, to Judge McCarthy at 1331 Pennsylvania Avenue, N.W., Suite 520N, Washington, DC 20004-1710, and at [ctolbert@fmshrc.gov](mailto:ctolbert@fmshrc.gov) and [cbrightwell@fmshrc.gov](mailto:cbrightwell@fmshrc.gov).

12. Judge McCarthy will be added to the service list in this proceeding and a copy of this decision will be served upon him.

13. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street N.W., Suite 2469, Washington, DC 20415-9400 and electronically at [karyn.lusby@opm.gov](mailto:karyn.lusby@opm.gov). Judge McCarthy shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

14. Amtrak’s request for a record retention order is granted. All documents and/or data that relate to the subject matter of this investigation must be preserved. Regardless of any party’s ongoing document retention policy or other data destruction practices, parties must preserve such documents even if they claim those documents or data are protected from discovery by privilege or otherwise. Documents and/or data related to the subject matter of this inquiry that are included in the Board’s Preservations of Records regulations at 49 C.F.R. Part 1220 shall be preserved regardless of what is stated in Part 1220.

15. Amtrak is directed to supplement its request for a protective order by filing a draft protective order.

16. UP’s request for Board-sponsored mediation is denied.

17. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

APPENDIX A  
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**APPENDIX A—Part I.**  
DEFINITIONS AND INSTRUCTIONS  
FOR ALL PARTIES

**Definitions**

1. "Confidential" means any information, data, documents, or other material produced in discovery to another party to this proceeding, or submitted material in pleadings, that the submitting party in good faith believes reflects proprietary or confidential information.
2. "Control points" mean named operating locations found in employee timetables that assign a name to a specific location on the railroad track infrastructure. They may be referred to by a common name or by a code (e.g., "CP Alpha" or "CP 123").
3. "Data" means the physical symbols in the broadest sense, that represent information regardless of whether the information is oral, written, or otherwise recorded.
4. "Document" means any written, recorded, or graphic material of any kind, regardless of who prepared it, that is in your possession, custody, or control.
5. "Employee timetables" are documents with special operating instructions relative to the movement of trains.
6. "Highly confidential" means any information, data, documents, or other material produced in discovery to another party to this proceeding, or submitted material in pleadings, that the submitting party in good faith believes reflects competitively sensitive information.
7. "Machine-readable" means data in a structured format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost; for example, tabular data with a single row column header in an .xlsx or .csv file format. For the purposes here, "machine-readable" does not include PDFs with optical character recognition (OCR). See "Instructions" below for more information.
8. "On-time performance" or "OTP" is measured as the percentage of customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time. See 49 C.F.R. § 273.5.
9. "Passing siding" means any track other than the main track which may be used for meets and passes of trains traveling either in the same direction or in opposing directions. Sidings include all "controlled sidings," "signaled sidings," and "hand-thrown" or "dark" sidings.
10. "Relevant Period" means October 1, 2021, through December 8, 2022.
11. "Run time" means the duration of time a train is scheduled to take or actually takes to travel over a given distance.
  - "Actual run time" means the actual duration of time a train took to travel over a given distance.
  - "Scheduled run time" means the planned duration of time a train is supposed to travel over a given distance; it can be found in a schedule skeleton.

12. "Schedule skeleton segment" is the segment between two adjacent "Skeleton-stations" found on the "Sunset Limited Schedule Skeleton" in Appendix A of Amtrak's December 8, 2022 Complaint.
13. "Skeleton-station" means any location listed in the column marked "Station" found on the "Sunset Limited Schedule Skeleton" in Appendix A of Amtrak's December 8, 2022 Complaint.
14. "Station" means any named place on the railroad including control points, passenger stations, at-grade railroad crossings, junctions with another railroad, passing sidings, side-tracks, and locations in yards (e.g., throat, bowl, West hump, etc.).
15. "Study" means an organized experiment or analysis. For example, using a Rail Traffic Controller (RTC) model or other simulation, or an analysis of data to come to a conclusion.
16. "*Sunset Limited*" or "Line" or "Route" means the Amtrak passenger rail service between Los Angeles, Cal., and New Orleans, La., known as the *Sunset Limited*. These terms include route deviations and/or detours, as well as any special or irregularly scheduled trains run during the Relevant Period.
17. "Track chart" means a graphic representation of the geometry of a rail line that may include the gradient, curvature, at-grade crossings (public/private roadway or railroad), alignment, rail section, rail weight, bridges, tunnels, culverts, signals, wayside detectors (including defect detectors), and automatic equipment identification (AEI) readers, etc. These documents may also be known by other names, like "condensed profiles."
18. "Train index date" means the date of a train's departure from its originating terminal.
19. "Train run" or "run" means an individual instance of a single train's operation between a predetermined origin and destination in a single direction. For example, *Sunset Limited's* Train 1 and Train 2 are each scheduled to have three runs per week.
20. Unless the context clearly indicates otherwise, words used in singular include the plural and plural includes the singular.

### **Instructions:**

1. **Duty to preserve documents.** All documents and/or data that relate to the subject matter of this inquiry must be preserved. Regardless of your ongoing document retention policy or other data destruction practices, you must preserve such documents even if you believe those documents or data are protected from discovery by privilege or otherwise. Documents and/or data related to the subject matter of this inquiry that are included in the Board's Preservations of Records regulations at 49 C.F.R. part 1220 shall be preserved regardless of what is stated in part 1220.
2. **Public and CONFIDENTIAL/HIGHLY CONFIDENTIAL.** Answers and documents produced shall be incorporated into the public record. Accordingly, the following instructions shall apply:
  - a. Any party submitting to the Board a pleading or other item containing "HIGHLY

- CONFIDENTIAL” material should simultaneously submit (i) a “CONFIDENTIAL” version of such submission that redacts any “HIGHLY CONFIDENTIAL” material, and (ii) a public version of such submission that redacts any “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL” material.
- b. Any party submitting to the Board a pleading or other item containing “CONFIDENTIAL” material should simultaneously submit a public version of such submission that redacts any “CONFIDENTIAL” material.
  - c. In the HIGHLY CONFIDENTIAL versions, submitters must denote CONFIDENTIAL material with single brackets (“{ }”) and HIGHLY CONFIDENTIAL material with double brackets (“{ { } }”). In the CONFIDENTIAL versions, submitters must denote CONFIDENTIAL material with single brackets (“{ }”) and leave HIGHLY CONFIDENTIAL material redacted.
3. **Privilege.** If you withhold any responsive documents under a claim of attorney-client privilege, work product privilege, or other applicable privilege, you must submit a log, in a searchable electronic format, of such documents which shall, for each document, describe the nature of the document not produced in a manner that will allow the Board to assess the claim, provide a brief description or summary of the contents of the document (see Sulaymu-Bey v. City of New York, 372 F. Supp. 3d 90, 93 (E.D.N.Y. 2019)), and identify the attorney involved, the date of the document, the person(s) shown on the document to have prepared and/or sent the document, and the person(s) shown on the document to have received copies of the document. If only some portion of any responsive material is privileged, you must submit all non-privileged portions of the material.
4. **Lost or destroyed documents.** For any document related to these interrogatories and/or document requirements that is known to have been lost or destroyed, identify each document and its contents. Also, explain in detail the events leading to the loss or destruction.
5. The response to these investigatory questions shall be submitted in the following manner:
- a. **E-filed.** Filed electronically through the Board’s e-filing page, as a “formal filing,” at [www.stb.gov/proceedings-actions/e-filing/](http://www.stb.gov/proceedings-actions/e-filing/)
  - b. **Answer and document organization.** Each answer, document, and/or data produced shall be clearly designated as to which request it satisfies. All documents produced shall be segregated to correspond with the number of the request(s). If a document is responsive to more than one request, indicate each request to which it responds.
  - c. **Table of contents.** Answers and documents submitted shall be accompanied by a single table of contents, which identifies what question(s) the submissions are responsive to, a title/description of each submission, and the page number and/or

file name if multiple files are submitted.

6. **Data submitted in a machine-readable format.** Where these requests seek data in a machine-readable format, provide information as follows:
  - a. For each computer file supplied provide:
    - i. The name and description of the source database or other file from which the records in the computer file were selected,
    - ii. a description of how the records in the file produced were selected, and
    - iii. each computer program (in native software and text file) and intermediate files used in deriving the files produced.
  - b. For each field in each computer database file provide:
    - i. the name of the field;
    - ii. the starting and ending positions of the field;
    - iii. a detailed definition of the field;
    - iv. a detailed description of the data in the field, including an explanation of what they are used for;
    - v. the type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed);
    - vi. if the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each;
    - vii. an indication of whether the data in the field are packed or compressed; and if the data in the field are packed or compressed, the type of packing or compression, and detailed instructions for unpacking.

**APPENDIX A—Part II.**  
DOCUMENT REQUIREMENT  
FOR ALL PARTIES

1. **Uniform stations/mileposts.** Produce a list of all stations (as defined in Part I of this appendix) on the *Sunset Limited* that you hosted, owned, operated, dispatched, served, or leased. This list should identify each station with a milepost number that incorporates a prefix from the “Alpha Milepost Series Designators” table below. Any answer or document produced in this proceeding that references a location should conform to this uniform milepost standard, unless stated otherwise. In other words, if multiple parties all refer to the same milepost number, that location will be identical in its actual location. This does not apply to documents where a location is given for a generic purpose such as a training guide or standard operating procedure.

Alpha Milepost Series Designators		
Railroad(s)	Station Range	Prefix
NOPB, CN, Amtrak	New Orleans Station to East Bridge Jct.	A
UP, BNSF, NOPB	East Bridge Jct. to Live Oak	B
BNSF	Live Oak to Iowa Jct.	C
UP	Beaumont to Houston via Gulf Coast Jct.	D
UP	Iowa Jct. to Houston	E
UP	Houston to El Paso	F
UP	El Paso to Los Angeles	G
SCRRA	Los Angeles Union Station	H



**APPENDIX A—Part III.**  
**INTERROGATORIES AND DOCUMENT REQUIREMENTS**  
**FOR AMTRAK**

**Delay causes and treatments.**

1. **Detailed delay causes.** Provide further explanation of each delay code found in Appendix B of your December 8, 2022 Complaint. Provide examples that would make clear the typical circumstances of each delay cause.
2. **Mitigation of unforeseen delays.** Explain the procedures in place to minimize the operational consequences of unplanned and/or unanticipated delays. For example, stationing reserve equipment and/or crews at crucial locations. Provide any documents that describe these procedures, such as training manuals or guides.
3. **Mitigation of expected delays.** Explain the procedures in place to proactively minimize the consequences of planned and/or anticipated delays. For example, notice to passengers, or schedule adjustments. Provide any documents that describe these procedures, such as training manuals or guides.
4. **Train equipment.** Describe the typical train equipment and consists used on the *Sunset Limited* during the Relevant Period. This description should include the typical consists used east and west of San Antonio, Texas. If there were changes made during the Relevant Period include such.
5. **Reserve train equipment.** Did you maintain a fully operable reserve train set at either terminal at any time during the Relevant Period, if so specify the dates and describe the typical consist of the reserve train set?

**Delays to the *Sunset Limited* in the Relevant Period.**

6. **Sharing arrangements.** On portions of the Line that are jointly owned, operated, dispatched, and/or used by more than one railroad company, how does Amtrak distinguish among the participating railroads in assigning responsibility for delays?
7. **Detailed delay listing.** Provide a detailed list of delays that occurred during the Relevant Period. The list should be in a machine-readable table; it should include the following as separate data fields:
  - a. The train number of the Amtrak train affected, as recorded by Amtrak.
  - b. If applicable, any surrogate train number used by another party for the Amtrak train affected.
  - c. The train index date (departure date from originating terminal) of the train affected.
  - d. The train ID date assigned by the host railroad.
  - e. Any delay ID number employed by Amtrak for the train involved.

- f. Date and time that the delay began. In this format YYYY-MM-DD HH:MM:SS-05:00 (i.e., year-month-day hours:minutes:seconds-difference from UTC time).
  - g. Date and time that the delay ended. In this format YYYY-MM-DD HH:MM:SS-05:00 (i.e., year-month-day hours:minutes:seconds-difference from UTC time).
  - h. Duration of the delay in minutes.
  - i. Railroad to which Amtrak assigned responsibility for the delay.
  - j. Delay cause (code), as found in Appendix B to Amtrak’s Dec. 8, 2022 Complaint.
  - k. Other causation information. That is, any additional causation information supplied by the conductor or other personnel.
  - l. Location of the delay:
    - 1. Host Railroad Subdivision name (string).
    - 2. Uniform Milepost Number, consistent with Part II of this Appendix (numeric).
    - 3. Delay location type (string) (e.g., at station, schedule skeleton segment, detour).
    - 4. Amtrak Crew District name (string).
  - m. Latitude and longitude data if available.
  - n. Indicate if the delay was disputed at any time.
  - o. For any delays that were disputed, whether the delay was resolved or unresolved
  - p. An explanation of the dispute that includes a description of any revisions made. If the dispute was unresolved, explain why.
  - q. Date of revision, if applicable.
  - r. Host railroad’s concurrence or nonconcurrence in revision.
  - s. Status as of the date of submission of this response.
8. **Conductor delay reports.** Produce conductor-entered delay reports, as well as any supplementary communications received, for all delays during the Relevant Period. The list should be in a machine-readable table.
9. **Detailed run time data.** Provide a list of actual run time data for each schedule skeleton segment on a run-by-run, day-by-day basis, including alternate or detour routes if applicable. The list should be in a machine-readable table; it should include the following as separate data fields:
- a. Train number.
  - b. Train index date.
  - c. Schedule skeleton segment station pairs (starting “skeleton-station” and ending “skeleton-station” according to the Amtrak schedule skeleton).
  - d. Entity recorded as Host(s).
  - e. Scheduled run time for each schedule skeleton segment.
  - f. Actual run time for each schedule skeleton segment.

10. **Total run time.** Provide a list of all individual *Sunset Limited* trains' total actual run time from origin to destination during the Relevant Period. Include the entire train run even if the run began or ended outside of the Relevant Period, so long as the train run was in progress during the Relevant Period. Include the total scheduled run time. Indicate if a train run took an alternate route. The list should be in a machine-readable table.
11. **Detailed dwell time data.** Provide a list of separate day-by-day, train-by-train dwell times. The list should be in a machine-readable table; it should include the following as separate data fields:
  - a. Skeleton-Station.
  - b. Train index date.
  - c. Train number dwelling.
  - d. Scheduled dwell time (according to the schedule skeleton).
  - e. Actual dwell time.

#### **Data Accuracy.**

12. **Customer OTP data.** Provide all standard operating procedures, employee training manuals, guidelines, instructions, and other relevant materials that describe the processes for gathering, calculating, recording, and storing on-time performance and station-by-station alighting traffic data, and all other data submitted to FRA on a quarterly basis. Documentation should also include how often the data is updated, who is responsible for updating the data, and /or the systems used.
13. **Train delay data.** Provide all standard operating procedures, employee training protocols and manuals, guidelines, instructions, and other relevant materials that describe, step-by-step, the processes for gathering, identifying, categorizing by cause, describing, recording, transmitting, and storing passenger train delay data.
14. **Train delay data review and revisions.** Provide documents that describe the review and/or revision processes and how passenger train delay data is reviewed and/or changed after it is initially recorded. Documents should include how reviews, revisions, and amendments are made, either internally or in reaction to feedback from a host railroad or other external entity.
15. **Host delay disputes.** Provide documents that describe the host delay dispute process. Documentation must describe the process, step-by-step, that occurs when a host railroad disputes a delay and/or delay cause.
16. **Resolving disputed delays.** Provide documents that describe how delay disputes are resolved. Documentation must explain the training and guidance provided to employees regarding the process for resolving disputed delays and steps related to resolving disputes. Provide relevant documents such as training manuals and guides.
17. **Deviations from delay dispute protocols.** During the Relevant Period, on the *Sunset Limited*, identify whether there were any deviations from the typical practice of resolving disputed delays. If so, explain the deviation and rationale for the deviation.
18. **Revised run time metric submissions.** Since FRA commenced publication of the

PRIIA § 207 data under 49 C.F.R. Part 273, the Run Time Metric workbooks have been revised and replaced for FY 22 Q1, FY 22 Q2, and FY 22 Q3.<sup>15</sup> The revised workbooks include at least two changes. First, as originally published, the FY 22 Q3 run time summary data for Train 1 showed scheduled run time of 4,005 minutes, versus 2,795 in the Schedule Skeleton provided in Appendix A of Amtrak’s Complaint. Second, in the same FY 22 Q3 Run Time Metric workbook, the scheduled time for Amtrak’s short segment of *Sunset Limited* Train No. 1 was shown as 195 minutes, versus 15 minutes in the Schedule Skeleton in Appendix A of Amtrak’s Complaint. Explain if the need for changes resulted from errors on Amtrak’s part, and if so, explain the steps subsequently taken to prevent their recurrence. In addition, review your Run Time data for the Relevant Period (all worksheets and parameters) and identify any remaining needed changes, in Amtrak’s view. Produce revised data workbooks with changed run times.

### **Internal Controls for Data Quality Assurance.**

19. **Internal controls for data quality assurance.** Provide documentation on the quality assurance procedures used to verify and confirm accuracy of reports. List all the procedures Amtrak uses to ensure the accuracy of the reported data by processing it through a quality assurance procedure. Documentation must describe in detail the internal control procedures applied by Amtrak to ensure data accuracy regarding all the quarterly passenger OTP data, train delay data, and all other related data reported to FRA under 49 C.F.R. part 273. Your answer should discuss data gathering, recording, calculating, verifying, reviewing, correcting, maintaining, and delivery of all data reported to FRA.
20. **Deviation from internal controls.** Identify, if any, all actual deviation(s) during the Relevant Period from your internal control procedures for data quality assurance regarding the quarterly passenger OTP data and train delay data reported to FRA under 49 C.F.R. part 273. Include the rationale for the deviation(s).
21. **Third-party reviews of quarterly data submitted to FRA.** Describe the processes and findings of any independent parties engaged or assigned by Amtrak to verify the sufficiency and effectiveness of the standard protocols and internal control procedures described in the previous questions. Identify any actions taken by Amtrak to resolve and/or implement these findings.
22. **Source code for quarterly data.** Produce the source code used to extract, transform, and load; sort; filter; scrub; aggregate; cleanse; calculate; arrange; or otherwise modify raw passenger OTP data as it is prepared for submission to FRA. Provide a narrative that explains each program’s purpose.

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<sup>15</sup> Intercity Passenger Rail Service Quality and Performance Reports, [railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and](https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and) (select “Archived Reports”) (last visited July 11, 2023).

**Scheduling.**

23. **Schedule.** Resubmit Appendix A from the December 8, 2022 complaint (“Complaint Appendix A”) in a machine-readable format. For each location referred to in Complaint Appendix A, provide the uniform milepost prefixes and numbers as specified in Part II of the present Appendix A, above. Also, it appears as though certain mileage cells were left blank under the column marked “Mileage” in Complaint Appendix A. In your response supply the missing mileage information using the uniform milepost prefixes and numbers.
24. **Schedule planning considerations.** When planning the pure running time, recovery time, and dwell time allowances for the schedule skeletons on the *Sunset Limited*, what underlying assumptions are made about the routing, track condition, weather, capacity, equipment consist and performance, and any other relevant variables?
25. **Schedule development.** Describe how Amtrak developed its schedule skeletons, including existing and contemplated schedules for the trains on the *Sunset Limited*; for example, what methodology was used? Produce the underlying work papers and/or any studies performed to develop the schedule skeleton. Include a description of any computer programs, SQL models, or other tools used in the process, including detailed descriptions of any equations or algorithms employed for distributing recovery time with the aim of optimizing schedules for customer OTP, whether used in the development of existing and contemplated schedules for the trains on the *Sunset Limited* or other Amtrak trains.
26. **Schedule skeletons—effective dates.** Confirm that the schedule skeletons in Appendix A of your complaint were in effect throughout the Relevant Period. If that is not the case, then provide all schedule skeletons in effect since October 1, 2021, with a detailed list of the *Sunset Limited* train numbers and train index dates to which each schedule skeleton applied.
27. **Schedule skeletons—negative minutes.** Explain all instances where negative values are given for “Misc. Adjust.” time and “Recovery Minutes” in Appendix A of your complaint.
28. **Schedule skeletons—dwell times.** Explain the purpose of “Dwell Minutes” scheduled for stations that are not passenger stops in Appendix A of your complaint.
29. **Variations in tri-weekly operation.** Describe and explain the reasons for any changes in the per-week frequency of *Sunset Limited* operations that occurred during the Relevant Period.
30. **Schedule updates.** Describe Amtrak’s processes, if any, for performing checks of its schedule skeletons to verify that the pure running times and dwell times prescribed therein remain attainable. Provide, where practicable, any work products or work papers, in a machine-readable format, that achieve this schedule skeleton checking functionality.
31. **Factors used to revise schedules.** Describe the assumptions, methods, and factors that have been used to revise the Line’s schedule skeleton in the past.

32. **Certified schedules.** Explain why no “certified schedule” (as defined by 49 C.F.R. § 273.3) has been created for Train 1 or Train 2.
33. **Proposed revised schedules using current scheduled run time.** Provide all schedules proposed by Amtrak to a host railroad after December 16, 2020, that use either the current overall scheduled running time of the trains or a lesser amount of run time.
34. **Proposed revised schedules that are greater than the current scheduled run time.** Provide all schedules proposed by Amtrak to a host railroad after December 16, 2020, that extend the overall scheduled running time of the trains beyond the current overall schedule run time.
35. **Tests for feasibility.** Produce the results of any tests, studies, or projects used to evaluate the feasibility or effectiveness of schedule skeletons on the *Sunset Limited*. Provide any work product, work papers, and all assumptions and documents relied upon in making these calculations in a machine-readable format.
36. **Detailed OTP, lateness, and train arrival data.** Provide a list of every *Sunset Limited* run in the Relevant Period. The list should be in a machine-readable table; it should include the following as separate data fields:
- a. Train number.
  - b. Train index date.
  - c. Customer OTP for each run (based on all alighting passengers).
  - d. Average passenger-minutes late for the run (measured from scheduled arrival at every alighting station, including late durations less than 15 minutes).
  - e. Customer OTP at each alighting station for each run.
  - f. Minutes late (measured from scheduled arrival) at each station for each run, including late durations less than 15 minutes.
  - g. Number of alighting passengers at each station for each run.
37. **Origin/Destination Data.** For each origin/destination station pair served by the *Sunset Limited*, provide the total passenger-trips, passenger-miles, and ticket revenue for all *Sunset Limited* trains operated during the Relevant Period. Include data for all passenger-trips that arrived at destination stations during the Relevant Period, even if the train run originated or terminated before or after the Relevant Period. These data should be provided in a machine-readable format.
38. **Train-Mile and Passenger-Mile Data.** For each run of the *Sunset Limited*, and by train number, during the Relevant Period, provide train-miles, passenger-miles, and passenger-trips by schedule skeleton segment. These data should be provided in a machine-readable format.
39. **Expiring freight crews.** During the Relevant Period, what is the number of times Amtrak trains on the *Sunset Limited* route were stopped behind a freight train that was undergoing a host railroad crew change? Explain how you know a delay is caused by a host railroad crew change. How many delay minutes did these stops account for during the Relevant Period? Explain the methodology you used to calculate any delay minutes in the answer you provide.
40. **Houston Subdivision/Beaumont Subdivision—operating agreement.** Produce the

agreement between UP and Amtrak that specifies that the *Sunset Limited* is to operate over the Houston Subdivision. Provide a cite to the page or article that illustrates this.

41. **Houston Subdivision/Beaumont Subdivision—run time comparison.** Provide the average actual run time for all Amtrak trains during the Relevant Period for the following segments: (a) from the Houston Amtrak Station to Gulf Coast Junction, (b) from Gulf Coast Junction to Beaumont, (c) from Beaumont to the Houston Amtrak Station via the Houston Subdivision.
42. **Houston Subdivision/Beaumont Subdivision—routing.** How many times was Amtrak train 2, routed over the Beaumont Subdivision during the Relevant Period?

### **Improving Service, Quality, and On-time Performance.**

43. **Plans for improving passenger service.** Explain any measures or plans you have, or would propose to undertake in cooperation with other entities, for improving passenger service and on-time performance of your passenger trains, with particular emphasis on the *Sunset Limited*.
44. **Passenger well-being and travel continuity.** Describe the procedures, if any, in place to ensure passengers' proper well-being and assure their continuity of travel when delays occur—specifically, passenger access to food, water, restrooms, and HVAC, as well as assistance with alternative travel arrangements and accommodations. Provide any documents that describe these procedures.

**APPENDIX A—Part IV.**  
**INTERROGATORIES AND DOCUMENT REQUIREMENTS**  
**FOR UP AND BNSF (individually)**

**Delay causes and treatments.**

1. **Sharing arrangements.** Regarding each segment of the Line in which your company shares ownership, operation, dispatching, maintenance, and/or other responsibilities with one or more other railroads, provide a detailed explanation of the division of responsibilities among the carriers during the relevant period.

**Data Accuracy.**

2. **Delay causes.** To the extent that you track Amtrak and/or freight train delays and their causes, explain the process(es) for gathering, categorizing, recording, and storing train delay causes. Provide all relevant standard operating procedures, employee training manuals, guidelines, instructions, and other relevant material.

**Scheduling.**

3. **Train scheduling process.** Produce all standard operating procedures, employee training manuals, guidelines, instructions, and other relevant material that explain your train scheduling process. To the extent that any portion of the scheduling process is computerized, provide an explanation of the rule(s)/algorithm(s) programmed.
4. ***Sunset Limited* Schedule.** Describe your role in creating the schedule skeleton. Identify any parts of the current schedule skeleton with which you disagree and explain why you disagree.
5. **Certified schedules.** Explain why no “certified schedule” (as defined by 49 C.F.R. § 273.3) has been created for Train 1 or Train 2.
6. **Proposed revised schedules using current scheduled run time.** Provide all schedules proposed to Amtrak after December 16, 2020, that use either the current overall scheduled running time of the trains or a lesser amount of run time.
7. **Proposed revised schedules that are greater than the current scheduled run time.** Provide all schedules proposed to Amtrak after December 16, 2020, that extend the overall scheduled running time of the trains beyond the current overall schedule run time.
8. **Train schedules.** Produce all schedules and operating plans that you had for freight operations using the portion(s) of the *Sunset Limited*’s route that you hosted, owned, operated, dispatched, served, or leased during the Relevant Period, and the dates such schedules and plans were in effect. To the extent practicable, provide these in a machine-readable format.



9. **Scheduling and Amtrak.** When scheduling freight trains, what steps are taken to avoid conflicts with the *Sunset Limited*?
10. **Unscheduled trains.** Describe your protocols for introducing unscheduled trains onto your rail system.

### **Congestion.**

11. **Maps.** Produce a clear, detailed map or set of maps of the portion(s) of the *Sunset Limited* that you host, own, operate, dispatch, serve, or lease, which were in effect during the Relevant Period, as well as the most current version(s) if the map(s) have been updated since the Relevant Period. You must produce a map in a static format such as a PDF, but also, if available, produce a computer-readable version in a format such as a .kml, .kmz, or ESRI shapefile file type. These map(s) should identify:
  - a. Mileposts (following the Uniform Milepost Numbers described in Part II of this appendix).
  - b. Subdivision.
  - c. Stations (as defined in the “definitions” section of this Appendix).
  - d. Where your involvement with the *Sunset Limited* begins and ends.
  - e. Single-track territory with mileage identified.
  - f. Double-track territory with mileage identified.
  - g. Passing sidings on single-track territory, including the length of each siding.
  - h. Passing sidings on double-track territory, including the length of each siding.
12. **Track charts.** Submit all track charts for portion(s) you host, own, operate, dispatch, serve, or lease of the *Sunset Limited*, which were in effect during the Relevant Period, as well as the most current version(s) if the map(s) have been updated since the Relevant Period.
13. **Employee Timetables.** Produce all Employee Timetables, general orders, general track bulletins and special instructions for portion(s) you host, own, operate, dispatch, serve, or lease of the *Sunset Limited*, which were in effect during the Relevant Period, as well as the most current version(s) if the map(s) have been updated since the Relevant Period. This includes all train handling instructions and fuel conservation instructions.
14. **Passing Sidings.** On a map, identify all passing sidings on portion(s) of the *Sunset Limited*'s route that you hosted, owned, operated, dispatched, served, and/or leased during the Relevant Period. Identify any passing siding that was not long enough to accommodate all trains that traveled on the Route during the Relevant Period.
15. **Sidings and train length.** How many freight trains traveled on portion(s) of the Route you hosted, owned, operated, dispatched, served, or leased during the Relevant Period, that could not fit into passing sidings that the train traveled past?
16. **Amtrak delays and siding length.** List each instance during the Relevant Period, where passing siding length resulted in an Amtrak train being stopped or slowed (i.e., when a freight train could not fit onto passing siding due to a lack of length) on portion(s) of the Route that you host, own, operate, dispatch, serve, or lease. Identify the schedule

skeleton segment or skeleton-station involved, the duration of the delay to the Amtrak train, and the Amtrak train number affected, with its date of departure from origin terminal.

17. **Passing sidings or double-track removed.** Between October 1, 2016, and December 8, 2022 (i.e., the Relevant Period and five years prior), did you remove or shorten any passing sidings or double-track segments on portions of the *Sunset Limited* that you host, own, operate, dispatch, serve, or lease? If so, provide the uniform milepost number associated with such sidings or double-track segments, the sidings' or double-track segment's original length (and new length, if shortened), and the circumstances leading to their removal.
18. **Passing sidings blocked or unavailable.** Provide a list of each instance during the Relevant Period where a passing siding on a portion of the *Sunset Limited* that you hosted, owned, operated, dispatched, served, and/or leased was unavailable for meeting or passing trains for five consecutive days or longer. This list should clearly identify each passing siding with a uniform milepost number. The list should also include the date range that each passing siding was blocked or otherwise unavailable, and a reason for the unavailability; for example, stored cars causing a blockage, maintenance, or track condition.
19. **Schedule skeleton segment data.** Provide schedule skeleton segment data for the portion(s) of the Route that you host, own, operate, dispatch, serve, or lease in a table. The list should be in a machine-readable table; it should include the following as separate data fields:
  - a. Skelton Schedule Segment.
  - b. Skelton Schedule Segment Road Mileage.
  - c. Mileage of single-track territory.
  - d. Mileage of sidings on single-track territory.
  - e. Mileage of sidings on single-track territory under or equal to 10,000 feet.
  - f. Mileage of double-track territory.
  - g. Mileage of sidings on double-track territory.
  - h. Mileage of sidings on double-track territory under or equal to 10,000 feet.
  - i. Freight train-miles, by direction and in total from 10/1/2021 through 12/8/2022.
20. **Freight train speeds.** For each of your segments where the *Sunset Limited* operates, provide the actual average freight train speed between each successive pair of control points during the Relevant Period. Provide notation of any equalization calculations used with any calculations.

### **Improving Service, Quality, and On-time Performance.**

21. **Plans for improving passenger OTP.** Provide a narrative and any relevant documents explaining any measures or plans you have for improving passenger service and on-time performance of Amtrak trains.

**Preference.**

22. **Dispatching protocols.** Explain your dispatching protocols on the portion(s) of the Route for which you provide dispatching. Produce documentation about your dispatching procedures used during the Relevant Period. Include standard operating procedures, employee training manuals, guidelines, instructions, and other relevant material.
23. **Computer/automated dispatching.** Produce documentation about any computer assisted dispatching used during the Relevant Period on the portion(s) of the Route for which you provide dispatching. This includes automated dispatching and any time a computer provided a recommendation.
24. **Dispatching algorithms.** Explain the rule(s)/algorithm(s) programed into any computer system that either determines dispatching or recommends dispatching solutions; include a decision tree explaining how the program makes its decisions.
25. **Train length and priority.** To what extent, if any, does train length impact a train's priority under your dispatching protocols?
26. **Expiring crews.** Explain how you plan for freight crew expiration (pursuant to 49 U.S.C. § 21103(a)(2)).
27. **Expiring crews on mainline track.** When a freight crew expires while their train is on mainline track, what considerations, if any, do you give to Amtrak trains that will be impacted?
28. **[\*To be addressed by UP only.] Houston Subdivision/Beaumont Subdivision—run time comparison.** Provide the average actual run times for all Amtrak trains via the Beaumont Subdivision, and provide average actual run times for all Amtrak trains via the Houston Subdivision, during the Relevant Period.
29. **[\*To be addressed by UP only.] Houston Subdivision/Beaumont Subdivision—routing.** Explain the circumstances that result in an Amtrak train being routed to the Beaumont Subdivision.
30. **Coordination with other railroads.** Describe the procedures used to coordinate the handoff of Amtrak trains on the *Sunset Limited* to other railroads.

**APPENDIX A—Part V.**  
**INTERROGATORIES AND DOCUMENT REQUIREMENTS**  
**FOR CN, SCRRA, and NOPB (individually)<sup>16</sup>**

**Delay causes and treatments.**

1. **Sharing arrangements.** Regarding each segment of the Line in which your company shares ownership, operation, dispatching, maintenance, and/or other responsibilities with one or more other railroads, provide a detailed explanation of the division of responsibilities among the carriers during the relevant period.

**Scheduling.**

2. **Scheduling and Amtrak.** When scheduling freight trains, and passenger trains as applicable, what steps are taken to avoid conflicts with the *Sunset Limited*?
3. **Unscheduled trains.** Describe your protocols for introducing unscheduled trains onto your rail system.

**Congestion.**

4. **Maps.** Produce a clear, detailed map or set of maps of the portion(s) of the *Sunset Limited* that you host, own, operate, dispatch, serve, or lease. You must produce a map in a static format such as a PDF, but also, if available produce a computer-readable version in a format such as a .kml, .kmz, or ESRI shapefile file type. These map(s) should identify:
  - a. Mileposts (following the Uniform Milepost Numbers described in Part II of this appendix).
  - b. Subdivision.
  - c. Control points, such as stations (as listed in Appendix A of Amtrak’s Complaint), and non-passenger skeleton “stations.”
  - d. Where your hosting, ownership, operating, dispatching, servicing, or leasing of the *Sunset Limited* begins and ends.
  - e. Single-track territory with mileage identified.

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<sup>16</sup> The Board recognizes that SCRRA, NOPB, and CN have associations with the *Sunset Limited* service over relatively short portions of tracks. Accordingly, the interrogatories and document requirements directed to those entities are necessarily more limited than those directed to UP and BNSF. If there are items in Appendix A that parties cannot answer or do not have data for, they should indicate so in their responses.

- f. Double-track territory with mileage identified.
  - g. Passing sidings on single-track territory:
    - 1. Under or equal to 10,000 feet in length, with mileposts identified.
    - 2. Over 10,000 feet in length, with mileposts identified.
  - h. Passing sidings on double-track territory:
    - 1. Under or equal to 10,000 feet in length, with mileposts identified.
    - 2. Over 10,000 feet in length, with mileposts identified.
5. **Passing Sidings.** On a map, identify all passing sidings on portion(s) of the *Sunset Limited*'s route that you hosted, owned, operated, dispatched, served, and/or leased the during the Relevant Period. Identify any passing siding that was not long enough to accommodate all trains that traveled on the Route during the Relevant Period.
  6. **Sidings and train length.** How many freight trains traveled on portion(s) of the Route you host, own, operate, dispatch, serve, or lease during the Relevant Period, that could not fit into passing sidings that the train traveled past?
  7. **Amtrak delays and siding length.** List each instance during the Relevant Period, where passing siding length (i.e., when a freight train could not fit onto passing siding due to a lack of length) resulted in an Amtrak train being stopped or slowed on portion(s) of the Route that you host, own, operate, dispatch, serve, or lease. Identify the schedule skeleton segment or skeleton-station involved, and the Amtrak train number affected, with date of departure from origin terminal.
  8. **Passing sidings or double-track removed.** Between October 1, 2016, and December 8, 2022, did you remove or shorten any passing sidings or double-track segments on portions of the *Sunset Limited* that you host, own, operate, dispatch, serve, or lease? If so, describe the location of such sidings or double-track segments, the sidings' or double-track segment's original length (and new length, if shortened), and the circumstances leading to their removal.
  9. **Passing sidings blocked or unavailable.** Provide a list of each instance during the Relevant Period where a passing siding on a portion of the *Sunset Limited* that you hosted, owned, operated, dispatched, served, and/or leased was unavailable for meeting or passing trains for five consecutive days or longer. This list should clearly identify each passing siding in a way that corresponds with at least one map submitted in response to this Appendix. The list should also include the date range that each passing siding was blocked or otherwise unavailable, and a reason for the unavailability; for example, stored cars causing a blockage, maintenance, or track condition.
  10. **Freight train speeds.** For each of your segments where the *Sunset Limited* operates, provide the actual average freight train speed between each successive pair of control points during the Relevant Period. Provide notation of any equalization calculations used with any calculations.

### **Improving Service, Quality, and On-time Performance.**

11. **Plans for improving passenger OTP.** Provide a narrative and any relevant documents

explaining any measures or plans you have for improving passenger service and on-time performance of Amtrak trains.

**Preference.**

12. **Dispatching protocols.** Explain your dispatching protocols on the portion(s) of the Route for which you provide dispatching. Produce documentation about your dispatching procedures used during the Relevant Period. Include standard operating procedures, employee training manuals, guidelines, instructions, and other relevant material.
13. **Computer/automated dispatching.** Produce documentation about any computer assisted dispatching used during the Relevant Period on the portion(s) of the Route for which you provided dispatching. This includes automated dispatching and any time a computer provided a recommendation.
14. **Dispatching algorithms.** Explain the rule(s)/algorithm(s) programed into any computer system that either determines dispatching or recommends dispatching solutions; include a decision tree explaining how the program makes its decisions.
15. **Train length and priority.** To what extent, if any, does train length impact a train's priority under your dispatching protocols?
16. **Coordination with other railroads.** Describe the procedures used to coordinate the handoff of Amtrak trains on the *Sunset Limited* to other railroads.