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By Electronic Submission

Ms. Allison C. Davis, Director
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Finance Docket No. 36468, *American Rocky Mountaineer, LLC – Petition for Exemption from 49 U.S.C. Subtitle IV*

Dear Ms. Davis:

On behalf of American Rocky Mountaineer, LLC, enclosed please find a Reply to the Partial Opposition to Petition for Exemption filed by the Brotherhood of Locomotive Engineers and Trainmen in the above-referenced docket.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Carolyn G. Kraska

Carolyn Gaut Kraska

Associate
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36468

AMERICAN ROCKY MOUNTAINEER, LLC

**PETITION FOR EXEMPTION FROM
49 U.S.C. SUBTITLE IV**

**REPLY TO
PARTIAL OPPOSITION TO PETITION FOR EXEMPTION
OF BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

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Washington, D.C. 20004

Counsel for American Rocky Mountaineer, LLC

Dated: April 5, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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I. Introduction

On February 3, 2021, American Rocky Mountaineer, LLC (“ARM”) filed a Petition for Exemption from Subtitle IV¹ (the “Petition”) to operate a new seasonal passenger rail excursion on lines of Union Pacific Railroad Company (“UPRR”) between Denver, Colorado and Moab, Utah. The Petition explained that under an agreement to be entered into between the parties, UPRR will provide track access and dispatch the ARM trains operated by ARM crews. Petition at 1–2.² ARM sought a Subtitle IV exemption for the transaction (i.e., the ARM-UPRR agreement) and the planned passenger rail excursion service because:

Board regulation of [ARM]’s acquisition of operating rights from UPRR and the planned luxury rail tourism service is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 and, as the acquired rights and the planned service are not freight rights or freight service, Board regulation is not necessary to protect shippers from the abuse of market power.

¹ ARM did not seek an exemption from labor protection and certain damage liability provisions in Subtitle IV. See 49 U.S.C. § 10502(e), (g). Footnote 1 of the Petition erroneously cited 49 U.S.C. § 10502(c) for § 10502(e). Petition at 2.

² The Petition explained that despite offering only luxury scenic operations, ARM would be a common carrier subject to Surface Transportation Board (“STB” or “Board”) jurisdiction. Petition at 4–5.

Petition at 3–4.

On March 15, 2021, the Brotherhood of Locomotive Engineers and Trainmen (“BLET”) filed a Partial Opposition to Petition for Exemption (the “BLET Opposition”), arguing that (1) ARM has not met the section 10502 exemption criteria because regulation of ARM’s transaction and planned service is necessary to carry out the rail transportation policy in 49 U.S.C. § 10101 and (2) the Petition is overbroad.³

On the exemption criteria, the BLET argues that Board regulation of ARM’s transaction and planned service is necessary to carry out elements of the rail transportation policy on (i) adequacy of rail carrier revenues, (ii) public health and safety, (iii) honest and efficient management of railroads, and (iv) fair wages and suitable working conditions. BLET Opposition at 4-5. BLET asserts that the Board has a (1) “duty to ensure that ARM’s operations are safe, that ARM does not negatively impact safe and efficient operations of UP, and that ARM’s operations are not detrimental to public health and safety” and (2) a mandate to encourage ARM to have of honest and efficient management, fair wages and suitable working conditions. BLET Opposition at 5.⁴

On overbreadth, the BLET argues that the Subtitle IV exemption cases relied upon by ARM are distinguishable because the “propriety of a blanket exemption” was not contested and therefore not presented or addressed in the cases. BLET Opposition at 8–9. Moreover, the

³ The BLET also filed the verified Declaration of Thomas A. Pontolillo, the Director of Research and Assistant to the National President of the BLET (the “Pontolillo Declaration”).

⁴ The BLET does not challenge ARM’s assertion that the transaction and the planned service for which the Subtitle IV exemption is sought is of limited scope, or that application of the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”) to the transaction and the planned services is not necessary to protect shippers from the abuse of market power.

relied-upon cases involved “Amtrak trains that were operated by Amtrak engineers represented by the BLET, whereas [in the present case] ARM will actually operate trains.” BLET Opposition at 8. If the STB granted a Subtitle IV exemption for the transaction and the planned passenger rail excursion service, ARM might use it to construct a line of railroad and cross other carriers (BLET Opposition at 6); it might use it to enter into additional operating agreements over the lines of another carrier (BLET Opposition at 7); or ARM or its corporate parent might acquire a line of railroad from UPRR (BLET Opposition at 7).

II. Argument

a. Summary

The BLET Opposition fails to present any argument or evidence that would justify denial or partial denial of ARM’s Petition.⁵ Board regulation of ARM’s agreement with UPRR and ARM’s planned passenger rail excursion service is not necessary to carry out any of the four rail transportation policy (“RTP”) elements of 49 U.S.C. § 10101 raised by the BLET. In addition, BLET’s argument that ARM’s Petition is overbroad ignores both the Board’s mandate to exempt a “transaction or service” to the “maximum extent” consistent with the ICCTA when the exemption criteria are met and well-settled STB/ICC precedent on Subtitle IV exemptions.

Regulation of ARM’s transaction and planned service is not necessary to ensure fair wages and suitable working conditions, because the exemption does not alter the applicability of the

⁵ If the BLET Opposition is a late-filed reply to the ARM Petition and the Board allows it to stay in the record, ARM hereby moves that the Board also accept ARM’s Reply as a sur-reply, in the interest of fairness and a complete record. See, e.g., City of Alexandria, Va.—Pet. for Declaratory Order, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing reply to reply “(i)n the interest of compiling a full record”); The Blacklands Railroad—Discontinuance Of Service Exemption—In Hunt, Delta, Hopkins, Franklin, And Titus Counties, Tex., AB 1108 (Sub-No. 1X), slip op. at 5 (STB served Feb. 13, 2020).

Railway Labor Act or the Railroad Retirement Act to ARM. ARM crews will work in locomotives leased from UPRR – the same types of locomotives operated by BLET members on UPRR lines. ARM crewing of its trains for operation on UPRR lines as described in the Petition does not violate the BLET-UPRR collective bargaining agreement.⁶ In addition, the BLET has not presented any evidence that absent regulation ARM employees will not have fair wages or suitable working conditions.

Regulation of ARM’s transaction and planned service is not necessary to ensure public health and safety, because ARM operations are subject to the laws and regulations administered by the Federal Railroad Administration (“FRA”) and ARM is working closely with the Federal Railroad Administration and UPRR to ensure compliance with applicable railroad safety laws and regulations.⁷ Thus regulation of ARM is not necessary to ensure that ARM’s operations are safe or that ARM does not negatively impact safe UPRR operations.⁸

Regulation of ARM’s transaction and planned service is not necessary to ensure honest and efficient management of ARM or UPRR. UPRR routinely dispatches third party freight and passenger trains on its lines without interference with UPRR’s efficiency.⁹ Thus regulation of ARM is not necessary to ensure that ARM’s operations do not negatively impact the efficiency of UPRR operations.

⁶ See Verified Statement of Rodney Doerr, attached hereto as Exhibit A, at 3 (“Doerr Verified Statement”).

⁷ See Verified Statement of Carl Atencio, attached hereto as Exhibit B, at 2–3 (“Atencio Verified Statement”).

⁸ Regulation of ARM’s transaction and planned service is not necessary to ensure public health. The BLET lists this RTP element, but then does not present any evidence or address it.

⁹ See Doerr Verified Statement at 2.

On overbreadth, BLET's effort to distinguish the cases relied upon by ARM must fail. Both cases¹⁰ were fully presented in prior petitions for exemption. Both decisions were predicated on the Board's mandate to grant exemptions to the maximum extent consistent with the ICCTA and based on well-settled Subtitle IV exemption precedent. Moreover, the fact that the relied-upon cases involved Amtrak employees represented by the BLET is not a valid basis to distinguish the cases from ARM's petition for exemption. As long as the statutory exemption criteria are met, the identity of the employer of the crew and the identity of the union representing the crew are not part of the STB's consideration.

Finally, BLET's concern that ARM might use a Subtitle IV exemption to construct a line of railroad, enter into operating agreements on the lines of other carriers or acquire a line of railroad from UPRR is misplaced. These actions would be beyond the scope of the transaction and planned service for which ARM seeks a Subtitle IV exemption. ARM fully expects the STB decision on the Petition to confirm that the exemption applies only to the operations as described in the Petition (i.e., passenger rail service provided using its crews on UPRR lines), and does not extend to any new activities, or new types of operations or services, that ARM may offer in the future or to any service offered in conjunction with any carrier other than UPRR. The STB included similar confirmatory language in the decisions granting the Subtitle IV exemptions in Pullman and Great Canadian Railtour.¹¹

¹⁰ The Pullman Sleeping Car Company, LLC—Petition For Exemption from 49 U.S.C. Subtitle IV, Finance Docket No. 35738 (STB served Feb. 5, 2015) (hereinafter, Pullman); Great Canadian Railtour Company Limited d/b/a Rocky Mountaineer – Petition for Exemption from 49 U.S.C. Subtitle IV, Finance Docket No. 35851 (STB served Jun. 2, 2015) (hereinafter, Great Canadian Railtour).

¹¹ Pullman, slip op. at 4 (“The exemption granted by this decision, however, applies only to Pullman's operations as described in its petition (i.e. passenger railcars attached to Amtrak trains providing passenger rail service), and does not extend to any new activities, or new types of

b. The BLET Fails to Present Any Argument or Evidence That Board Regulation of ARM's Agreement with UPRR and ARM's Planned Passenger Rail Excursion Service Is Necessary to Carry Out the Rail Transportation Policy

As noted in the Petition, the Board will exempt a transaction or service from regulation when: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The BLET does not challenge ARM's assertion (Petition at 4) that the transaction and planned service transaction are of limited scope and that regulation of the transaction and service is not necessary to protect shippers from the abuse of market power. The BLET's argument is that regulation to of the transaction and service necessary to carry out four elements of the RTP.

As is explained below, the BLET Opposition (1) fails to demonstrate that regulation of ARM's transaction and planned service is necessary to further any of the four relied-upon elements of the RTP and (2) fails to distinguish STB Subtitle IV exemptions granted in prior cases involving passenger rail excursion services within its jurisdiction.

i. Adequate Revenue - § 10101(3)

The BLET asserts that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to allow rail carriers to earn adequate revenues. BLET Opposition at 5.

operations or services, that Pullman may offer in the future or to any service offered in conjunction with any carrier other than Amtrak.”); Great Canadian Railtour, slip op. 5 at (“The exemption granted by this decision, however, applies only to Rocky Mountaineer’s operations as described in its petition (i.e. passenger rail service provided using Rocky Mountaineer’s locomotives and operated by Amtrak train and engine crews), and does not extend to any new activities, or new types of operations or services, that Rocky Mountaineer may offer in the future or to any service offered in conjunction with any carrier other than Amtrak.”).

In support, the BLET offers not a single word. It is unclear whether the BLET is concerned about UPRR revenues from the ARM service or ARM revenues; it is also unclear how BLET's revenue adequacy concern relates to its concession (in the sentence introducing its single reference to revenue adequacy) that RTP provisions concerning "comparison of rates to the cost of capital ... may not be relevant." BLET Opposition at 4. ARM will not speculate further. Suffice to say the BLET has not presented evidence or argument on the bare assertion that regulation of ARM's transaction and planned passenger rail service is necessary to allow rail carriers to earn adequate revenues.

ii. Public Health and Safety - § 10101(8)

The BLET asserts that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to ensure that transportation facilities and equipment are operated without detriment to the public health and safety. The BLET says the Board has a duty to ensure that ARM's operations are safe and that ARM does not negatively impact safe operations of UP. BLET Opposition at 5. True enough, but the BLET submitted no information or evidence on UPRR's safety record or on the safety record of ARM's rail operating affiliate, which has operated luxury passenger rail service in Canada for more than thirty years. In the absence of any evidence, the BLET has not demonstrated that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to ensure that transportation facilities and equipment are operated without detriment to the public health and safety.¹²

¹² See, e.g., Delmarva Central Railroad Company—Lease and Operation Exemption with Interchange Commitment—Norfolk Southern Railway Company, Finance Docket No. 36071, slip op. at 3 (STB served Mar. 8, 2017) ("The Board takes safety concerns seriously; however, SMART/TD's concerns here are vague and speculative and do not arise from any demonstrated shortcomings specific to DCR.").

ARM's passenger rail excursion will be subject to FRA regulation and ARM is actively engaged with the FRA on a new start compliance plan.¹³

iii. Honest and Efficient Management - § 10101(9)

The BLET asserts that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to encourage honest and efficient management of railroads. The BLET says the Board has a duty to ensure that ARM does not negatively impact efficient operations of UPRR. BLET Opposition at 5. BLET submitted no information or evidence suggesting that ARM would interfere in any way with the efficiency of UPRR operations. In the absence of any evidence, the BLET has not demonstrated that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to encourage honest and efficient management of railroads.¹⁴

UPRR, an experienced rail operator, hosts numerous intercity passenger, commuter rail and third party freight trains on its lines, without impacts on its overall efficiency.¹⁵

iv. Fair Wages and Safe & Suitable Working Conditions - § 10101(11)

The BLET asserts that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to encourage fair wages and safe and suitable working conditions. The

¹³ See Atencio Verified Statement at 2–3.

¹⁴ See, e.g., Norfolk and Western Railway Company—Trackage Rights Exemption—Norfolk Southern Railway Company, Finance Docket No. 32961, slip op. at 3 (STB served Aug, 22, 1997) (“Third, UTU’s reliance on the RTP is vague. It cites only elements (9) and (11) which provide, respectively, for encouraging honest and efficient management of railroads, and fair wages and safe and suitable working conditions in the railroad industry. UTU has not shown that those RTP elements would be undermined.”).

¹⁵ See Doerr Verified Statement at 2.

BLET notes that encouragement of fair wages and safe and suitable working conditions is part of the Board's mandate, applicable to ARM's planned operations. BLET Opposition at 5. ARM agrees that this is part of the Board's mandate and that the policy applies to consideration of ARM's Petition. But once again, the BLET submitted no information or evidence suggesting that Board regulation is necessary to ensure fair wages and safe and suitable working conditions and in the absence of any evidence, the BLET has not demonstrated that Board regulation of ARM's transaction and planned passenger rail excursion is necessary to encourage fair wages and safe and suitable working conditions.¹⁶

Importantly, ARM will be subject to the Railway Labor Act and the Railroad Retirement Act. Granting an exemption for ARM's planned passenger rail excursion will not alter application of either law. BLET acknowledges this. BLET Opposition at 2. BLET is *not* arguing that an STB exemption could alter the rights of workers under the RLA or the RRB. Instead, BLET argues that "[r]ejection of a blanket [Subtitle IV] exemption, and a grant of a more narrowly tailored exemption, would prevent any possible ambiguity" with respect to application of the RLA and RRA to ARM. BLET Opposition at 7. ARM disagrees with BLET's

¹⁶ See, e.g., Norfolk and Western Railway Company, supra note 15, and Middletown & New Jersey Railroad, LLC—Lease and Operation Exemption—Norfolk Southern Railway Company, Finance Docket No. 35412, slip op. at 8 (STV served Sept. 23, 2011) ("UTU-NY merely makes a conclusory statement in its stay request that the interchange commitment contains anticompetitive features that negatively impact several aspects of the RTP at 49 U.S.C. § 10101. UTU-NY does no more, however, than cite to the RTP; it does not explain how the interchange commitment would negatively impact development of a sound rail transportation system with effective competition, sound economic conditions, public health and safety, honest and efficient management railroads, or fair wages and safe and suitable working conditions in the railroad industry. Thus, UTU-NY has not presented adequate evidence to demonstrate that any of the aspects of the RTP highlighted by UTU-NY will be negatively impacted as a result of the interchange commitment involved in the proposed transaction, and thus its argument is insufficient to support a stay while the Board considers the petition to revoke.").

premise. The scope of an STB exemption cannot create ambiguity about the applicability of a statute where no ambiguity about the scope of a statute exists.

The BLET asserts that the BLET-UPRR collective bargaining agreement contains “scope rules providing exclusive rights to BLET represented locomotive engineers to operate trains on UP lines.” BLET Opposition at 2; Pontolillo Declaration at 3. This is not the case.¹⁷ The BLET-UPRR collective bargaining agreement does not give BLET represented locomotive engineers the right to run third party trains – like those of ARM -- on UPRR lines. Thus, ARM crewing of its trains for operation on UPRR lines as described in the Petition does not violate the BLET-UPRR collective bargaining agreement.¹⁸

v. The BLET Fails to Distinguish STB Subtitle IV Exemptions Granted in Prior Cases Involving Passenger Rail Excursion Services Within Its Jurisdiction

In the Petition, ARM explained that regulation of ARM’s planned acquisition and operations is not necessary to carry out the rail transportation policy; that granting the Subtitle IV exemption would give ARM “flexibility to change its rates, schedule or service frequency without regulatory constraints;” and that the exemption would foster sound economic conditions and encourage efficient management, consistent with 49 U.S.C. § 10101(5), (7), and (9). See Petition at 5. ARM relied upon the Board’s decisions in Pullman and Great Canadian Railtour

¹⁷ See Doerr Verified Statement at 3.

¹⁸ The BLET also notes that Amtrak has statutory rights to operate intercity passenger and regional passenger trains, that the BLET represents Amtrak engineers and that engineers employed by Amtrak have historically operated trains for excursion operators similar to ARM. BLET Opposition at 2–3; Pontolillo Declaration at 3. The ARM operations do not implicate Amtrak’s statutory rights and the ARM trains will not be Amtrak trains, so none of these points are relevant to whether STB regulation of ARM’s transaction and planned passenger rail excursion service is necessary to encourage fair wages and safe and suitable working conditions.

that cited the benefits of flexibility and efficiency that Subtitle IV exemptions allowed similar tourism operations. See Great Canadian Railtour, slip op. at 5 and Pullman, slip op. at 4.¹⁹

The BLET attempts to distinguish the cases relied upon by ARM, but the offered distinctions are unpersuasive. The BLET notes that Pullman and Great Canadian Railtour were uncontested and argues that the “propriety of a blanket exemption” was not presented or addressed in either case. BLET Opposition at 8. This is factually incorrect and unpersuasive. The propriety of a Subtitle IV exemption was plead and affirmatively addressed by the STB in both cases.²⁰ Moreover, in exemption petition cases, the absence of opposition is not a reason to diminish the precedential value of the Board’s decisions.

The BLET then argues that Pullman and Great Canadian Railtour are distinguishable because “petitioners were merely attaching their rail cars to Amtrak trains that were operated by Amtrak engineers represented by the BLET, whereas ARM will actually operate trains.” BLET Opposition at 8. In Great Canadian Railtour, Amtrak provided crews and locomotives, but the trains were Great Canadian Railtour trains rather than Amtrak trains.²¹ In any case, Pullman and

¹⁹ The BLET incorrectly says ARM relies on American Orient Express Ry. Co. LLC–Petition for Declaratory Order, F.D. 34502 (STB Dec. 29, 2005) (hereinafter, “American Orient Express”) to support the Subtitle IV exemption in this case. BLET Opposition at 8. ARM discussed American Orient Express only with respect to the uncontested point that STB has jurisdiction over ARM (see Petition at 4–5). In American Orient Express, the STB granted an exemption from 49 USC § 10901 *sua sponte* after it determined that AOE was subject to STB jurisdiction. It was not a Subtitle IV exemption case and therefore the BLET’s discussion of American Orient Express on pages 8–9 of the BLET Opposition is misplaced.

²⁰ See Petition for Exemption, Great Canadian Railtour Company Limited–Finance Docket 35851–Petition for Exemption from 49 U.S.C. Subtitle IV, (Oct. 31, 2014) (hereinafter, “Great Canadian Railtour Petition”) at 16–17 and Great Canadian Railtour, slip op. at 4–6; Petition for Exemption, The Pullman Sleeping Car Company LLC – Petition for Exemption From 49 U.S.C. Subtitle IV (Feb. 20, 2014) (hereinafter, “Pullman Petition”) at 10–15 and Pullman, slip op. at 3–4.

²¹ Great Canadian Railtour Petition at 5–6.

Great Canadian Railtour were not appropriate cases for blanket exemptions *because* the crews were Amtrak employees represented by the BLET. As long as the statutory exemption criteria are met, the identity of the employer of the crew and the identity of the union representing the crew are not part of the STB's consideration. The circumstances where a Subtitle IV exemption is appropriate have been discussed in numerous other cases, is well-settled law and sound policy.²²

vi. The STB Does Not Need To Regulate ARM's Service In Order To Further The RTP

In a slightly different vein, and without any linkage to the interest of its members as railroad employees or the section 10502 exemption criteria, the BLET argues that "ARM should be subject to the basic obligation to serve like customers similarly, and to provide adequate service to them." BLET Opposition at 6–7. Like the common carriers in Pullman and Great Canadian Railtour, ARM will be a "niche" common carrier, providing luxury passenger services.²³ In Pullman and Great Canadian Railtour, the STB addressed customers issues as a section 10502(a)(2) issue. Pullman, slip op. at 4; Great Canadian Railtour, slip op. at 5. The

²² Even beyond Great Canadian Railtour and Pullman, the circumstances where these exemptions are appropriate have been discussed in numerous other cases. See, e.g. Metro North Commuter Railroad Company—Exemption From 49 U.S.C. Subtitle IV, Docket No. 32639 (Sub-No. 1) (ICC served Jan. 13, 1995) (in which a commuter railroad purchased 41.1 miles of track and the provider of freight service would not change); Ormet Railroad Corporation – Exemption From 49 U.S.C. Subtitle IV, Finance Docket No. 32908 (STB served Oct. 16, 1996) (in which a railroad bought a 12.2 mile stub-end rail line to provide freight service to its affiliates); Rutherford Railroad Development Corporation – Exemption from 49 U.S.C. Subtitle IV, Finance Docket No. 31623 (ICC served May 29, 1991) (in which a non-profit purchased a rail line to preserve local rail service and leased the track to a railroad to that would assume common carrier responsibilities).

²³ American Orient Express, slip op. at 5 ("A common carrier need not hold itself out to serve all business at all times; rather, it may establish a business niche, as AOERC has done here."); Steere Tank Lines, Inc. v. ICC, 675 F.2d 103, 105 (5th Cir. 1982).

BLET does not challenge the Petition on section 10502(a)(2) grounds. In any case, the STB should exempt ARM from the common carrier service requirements of the ICCTA.

c. The Actions BLET Says ARM Could Take With A Subtitle IV Exemption Are Beyond The Scope Of The Transaction And Planned Passenger Service For Which the Subtitle IV Exemption Is Sought

The BLET argues that if ARM's Subtitle IV exemption is granted ARM might choose to construct a rail line for its own cross other carriers (BLET Opposition at 6); with the blanket exemption in hand might use it to enter into additional operating agreements over the lines of another carrier (BLET Opposition at 7); or ARM or its corporate parent might acquire a line of railroad from UPRR (BLET Opposition at 7).

These concerns are misplaced, because all of these activities and transactions are beyond the scope of the transaction and the planned service for which the Subtitle IV exemption is sought.²⁴ In Great Canadian Railtour, the petitioner (ARM's affiliate) sought an exemption from "all common carrier obligations imposed under the ICCTA."²⁵ STB granted the exemption from Subtitle IV but noted that it applied "only to [petitioner's] operations as described in its petition ... and does not extend to any new activities, or new types of operations or services, that [petitioner] may offer in the future." Great Canadian Railtour, slip op. at 5. ARM has sought a blanket Subtitle IV exemption for the transaction and the planned service, but fully expects the

²⁴ In particular, the Subtitle IV exemption sought does not apply to ARM's corporate parent or affiliates. See Verified Notice of Exemption, Armstrong Hospitality Group, Ltd., Invictus Maneo Ltd., Oceaneer Investments Ltd., No. 245 Dynamic Endeavors Inc., The PRBA Alter Ego Trust, and Peter R. B. Armstrong – Continuance in Control, Finance Docket No. 36469 (Feb. 3, 2021). Cf. Pullman Petition.

²⁵ Great Canadian Railtour Petition at 3; 14–15. The same pattern was followed in Pullman, where petition sought "blanket authority" from Subtitle IV" and exemption from "all common carrier obligations imposed under the ICCTA." Pullman Petition at 2, 3. The STB granted the Subtitle IV exemption, but it did not apply new activities, or new types of operations or services, that Pullman may offer in the future." Pullman, slip op. at 4.

STB decision on the petition to confirm that the exemption applies only to the operations as described in the Petition (i.e. passenger rail service provided using its crews on UPRR lines), and does not extend to any new activities, or new types of operations or services, that ARM may offer in the future or to any service offered in conjunction with any carrier other than UPRR.

III. Conclusion

The BLET fails to present any argument or evidence that would justify denial or partial denial of ARM's Petition.

Respectfully submitted,



Kevin M. Sheys
Carolyn G. Kraska
Hogan Lovells US LLP
555 13th Street NW
Washington, D.C. 20004

Counsel for American Rocky Mountaineer, LLC

Dated: April 5, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36468

AMERICAN ROCKY MOUNTAINEER, LLC

PETITION FOR EXEMPTION FROM
49 U.S.C. SUBTITLE IV

EXHIBIT A

Verified Statement of Mr. Rodney Doerr

VERIFIED STATEMENT OF RODNEY DOERR

My name is Rodney Doerr. I am the Vice President, Labor Relations of Union Pacific Railroad Company (“UPRR”). The purpose of this Statement is (1) to respond to a concern expressed by the Brotherhood of Locomotive Engineers and Trainmen (“BLET”) about the impact of American Rocky Mountaineer (“ARM”) trains on efficient UPRR operations and (2) to clarify a statement made in the Declaration of Thomas Pontolillo, the BLET’s Director of Research and the Assistant to the BLET National President.

A copy of my C.V. is attached to this Verified Statement as Attachment 1.

Under an agreement to be entered into with UPRR, ARM will operate seasonal passenger rail excursion trains on UPRR lines between Denver, Colorado and Moab, Utah. UPRR will provide track access and dispatch the ARM trains, which will be operated by ARM crews using leased UPRR power.

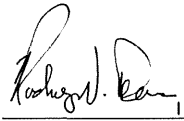
On page 5 of its Opposition filing, the BLET expresses concern that the ARM trains could negatively impact the efficient operations of UPRR or impede efficient UPRR operations. The BLET does not explain the reason for its concern or provide any examples of other non-UPRR trains impeding UPRR freight trains, so there is nothing specific to which I can respond.

However, UPRR safely and efficiently dispatches hundreds of third party freight trains, Amtrak and commuter trains across its system every day. UPRR is working closely with ARM to ensure the safe introduction of ARM trains on UPRR lines between

Denver, Colorado and Moab, Utah, without impeding efficient UPRR operations. In Canada, ARM d/b/a Rocky Mountaineer, which operates passenger trains over Canadian Pacific and Canadian National railway mainlines, has an excellent safety record and is working with UPRR to train ARM's operating employees to be qualified to the same standards as UPRR's employees.

On page 3, Mr. Pontolillo's Declaration says that the BLET-UPRR collective bargaining agreement gives "exclusive rights to BLET-represented locomotive engineers to operate trains on UPRR lines." This is not the case. UPRR collective bargaining agreements do not extend exclusive rights to passenger trains hosted on UPRR lines. UPRR is neither the owner nor operator of the ARM service/trains. Further, no UPRR employees will operate ARM trains. Therefore, this ARM service does not fall within the scope of UPRR's collective bargaining agreements.

I, Rodney Doerr, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on April 2 , 2021.



Rodney Doerr

Rod Doerr
VP Labor Relations
Workforce Resources Department



Years of Service: 29

Other Department Experience: **Supply, Operations Analysis,
Engineering, Mechanical,
Transportation, Safety**



Non UP Work Experience: **Burlington Northern Railroad,
Montana Rail Link (MRL),
Generation II Locomotives (GenII)**

Education: **MBA – Arizona State University (1992)
BA – Hamline University (1988)**

Leadership Development: **Management Development Program (1992-93)**

Rod Doerr was named Vice President Labor Relations in 2019. He is responsible for developing, negotiating and implementing labor strategies associated with Union Pacific's (UP) 14 Unionized Labor Organizations representing 85% of the company's 32,000 employees serving the railroad's 23-state network spanning the western two-thirds of the United States. In this role, Doerr is UP's designee on the National Carrier's Conference Committee member responsible for national rail bargaining that establishes labor rates and Health and Welfare coverage.

Prior to his current role, in 2015, Doerr was named Vice President & Chief Safety Officer, responsible for developing and implementing safety-related, risk-reduction programs for the company's employees, customers and communities served throughout UP's network. During this period, UP reached its best safety performance during its history and set several industry benchmarks.

Rod previously held various Operating Department roles in Minnesota, Missouri, Kansas and Nebraska, along with assignments in the Mechanical, Engineering, Supply and Operations Analysis departments. Most recently, Doerr served as General Superintendent-Transportation Services for Southern California. He was responsible for safe railroad operations with service to 600-plus customers, including the Ports of Long Beach and Los Angeles, along with service design and maintenance involving track infrastructure, locomotives and railcars.

Doerr joined the railroad in 1992 as a management trainee in the Operating Department.

He and wife Jan have three sons.

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AMERICAN ROCKY MOUNTAINEER, LLC

PETITION FOR EXEMPTION FROM
49 U.S.C. SUBTITLE IV

EXHIBIT B

Verified Statement of Mr. Carl Atencio

VERIFIED STATEMENT OF CARL ATENCIO

My name is Carl Atencio. I am the Superintendent, Operations & Mechanical for American Rocky Mountaineer LLC. (“ARM”). The purpose of this Statement is to summarize steps ARM has taken and will take under my direction to ensure compliance with all Federal Railroad Administration (“FRA”) requirements before operation of our first pre-revenue service test trains.

I joined ARM on February 1, 2021. Before joining ARM, I was the Chief Mechanical Officer of Denver Transit Operators (“DTO”), which is the private contract operator of many of the commuter rail lines of the Denver Regional Transit District. I served as DTO’s Chief Mechanical Officer for approximately six (6) years. Before that, I served for approximately six (6) years in various railroad equipment repair and maintenance roles for DTO and two short line railroads. I have served as the Chair of the American Public Transportation Association (“APTA”) Rolling Stock Technical Equipment Forum since 2019. I am a member of the APTA Passenger Rail Equipment Safety Standards Committee. A copy of my CV is attached to this Verified Statement as Attachment 1.

As the Superintendent, Operations & Mechanical for ARM, my duties include coordination with FRA to ensure that ARM is in compliance with all of the railroad safety requirements administered by FRA before operation of our first pre-revenue service test trains, scheduled for June of 2021.

FRA uses a detailed “New Starts” compliance matrix with all new railroads (including intercity, commuter and scenic railroads) subject to FRA regulation. FRA provided ARM with the ARM compliance matrix on February 1, 2021. Since February 1, FRA and ARM have been holding periodic conference calls (currently bi-weekly) to discuss ARM’s progress towards

achievement of key elements and deliverables on the compliance matrix. Union Pacific Railroad Company (“UPRR”) personnel involved in the introduction of ARM trains to UPRR’s lines participate in most of these conference calls. These calls are a forum for general question and answer sessions among FRA, ARM and UPRR. ARM and UPRR also have separate, frequent calls to discuss and address other safety and safety-related operational issues.

Of the approximately fifty-three (53) items on the FRA compliance matrix, 16 items have been “closed” by FRA, indicating that ARM has completed all pre-requisitions to pre-revenue service; 13 items have been completed by ARM and have been issued to FRA for review and closure; and 24 items are being worked on by ARM for later submission or review by FRA. A copy of the current ARM compliance matrix (showing ARM’s progress to date) is attached to the Statement as Attachment 2.

ARM has received authorization from UPRR to adopt the General Code of Operating Rules and is coordinating with UPRR on adoption of other UPRR Rule Book documents, including UPRR’s Timetables, Special Instructions, Safety Rules, and Air Brake & Train Handling Rules.

I, Carl Atencio, declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on
April 2, 2021.

Carl Atencio

Carl Atencio

Carl Atencio

Superintendent, Operations & Mechanical – American Rocky Mountaineer

10965 W 77th Ave

Arvada, CO 80005

catencio@rockymountaineer.com

719.580.0801 (Cell)

EDUCATION

Diesel & Automotive Certification 2005 – Trinidad State Junior College.

Diesel & Automotive Certification, 2003 – Denver Automotive and Diesel College

AWARDS & CERTIFICATIONS

- Qualified Mechanical Person per Title 49 CFR 238
- Servicing Operator Qualification (Hostler)
- CPR and First Aid certified
- Class B CDL

PROFESSIONAL ASSOCIATIONS

- APTA- Rolling Stock Technical Equipment Forum- Chair- September 2019 to Present
- APTA- Passenger Rail Equipment Safety Standards Committee- Member- Present
- APTA- Emerging Leaders Program Class of 2020
- Latinos in Transit-Member-Present

EXPERIENCE

02/17/15-1/31/2021

Denver Transit Operators

Denver, CO

Chief Mechanical Officer

- Oversee and coordinate the maintenance and operations of the RTDC Commuter Rail system including maintenance strategies and modifications of the rolling stock equipment, procurement for special projects; ensure adherence to all regulations of the commuter trains including the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), and the American Public Transportation Association (APTA); planning the future needs of the commuter trains, and overhaul requirements; oversee and ensure contract adherence and requirements for fleet maintenance.
- Oversee and coordinate the maintenance and operations of the non-revenue vehicles fleet maintenance program and warehouse operations for the commuter rail system. Monitor and administer contract oversight of assigned contracts for equipment and maintenance of non-revenue vehicles to ensure compliance with contract terms; administer contract changes; investigate contract issues/changes and solve as appropriate; review and oversight of material inventory and control

- Serve as a member of the Configuration Control Board and actively make appropriate recommendations to support system changes and developments.
- Participate in the development and implementation of goals, objectives, policies, priorities and budgets for assigned projects, services and functional area within the commuter system; and make recommendations and forecasts for future funding needed for staffing, equipment, materials, and supplies.

07/14/14-02/13/15

Regional Transportation District

Denver, CO

Electro-Mechanical Technician

- Perform routine outlined maintenance inspections on Siemens SD100 and SD160 Light Rail Vehicles
- Repair and diagnose various hydraulic, mechanical, electrical and pneumatic systems on LRV's

06/24/10-06/30/14

Saratoga & North Creek Railway

North Creek, NY

Mechanical Superintendent

- Repair, inspect, maintain, and diagnose problems on diesel locomotives, passenger rail cars, and freight rail cars
- Managed shop and crew of 6 mechanics to maintain a Title 49 CFR 238 passenger railroad to FRA requirements and Title 49 CFR 238 regulations
- Created work estimates of time and manpower on various projects and drafted, implemented, and controlled budget reports, schedules, and various projects
- Knowledgeable in office programs including Power Point, Excel, Word, and Outlook
- Trained new conductors and helped other railroads with Part 232 Power Brake Law air brake training
- Successfully obtained QMP certification (Qualified Mechanical Person) in SCT, Interior and Exterior Inspections, and Brake Tests

07/25/2009-06/20/10

San Luis & Rio Grande Railroad

Alamosa, CO

Rail Equipment Mechanic

- Repair, inspect, and diagnose problems on diesel locomotives, passenger cars, freight cars, and steam locomotives
- Assisted with the off-season repair and summer maintenance of SLRG #18 steam locomotive
- Attended Conductor Ground School to cross train as a spare conductor and passed all applicable tests
- Successfully completed numerous safety and operation classes including GCOR, Hazmat, T Rules, Air Brake and Train Handling, and I.E.D's

American Rocky Mountaineer Excursion Railroad New Starts Deliverables Matrix															
Excursion-Tourist Railroad:		American Rocky Mountaineer (RMRX)								Passenger Rail Team:	Mike Ramsey (Lead)				
Host Railroad:		Union Pacific RR								SMT Team:	SMT 7 - Mark Gallegos (Support)				
Initial Start-Up Date (Testing):		July 2021?									CLOSED				
Revenue Service Date:		15-Aug-21									PENDING				
											CRITICAL				
Note - This list is an informal "compliance tool" so as to assist the railroad with key deliverables and compliance verification needed prior to start-up of the service. All other applicable regulations as outlined in 49 CFR part 200-299 need to be part of the railroads overall compliance.											49 CFR Part 200-299		Last Updated with FRA: 3/23/2021		
Program Requirements							Time Periods				Program Status				
Discipline	Item	Regulation	Part	Summary (Note: Refer to 49CFR for entire rule...)	Deliverable Type	Approval Required (y/n)	Date Required	RR Person(s) Responsible	FRA Person(s) Responsible	Deadline Submission Date	Target Deliver Date to FRA	RR Status	Date Closed	Status	Comments
OP	1	Railroad Operating Rules	217.7(a)	File with the FRA Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations. Further requirements are detailed in Parts 217 & 218	Submittal	No	Prior to start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. GCOR acceptance letter and RMRX rulebook emailed to CFR217opsrule@dot.gov on 3/10/2021
OP	2	Railroad Operating Rules	217.7(c)	Keep one copy of its code of operating rules, timetables, and timetable special instructions and any amendments at System Headquarters	In place / On hand	No	Must be in place at start-up	CARL	N/A	4/15/21	4/15/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Submitted rules will be located at ARM Office (3880 Wynkoop St Denver, CO 80216) and Kamloops, BC Operation Centre
OP	3	Railroad Operating Rules	217.9(c)	Written program of operational tests and inspection	In place / On hand	No	At least 30 days prior to start-up	CARL / Mike M	Mark Gallegos/Mike Ramsey	4/01/21	5/01/21	Open	Open	Open	
OP	4	Railroad Operating Rules/Operating Practices	217.11 218.95	Program of instruction/training/examination on Operating Rules.	In place / On hand	No	At least 30 days prior to start-up	CARL/Mike M	Mark Gallegos/Mike Ramsey	4/01/21	5/01/21	Open	Open	Open	
OP	5	Railroad Operating Practices	218.21	Blue Signal Protection	In place / On hand	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Blue Signal Rules covered in RMRX Rulebook GCOR 5.13 (3/10/2021)
OP	6	Railroad Operating Practices	218.97(b)(1)	Adopt & Implement written good faith challenge procedures & instruction. Instruction to begin on the date of operations	In place / On hand	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Good Faith Challenge Rule covered in RMRX Rulebook GCOR 1.4.1 (3/10/2021)
OP	7	Railroad Operating Practices	218.37(a)	Each railroad must have in effect an operating rule for flag protection...	In place / On hand	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Flag Protection rule covered in RMRX Rulebook GCOR 6.19 (3/10/2021)
OP	8	Railroad Communications	220.21(b)	Each railroad shall retain one copy of its current operating rules with respect to radio communications	In place / On hand	No	At least 30 days prior to start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/2021	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Radio & Communication Rules covered in RMRX Rulebook GCOR 2.0 (3/10/2021)
OP	9	Railroad Communications	220.23	Railroad to designate where radio base stations are installed, where wayside stations may be contacted, and the appropriate radio channels used by these stations in connection with railroad operations by publishing them in a timetable or special instruction	In place / On hand	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Designation of radio channels covered in RMRX Rulebook, UPRR Denver & Salt Lake City Timetables (3/10/2021)
OP	10	Railroad Communications	220.302	Each railroad shall adopt operating rules that implement the requirements of Subpart C - Electronic Devices	In place / On hand	No	Must be in place prior to pre-revenue testing	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Electronic Devices Rule covered in RMRX Rulebook GCOR 2.21 (3/10/2021)
OP	11	Railroad Communications	220.313(a)	Each railroad shall maintain a written program of instruction and examination implementing the requirements of Subpart C - Electronic Devices	In place / On hand	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Open	Open	Open	Will be part of GCOR training per 217.11
OP	12	Railroad Communications	220.315(a)	The railroad's program of operational tests and inspections shall specifically include a minimum number of tests for electronic devices...	In place / On hand	No	Must be in place at start-up	CARL/ MIKE M	Mark Gallegos/Mike Ramsey	4/01/21	5/01/21	Open	Open	Open	
OP	13	Railroad Accident/Incident Reporting	225.11	Accident/incident reporting requirements (requirements detailed throughout Part 225)	Submittal	No	Within 30 days after the month in which the accident/incident occurred	Michelle P/Mike M.	Michael Wissman	8/15/21	8/15/21	Pending	Open	Pending	Acceptance of submitted Internal Control Plan will cover how we will comply with Accident/Incident reporting
OP	14	Railroad Accident/Incident Reporting	225.25(a)	Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses o	In place / On hand	No	Varies	Michelle P/Mike M.	Michael Wissman	5/01/21	5/15/21	Pending	Open	Pending	CA sent email to MR/MG on 3.19.21 to review completed Internal Control Plan for compliance.
OP	15	Railroad Accident/Incident Reporting	225.25(h)	Railroad to develop a form for listing all injuries and occupational illnesses monthly...	In place / On hand	No	Within 30 days after the month in which the accident/incident occurred	Michelle P/Mike M.	Michael Wissman	5/01/21	5/15/21	Pending	Open	Pending	CA sent email to MR/MG on 3.19.21 to review completed Internal Control Plan for compliance.
OP	16	Railroad Accident/Incident Reporting	225.33	Adopt & comply with a written Internal Control Plan maintained at office of railroad reporting officer	In place / On hand	No	Must be in place at start-up	Michelle P/Mike M.	Michael Wissman	5/01/21	5/15/21	Pending	Open	Pending	CA sent email to MR/MG on 3.19.21 to review completed Internal Control Plan for compliance.
OP	17	Drug & Alcohol	40.25	Background checks completed on any covered employee before entering covered service	In place / On hand	No	Must be in place at start-up	Amy	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	18	Drug & Alcohol	219.111(a)	Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA.	In place / On hand	No	Must be in place at start-up	Amy	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	

American Rocky Mountaineer Excursion Railroad New Starts Deliverables Matrix															
Excursion-Tourist Railroad:		American Rocky Mountaineer (RMRX)							Passenger Rail Team:		Mike Ramsey (Lead)				
Host Railroad:		Union Pacific RR							SMT Team:		SMT 7 - Mark Gallegos (Support)				
Initial Start-Up Date (Testing):		July 2021?									CLOSED				
Revenue Service Date:		15-Aug-21									PENDING				
											CRITICAL				
Note - This list is an informal "compliance tool" so as to assist the railroad with key deliverables and compliance verification needed prior to start-up of the service. All other applicable regulations as outlined in 49 CFR part 200-299 need to be part of the railroads overall compliance.									49 CFR Part 200-299		Last Updated with FRA: 3/23/2021				
Program Requirements							Time Periods					Program Status			
Discipline	Item	Regulation	Part	Summary (Note: Refer to 49CFR for entire rule...)	Deliverable Type	Approval Required (y/n)	Date Required	RR Person(s) Responsible	FRA Person(s) Responsible	Deadline Submission Date	Target Deliver Date to FRA	RR Status	Date Closed	Status	Comments
OP	19	Drug & Alcohol	219.23(d)	Each railroad must provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements.	In place / On hand	No	Must be in place at start-up	Amy	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	20	Drug & Alcohol	219.205(c)(2) ↓	Post-accident testing kits (Tox Box)	In place / On hand	No	Must be in place prior to commencement of testing	CARL	Sam Noe	5/01/21	05-15-2021	Open	Open	Open	
OP	21	Drug & Alcohol	219 - Subpart E	Compliant policies in place for the identification of troubled employees.	In place / On hand	No	Must be in place prior to commencement of testing		Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	22	Drug & Alcohol	219.401(b)	Railroad to adopt/publish/implement policies relating to the prevention of the use of alcohol and drugs & make available for inspection by FRA	In place / On hand	No	Must be in place at start-up	AMY	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	23	Drug & Alcohol	219 - Subpart E	Pre-employment negatives for any covered employee before they are allowed to perform covered service	In place / On hand	No	Must be in place before first performance of safety-sensitive functions	AMY	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	24	Drug & Alcohol	219.607(a)	Must submit to FRA for approval a Random Alcohol Testing Program	Submittal	Yes	At least 30 days prior to start-up	AMY	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	25	Drug & Alcohol	219.601(a)	Random plan approved by FRA as well as the implementation tools operational so employees know they are subject to selection and testing	Submittal	Yes	30 Days Prior to Start-up	Amy	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	26	Drug & Alcohol	219.607(c)(1) ↓	The railroad must publish to each of its covered employees, individually, a written notice that the employee will be subject to random alcohol testing under this part.	In place / On hand	No	45 Days Prior to commencement of testing program	AMY	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	27	Drug & Alcohol	219.607(c)(2) ↓	A railroad commencing operations must submit a random testing program	Submittal	Yes	60 days after program implementation	Amy	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	28	Drug & Alcohol	219	Support systems hired, qualified and prepared to begin operations on day one to cover random selections, collections (breath and urine), SAP, MRO, and laboratory	In place / On hand	No	Must be in place at start-up	AMY	Sam Noe	3/31/21	05-15-2021	Open	Open	Open	
OP	29	Hours of Service	228.11	Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record, either manually or electronically, concerning the hours of duty of each employee.	In place / On hand	No	Must be in place at start of testing	CARL / SEAN	Billy Smith		05-15-2021	Pending		Pending	HOS Training presentation completed also. Completed 2/17/21. CA sent email to MR/MG on 3.19.21 with submission of HOS report and training presentation for review.
OP	30	Hours of Service	228.17	Each carrier shall keep, for each dispatching district, a record of train movements made under the direction and control of a dispatcher who uses telegraph, telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders pertaining to train movements.	In place / On hand	No	Must be in place at start of testing	CARL	Billy Smith	3/05/21	3/31/21	Closed	3/03/21	Closed	Rec'd email on 3.3.21 from Mike R. confirming this is a UP responsibility and will be completed in Omaha RTC
OP	31	Hours of Service	228.19	Each railroad, or a contractor or a subcontractor of a railroad, shall report to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, Washington, DC 20590, each instance of excess service listed in paragraph	Submittal	No	Within 30 days after the calendar month in which the instance occurs	CARL	Billy Smith		07-01-2021	Pending		Pending	Revised ARM GOI to include instructions regarding compliance to this part. CA sent updated GOI to MR 3/24/2021
OP	32	Hours of Service	228.201	Electronic record keeping system requirements	If Applicable	If Applicable	Varies	CARL	Billy Smith			Not Applicable	2/15/21	Closed	Not applicable to ARM
OP	33	Hours of Service	228.207	A railroad, or a contractor or subcontractor to a railroad, shall provide its train employees, signal employees, and dispatching service employees and its supervisors of these employees with initial training and refresher training	If Applicable	If Applicable	Varies	CARL	Billy Smith			Not Applicable	2/15/21	Closed	Not applicable to ARM
OP	34	Hours of Service	228.407(b)	Submissions of certain work schedules and any fatigue mitigation plans and determinations of operational necessity or declarations;	Submittal	Yes	Must be in place at start-up					Closed	3/18/21	Closed	Sent email on 2.17.2021 of proposed work schedule to Mike Ramsey for analysis. Received email from MR on 3/18/21 stating submitted crew schedule ran through analysis with no exceptions. CA sent email to Rachel Grice on 3/18/21 per 22.407(b)(2)
OP	35	Hours of Service	228.407(c)(1) ↓	If a railroad subject to this subpart wishes to use a model of human performance and fatigue, not previously approved by FRA, for the purpose of making part or all of the analysis required by paragraph (a) or (d) of this section, the railroad shall submit the model and evidence in support of its scientific validation, for the approval of the Associate Administrator.	If Applicable	If Applicable	Varies	N/A????	Billy Smith			Not Applicable	2/15/21	Closed	Not applicable to ARM
OP	36	Hours of Service	228.411(c)	A railroad shall maintain a record of each employee provided training in compliance with this section and shall retain these records for three years.	In place / On hand	No	Must be in place at start-up	CARL	Billy Smith		05-01-2021	Pending		Pending	HOS Training presentation completed also. Completed 2/17/21. CA sent email to MR/MG on 3.19.21 with submission of HOS report and training presentation for review.
OP	37	Locomotive Engineer Certification	240.101(b)	Written program approved by FRA for certifying the qualifications of locomotive engineers	In place / On hand	No	Prior to start-up	CARL/PTSI			05-15-2021	Open	Open	Open	
OP	38	Locomotive Engineer Certification	240.103(a)	Submission of written certification program to FRA	Submittal	Yes	At least 60 days prior to commencing passenger operations	CARL/PTSI			05-01-2021	Open	Open	Open	
OP	39	Locomotive Engineer Certification	240.201(a) and (b)	Railroad to designate in writing persons deemed qualified as DSLE's, Locomotive Engineers, and issue certificates	In place / On hand	No	Must be in place at start-up	CARL / MOP			05-15-2021	Open	Open	Open	
OP	40	Locomotive Engineer Certification	240.303(a)	Program to monitor the conduct of engineers	In place / On hand	No	At least 60 days prior to commencing passenger operations	CARL / Mike M			05-01-2021	Open	Open	Open	

Exhibit B, Attachment 2

American Rocky Mountaineer Excursion Railroad New Starts Deliverables Matrix																
Excursion-Tourist Railroad:		American Rocky Mountaineer (RMRX)									Passenger Rail Team:		Mike Ramsey (Lead)			
Host Railroad: Union Pacific RR											SMT Team:		SMT 7 - Mark Gallegos (Support)			
Initial Start-Up Date (Testing):											July 2021?		CLOSED			
Revenue Service Date:											15-Aug-21		PENDING			
													CRITICAL			
Note - This list is an informal "compliance tool" so as to assist the railroad with key deliverables and compliance verification needed prior to start-up of the service. All other applicable regulations as outlined in 49 CFR part 200-299 need to be part of the railroads overall compliance.											49 CFR Part 200-299		Last Updated with FRA: 3/23/2021			
Program Requirements							Time Periods					Program Status				
Discipline	Item	Regulation	Part	Summary (Note: Refer to 49CFR for entire rule...)	Deliverable Type	Approval Required (y/n)	Date Required	RR Person(s) Responsible	FRA Person(s) Responsible	Deadline Submission Date	Target Deliver Date to FRA	RR Status	Date Closed	Status	Comments	
OP	41	Conductor Certification	242.103	Conductor Certification Program	Submittal	Yes	At least 60 days prior to commencing passenger operations	CARL/PTSI			05-15-2021	Open	Open	Open		
Misc.	42	Training, Qual., & Oversight	Part 243 Subpart B	Training Program components and approval process	Submittal	Yes	Jan. 1, 2018 > 400k annual work hours Jan. 1, 2019 < 400k annual work hours Or, prior to operations	CARL		4/15/21	5/01/21	Open	Open	Open		
Crossing	43	Use of Loco Horns	222.27	Sounding of locomotive horns at pedestrian grade crossings	If Applicable	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey	3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Horn Sounding Requirements covered in RMRX Rulebook GCOR 5.8 (3/10/2021)	
STC	44	Grade Crossing Safety	234.101	Railroad to issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any grade sing warning system malfunction	In place / On hand	No	Must be in place at start-up	CARL		3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Grade sing system malfunction reporting requirements covered in RMRX Rulebook GCOR 6.32 (3/10/2021)	
STC	45	Signal & Train Control Systems Rules	236.23(e)	The names, indications, and aspects of roadway and cab signals shall be defined in the carrier's Operating Rule Book or Special Instructions. Modifications shall be filed with the FRA within 30 days after such modifications become effective.	Submittal	No	Must be in place at start-up	CARL		3/15/21	3/31/21	Closed	3/10/21	Closed	Carl sent email to MR/MG on 3/9/21 containing RMRX rulebook. Identification of roadway and cab signals covered in RMRX Rulebook, UPRR Denver & Salt Lake City Timetables (3/10/2021)	
MP&E	46	Locomotive Safety Standards	229.21(c)	Subpart B— Locomotive Daily Periodic Inspections and Tests	In place / On hand	No	Prior to pre-revenue testing	CARL			07-01-2021	Open	Open	Open		
MP&E	47	Locomotive Safety Standards	229.119(f) 229.119(g)	Fusee/ Torpedo Container Cab door securement	If Applicable	If Applicable	Must be in place at start-up	CARL			07-01-2021	Open	Open	Open		
MP&E	48	Passenger Car Window Glazing	223.15 (a)	End Facing Glazing (Type 1) Requirements for Existing Passenger Cars	Compliance	No	Must be in place at start-up	CRISTINA/CARL	Mark Gallegos/Mike Ramsey			Pending	Pending	Pending	Carl sent confirmation email of compliance to FRA on 2.19.21 FRA to inspect RMRX equipment upon arrival in Denver for verification of compliance	
MP&E	49	Passenger Car Window Glazing	223.15 (b)	Side Facing Glazing (Type 2) Requirements for Existing Passenger Cars	Compliance	No	Must be in place at start-up	CRISTINA/CARL	Mark Gallegos/Mike Ramsey			Pending	Pending	Pending	Carl sent confirmation email of compliance to FRA on 2.19.21 FRA to inspect RMRX equipment upon arrival in Denver for verification of compliance	
MP&E	50	Passenger Car Window Glazing	223.15 (c)	Glazing Requirements and Emeregency Windows	Compliance	No	Must be in place at start-up	CRISTINA/CARL	Mark Gallegos/Mike Ramsey			Pending	Pending	Pending	Carl sent confirmation email of compliance to FRA on 2.19.21 FRA to inspect RMRX equipment upon arrival in Denver for verification of compliance	
MP&E	51	Passenger Car Window Glazing	223.15 (d)	Window Replacement	Compliance	No	Must be in place at start-up	CARL	Mark Gallegos/Mike Ramsey			Pending	Pending	Pending	Carl sent confirmation email of compliance to FRA on 2.19.21 FRA to inspect RMRX equipment upon arrival in Denver for verification of compliance	
MP&E	52	Safety Appliance Standards	231	Safety Appliance for Passenger Cars	Compliance	No	Must be in place at start-up	RICK REIMER	Mark Gallegos/Mike Ramsey			Pending	Pending	Pending	FRA to inspect RMRX equipment upon arrival in Denver for verification of compliance	
MP&E	53	Brake Safety Standards	232 (Subpart E)	Tourist, Scenic, Historic, and Excursion Operations Braking Systems	Compliance	No	Must be in place at start-up	RICK REIMER	Mark Gallegos/Mike Ramsey			Pending	Pending	Pending	FRA to inspect RMRX equipment upon arrival in Denver for verification of compliance	
Recommended	54	Passenger Equipment Safety Standards	238.107(b)	Suggest that a detailed inspection, testing, and maintenance plan consistent with the requirements of Part 238 be developed.				CARL			05-15-21					
Recommended	55	Passenger Train Emergency Preparedness	239.101	Suggest that a comprehensive Passenger Train Preperdness Plan be developed using Part 239 as the minimum standard to include training of all on-board employees and first responders as applicable.				Michelle P/Mike M			05-15-21					
Recommended	56	Critical Incident Stress	272	Suggest that having something similer would be beneficial.							05-15-21					
Reference	57	Safety Appliance Act	Chapter 203	Safety Appliance Statutes (Reference)												
Reference	58	Locomotive Inspection Act	Chapter 207	Locomotives Satatute (Reference)												
Reference	59	Accidents/Incidents	Chapter 209	Accident Statute (Reference)												
Reference	60	Hours of Service	Chapter 211	Hours of Service Statutes (Reference)												

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 2021, a copy of the foregoing Reply was served by email on the following counsel of record:

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