

LANDMAN CORSI BALLAINE & FORD P.C.

A NEW YORK PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

ONE GATEWAY CENTER

22ND FLOOR

NEWARK, NEW JERSEY 07102

TELEPHONE (973) 623-2700

FACSIMILE (973) 623-4496

www.lcbf.com

August 25, 2022

120 Broadway

13th Floor

New York, NY 10271

Tel: (212) 238-4800

One Penn Center

1617 JFK Boulevard, Suite 955

Philadelphia, PA 19103

Tel: (215) 561-8540

JERRY A. CUOMO

MEMBER

TEL: (973) 353-8372

EMAIL: jcuomo@lcbf.com

VIA E-FILING

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

Re: Docket No. FD 35743

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

PUBLIC VERSION

305188

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Office of Proceedings
August 25, 2022
Part of
Public Record

Dear Ms. Brown:

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

Enclosed for e-filing is a public version of the Rebuttal Brief of National Railroad Passenger Corp. in Response to Reply Brief of Canadian National Railway Company and supporting Rebuttal Verified Statements of James Blair (with Exhibits) and Yoel Weiss (collectively, “Amtrak’s Rebuttal Submission”), with appropriate redactions that the Board can place on its docket. We are concurrently filing a CONFIDENTIAL version of Amtrak’s Rebuttal Submission to be filed under seal.

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

Respectfully submitted,

Jerry A. Cuomo

Jerry A. Cuomo

Enclosure.

cc: All Parties of Record

[CONTAINS REDACTED INFORMATION TO BE FILED ON PUBLIC DOCKET]

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35743

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

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

Eleanor D. Acheson
Chief Legal Officer, General Counsel &
Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971
achesoe@amtrak.com

Mark S. Landman
Jerry A. Cuomo
Timothy J. Collazzi
Landman Corsi Ballaine & Ford P.C.
120 Broadway, 13th Floor
New York, NY 10271
(212) 238-4800
mlandman@lcbf.com
jcuomo@lcbf.com
tcollazzi@lcbf.com

Counsel for National Railroad Passenger Corporation

Dated: August 25, 2022

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PRELIMINARY STATEMENT

Amtrak has clearly demonstrated that its proposed terms and conditions are reasonable and superior to those proposed by Canadian National Railway Company (“CN”) for the Parties’ new Operating Agreement (“OA”). Amtrak’s proposal satisfies FRA’s 2020 Final Rule and the Board’s August 8, 2019 Decision (“the 2019 Decision”) in this proceeding. CN’s proposal does neither. Instead, CN has demonstrated that it seeks an OA that rewards substandard performance. The Board should reject CN’s arguments.

Amtrak’s rebuttal to CN’s arguments is structured as follows:

Point I (CN’s 2019 Performance) - CN argues that Amtrak’s proposed incentive and penalty system is “unreasonable” because, had it applied in 2019, CN would have been penalized instead of [REDACTED] (as it did under the 2011 OA’s terms). However, on-time performance (“OTP”) of Amtrak’s trains on those routes in 2019 was well below the minimum 80% OTP standard. As such, Amtrak’s proposal, had it applied in 2019, would have dictated the correct result—CN should have been penalized. Indeed, Congress mandated that result; the governing statute requires that a penalty for untimely performance be incorporated into Amtrak’s OAs with its Host Railroads. There is no basis to continue to reward CN for such unacceptable performance, which delays Amtrak trains and harms Amtrak’s passengers.

Point II (Amtrak’s use of HRDs, COTP, and Ridership Factor) - CN argues that Amtrak’s incentive and penalty proposal is unreasonable in its incorporation of Host-Responsible Delays (“HRDs”), Customer On-Time Performance (“COTP”), and Amtrak’s Ridership Factor. But, HRDs and COTP are metrics that FRA expressly adopted in the Final Rule, and each is consistent with the Board’s 2019 Decision. Moreover, Amtrak’s correlation in its proposal of 80% COTP (the minimum standard that FRA established in the Final Rule) to 900 HRDs per 10,000 train miles

is well grounded in the analysis that Amtrak has provided. CN's additional arguments about Amtrak's proposed incentives and penalty system are meritless.

Point III (Amtrak's Three-Tiered Remedial Action Proposal) – CN's objections to Amtrak's proposed three-tiered approach to remedial action are also misguided. Amtrak's proposed remedies apply only after CN has caused sustained periods of delay to Amtrak's trains and passengers. When that occurs, there has been a failure on CN's part to carry out basic functions necessary to meet FRA's 80% COTP minimum threshold. Under those circumstances, it is perfectly reasonable for the Board to impose remedies that give Amtrak visibility into CN's practices and, for prolonged periods of poor CN performance, some direct involvement for a temporary period of time into CN's operating decisions related to Amtrak trains. Amtrak's proposal here is tailored to address, among other things, CN's unacceptable dispatching practices related to Amtrak trains, which are at the root of the problem.

Point IV (Amtrak's Lookback Proposal) - CN argues that Amtrak's "lookback" term should be rejected because Amtrak proposes to apply the lookback: (a) over the whole term of the new OA (rather than merely for the preceding twelve months, as the lookback applies under the 2011 OA and CN's proposal); and (b) collectively to all of Amtrak's routes operating on CN's system (rather than by route, as it applies under the 2011 OA and CN's proposal). But a longer lookback equal to the term of the OA makes it more likely that Amtrak can collect penalties that CN incurs, and is consistent with Congress's mandate that Hosts be penalized for poor Amtrak performance. If the lookback applies on a per route basis, as CN proposes, CN may "write off" a single route where Amtrak trains are underperforming badly because the lookback protects CN from penalties, and indeed, this is precisely what happened with Amtrak's Illini/Saluki route under the 2011 OA.

Point V (Arbitration of Scheduling Disputes) - CN persists in arguing that, because the Parties

have not yet certified schedules for the City of New Orleans and Illini/Saluki routes, the Board should impose terms mandating certain issues that arbitrators should consider, and remedies that they should impose. This is, however, duplicative of terms from the 2011 OA that both Parties already agree to carry forward to a new OA. Furthermore, to the extent that CN's proposal expands on what the Parties have already agreed to regarding arbitration, governing case law and the Board's precedents hold that Amtrak cannot be compelled to arbitrate issues to which it has not agreed.

Point VI (Miscellaneous issues) – Finally, Amtrak seeks to provide clarity to the Board on the remaining issues in this dispute. These include: (a) whether, if the Board permits CN to recover any of its alleged “freight delay costs” as incremental costs, such recovery should be retroactive (as CN argues) or prospective only (as Amtrak argues); (b) the confidentiality of certain appendices to the new OA; and (c) the method of incorporating the Parties’ Side Letter Agreements dated May 1, 2011. Amtrak also addresses the variety of other arguments CN has made with respect to various contract provisions in the OA.

* * *

As discussed herein and in Amtrak's prior submissions, Amtrak's proposed terms are reasonable under 49 U.S.C. § 24308(a), and the Board should impose them as part of the Parties' new OA.

POINT I

THE BOARD SHOULD REJECT CN'S PROPOSAL IN ITS ENTIRETY, AS IT ATTEMPTS TO IMPOSE TERMS THAT AWARD CN INCENTIVE PAYMENTS FOR UNACCEPTABLY POOR PERFORMANCE

CN contends that the purpose of this proceeding is to “produce a commercially ‘reasonable’ hosting agreement” with “expected” results. (CN Reply Br., p. 52). CN uses its performance in

2019 as a point of reference, claiming that it earned incentives for the routes at issue during that year totaling [REDACTED]. (*Id.*, pp. 52-53). CN also argues that Amtrak’s current proposal yields “remarkable” and “unreasonable” results because, if Amtrak’s terms were applied to CN’s 2019 performance (instead of the terms of the 2011 OA applicable in 2019), CN would not have earned incentives, but rather, would have been penalized for each of the subject routes, totaling [REDACTED]. (*Id.*).

These arguments highlight the central flaw in CN’s incentive and penalty proposal, which is modeled after the 2011 OA’s structure: it produces absurd results and demands payment of incentives for poor on time performance. In fact, CN argues that it was appropriate for it to receive incentives in 2019 even though it earned a “D” on the “Host Railroad Report Card” issued by Amtrak for the year. (Blair Rebuttal VS, Exh. 4). This means that on CN’s routes in 2019, “most passengers [were] *very late*.” (*Id.*) (emphasis added). As stated in the 2019 Report Card, the percentage of Amtrak passengers arriving at their stations within fifteen minutes of their scheduled arrival time on *all* routes hosted by CN were below 80% in 2019:

<i>Route</i>	<i>2019 Percentage of On-Time Customers</i>
Blue Water	39%
City of New Orleans	73%
Illini/Saluki	30%
Lincoln Service	73%
Texas Eagle	27%
Wolverine	27% ¹

¹ FRA’s Quarterly Reports for 2019 confirm Amtrak’s poor performance on these routes. During 2019, OTP for these routes using the “All-Stations” metric was as follows: Blue Water (between 51.9% and 77.5%); City of New Orleans (between 47.5% and 60.1%); Illini/Saluki (between 36% and 39.9%); Lincoln Service (between 69.6% and 79.5%); Texas Eagle (between 22.6% and 32.6%); and Wolverine (between 42.2% and 62.8%). FRA’s 2019 Quarterly Reports are publicly accessible on FRA’s website at <https://railroads.dot.gov/taxonomy/term/14941>.

Furthermore, in grading its Host Railroads, Amtrak also considers each Host's minutes of HRD per 10,000 train miles caused on a route. (Blair Rebuttal VS, Exh. 4, p. 2 of 2, ¶ 7; Notes, ¶ 4). Based on data that CN has itself presented for 2019, CN's HRDs were inordinately high. (Reply Verified Statement of Peterson, ¶ 81, p. 34; CN Reply Br., p. 44). For example, the *fewest* HRDs per 10,000 train miles that CN had for any quarter in 2019: on the Illini/Saluki route was 1,309; on the Lincoln Service, 2,029; on the Texas Eagle route, 2,902; and on the Wolverine route, 2,633. (*Id.*).

Based on this data, for 2019, none of the subject CN routes would have met the minimum COTP standard of 80% established in FRA's Final Rule. And, CN's HRDs far exceeded the level of HRDs that correlate to 80% COTP (*i.e.*, 900 HRDs per 10,000 train miles). This is not the "quality of service" that Congress contemplated for a Host Railroad to receive compensation above incremental costs. (*See* 49 U.S.C. § 24308(a)).

To the contrary, the more "reasonable" result for such poor OTP and high HRDs on an Amtrak route in 2019 would have been to *penalize* CN for unacceptable performance. That is precisely the result that is called for under Amtrak's proposal if CN's future performance is as bad as it was in 2019. Amtrak's incentive and penalty system is aligned with the Board's 2019 Interim Decision and the Final Rule because it incorporates the COTP metric and the HRD per 10,000 train miles metric. Under those metrics, CN's 2019 performance is clearly unworthy of the payment of [REDACTED] in incentives.

CN's flawed methodology based on the 2011 OA's system would cause the same incongruous results in the future as occurred in 2019. CN was able to earn large incentive payments under the 2011 OA's system of measuring Amtrak train OTP by adding "additional tolerances" to the schedule arrival times, and by excluding Amtrak trains from the OTP calculation

as “Do Not Counts” (“DNCs”). As Amtrak has argued—and as the 2019 experience confirms—that system is completely misaligned with the Amtrak passenger experience. Instead, it is based on the fiction that an Amtrak train may be “on time” even if it arrived late (perhaps significantly late after its scheduled arrival time). That is precisely the approach that FRA rejected when it adopted the COTP metric in the Final Rule. (See 85 F.R. at 72974-72978). It is also the flaw that the Board sought to remedy by requiring that OTP be measured at every station (not just stations on CN’s system, as CN has proposed) to account for the experiences of each and every Amtrak passenger. (2019 Decision, pp. 10-11).

CN further tries to justify its approach by arguing that, in 2018 and 2019, “almost every Amtrak segment hosted by every Class I freight railroad (except [Canadian Pacific]) exceeds 924 HRD minutes for 10,000 miles” and, under Amtrak’s presently proposed system, would be penalized. (CN Reply Br., p. 53). But this proceeding is about CN, and not the operations of other Host Railroads. Even if the Board finds CN’s argument relevant, the data confirms that this would be the *right* result for the performance of those railroads in 2018 and 2019.

During those years, the OTP for *nearly all of the routes referenced by CN was **below the 80% minimum standard.***² Notably, Canadian Pacific is the one Host Railroad who, according to CN, would not have been penalized under Amtrak’s system for its 2018 and 2019 performance. But, even if this is so, it would not be surprising—Canadian Pacific received an “A” on its Host Report Cards in 2018 and 2019, and the OTP on several of its routes exceeded 80% or was close to it. (Blair Rebuttal VS, Exhs. 3 and 4).

² Specifically, in 2018, only eight routes hosted by Class I railroads performed at or above 80%. In 2019, only three routes met that standard. See OTP data published as part of Amtrak’s 2018 and 2019 Host Railroad Report Cards. Blair Rebuttal VS, Exhs. 3 and 4.

* * *

The Board in this § 24308(a) proceeding must impose terms that are consistent with and that implement the metrics and standards established by FRA in the Final Rule, including the 80% COTP minimum standard. (See Amtrak Reply Br., pp. 9-10). If Amtrak’s proposal does so and is otherwise “reasonable,” then the Board should impose Amtrak’s proposal as part of a new OA.

If CN (or any other Host Railroad) does not perform in a manner that enables Amtrak to achieve the Final Rule’s 80% COTP minimum standard, the Board should not—as CN proposes here—relax, change, or mold the terms of the new OA to assure that CN earns incentives regardless of the performance achieved by Amtrak on CN’s system. The solution is instead for CN to improve its performance to meet the minimum standard established in the Final Rule.

POINT II

AMTRAK’S PROPOSED SYSTEM FOR MEASURING ON-TIME PERFORMANCE OF AMTRAK TRAINS AND CALCULATING INCENTIVES AND PENALTIES IS REASONABLE

As application of Amtrak’s proposal to CN’s 2019 performance illustrates, Amtrak’s proposed terms for determining whether Amtrak trains are on time and for calculating when CN earns incentives or is penalized are reasonable. CN’s arguments to the contrary are without merit.

A. Amtrak’s Use of HRDs per 10,000 Train Miles Is Reasonable

CN makes baseless arguments about why Amtrak’s inclusion of HRDs as an element of its proposal is unreasonable.

1. *The Board Did Not Reject HRDs as Part of an Incentive and Penalty System*

CN argues that the Board has rejected any penalty and incentive system that includes HRDs. (See, e.g., CN Reply Br., pp. 7-11). As support, CN provides the following selective quotation of the 2019 Decision:

[T]he Board notes that Amtrak’s proposed system is complicated in that it uses a regression model to infer a readily observable occurrence – whether, and to what degree, a train is late. The regression model also assumes that the influence of Amtrak and third party-caused delays on OTP will remain constant. However, these sources of delay are not constant and affect the likelihood that a CN delay will cause a train to fall outside of tolerance.

(Id. at p. 8 (quoting 2019 Decision, p. 14)). But, CN *omits* the Board’s sentence that preceded this paragraph, which says: “Unlike the proposal from CN, Amtrak’s *HRD minutes, regression-based proposal incorporates a degree of lateness into calculations for incentives and penalties.*” (2019 Decision, p. 14) (emphasis added).

The Board urged the Parties to account for the “degree of lateness” of Amtrak trains in the penalty and incentives system. (Id.). Because HRDs add a degree of lateness component into an incentive and penalty calculation, the Board looked *favorably* upon their inclusion in a new OA. The language CN quotes from the Board’s decision is, therefore, much more limited than CN argues. The Board held only that Amtrak’s regression analysis was a complicated substitute for something “readily observable”—*i.e.*, whether a train was late and, if so, the degree or extent to which it was late as a result of the conduct of a Host Railroad. (Id.). The Board did not reject the use of HRDs *per se*, and it certainly did not endorse the proposal that CN offers now.

Furthermore, consistent with the 2019 Decision, Amtrak’s present proposal does not utilize a regression analysis. Instead, HRDs are measured by something “readily observable”—the actual number of HRDs recorded by Amtrak in the normal course of operations and the corresponding performance of those trains that achieved the 80% COTP minimum standard. These HRDs serve as the basis for Amtrak’s “Delay Adjustment Factor” calculation, which adjusts CN’s incentives or penalties based upon CN’s HRDs for a quarter for a particular route. This effectuates an appropriate “degree of lateness” into the penalty and incentive calculations.

2. The Final Rule Endorsed the Use of HRDs per 10,000 Train Miles

After the Board’s 2019 Decision, FRA issued the Final Rule—which CN omits entirely from its discussion of HRDs. In the Final Rule, FRA established the HRD per 10,000 train miles metric, and characterized it as useful in “assessing an individual railroad’s performance on a route that has more than one host.” (85 F.R. at 72984). Because COTP is measured on a route level and is not Host-specific, the HRD per 10,000 train miles metric better informs FRA (and here, CN and Amtrak) about the extent to which a particular Host Railroad is delaying Amtrak’s trains. (*Id.*).

Further, as explained in Amtrak’s prior submissions, Amtrak has refined the role that HRDs play in setting the “Delay Adjustment Factor,” which, in turn, dictates the specific amount of incentives that CN is paid, or the penalties that it incurs. Amtrak initially reviewed more than 8,000 trains to determine that 900 HRDs per 10,000 train miles generally correlate to 80% COTP. (Weiss Verified Statement dated May 27, 2022, ¶¶ 82-86). Only when CN’s HRDs exceed 924 does CN begin to be penalized under Amtrak’s system. As explained *infra*, despite CN’s arguments to the contrary, Amtrak’s correlation of 900 HRDs per 10,000 train miles and 80% COTP is a valid one (and similar to one that FRA endorsed in promulgating its 2010 Metrics and Standards).

In sum, the Final Rule confirmed the important role that HRDs play in identifying the extent to which a particular Host Railroad is delaying Amtrak trains.³ Amtrak’s refinement of the HRD metric by correlating it to 80% COTP only makes that metric more appropriate for inclusion

³ CN also makes the illogical argument that Amtrak “ignores that FRA declined to impose an HRD trigger for the Board’s investigation into the on-time performance of a train.” CN Reply Br., p. 80. FRA could not impose such an “HRD trigger” because Congress already mandated that a Board investigation is triggered by two consecutive quarters of sub-80% OTP. 49 U.S.C. § 24308(f)(1).

in a new OA.

3. HRDs are Not “Unilaterally” Defined or Imposed by Amtrak

CN further contends that the inclusion of HRDs in Amtrak’s proposal is inappropriate because “Amtrak’s calling a delay ‘host-responsible’ does not make it so,” and because Amtrak “unilaterally define[s] and records” those delays. (CN Reply Br., pp. 27-28). CN’s argument misconstrues Amtrak’s proposal and is contrary to the Final Rule.

Amtrak has not, as CN contends, “unilaterally defined” what delays are “Host Responsible Delays.” In the Final Rule, *FRA specifically defined* HRDs as follows:

Host-responsible delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.

(See 85 F.R. at 73000, 49 C.F.R. § 273.3).

As such, FRA has identified delays for which a Host Railroad is responsible. They include delays resulting from freight train interference (“FTI”), passenger train interference (“PTI”), and commuter train interference (“CTI”)—all train types that CN is responsible for dispatching on their rail lines. Amtrak’s proposal defines HRDs precisely as they are in the Final Rule. (See Amtrak Redline, Article I). Amtrak is not sweeping anything into the definition of HRDs that was not provided for in the Final Rule. Indeed, CN defines HRDs the *same way*. (See CN Redline, Appx XI, p. 1).

Next, there is nothing improper, as CN implies, with Amtrak recording the applicable delay code in the first instance during the operation of its trains. (See Matteucci/Kuxmann Reply VS, ¶ 35) (criticizing Amtrak’s use of delay codes as representing the “unilateral discretion of Amtrak’s train conductors”). This approach is exactly what FRA approved. FRA was clear that HRDs are

as “*recorded by Amtrak, in accordance with Amtrak procedures.*” (49 C.F.R. § 273.3) (emphasis added).

Moreover, CN is not without remedy if it disagrees with Amtrak’s coding of a delay. Both Parties have incorporated terms into their proposals reflecting CN’s right to challenge delay coding, as well as a dispute resolution process when the Parties cannot agree on the applicable code. (See CN Redline, Appx V, § A(4); Amtrak Redline, Appx V, § II).

4. *HRDs as Defined by Amtrak and FRA Are Properly Attributed to CN*

CN next argues that it is unfair that HRDs are attributed to it. CN’s position is baseless.

First, CN complains that there are “problems” with Amtrak’s coding of delays. (See, e.g., Matteucci/Kuxmann Reply VS, ¶ 35). CN even asserts—without any support—that, “in creating a metric for Disputed Delays, FRA recognized that there is a problem with Amtrak’s HRD coding.” (*Id.*). As discussed above, however, there is *nothing* in the Final Rule that criticized Amtrak’s delay codes or Amtrak’s use of them. To the contrary, if FRA thought there were “problems” with Amtrak’s HRD coding, it would not have defined HRDs to be those “recorded by Amtrak, in accordance with Amtrak’s procedures.”

Second, CN argues that Amtrak often codes delay events as HRDs even in instances that are not “reasonably preventable” by CN. (CN Reply Br., p. 28). But the specific examples of delay identified by CN do not support this argument. For example, CN claims that it cannot avoid delaying Amtrak trains when it performs maintenance work. (*Id.*). However, FRA *specifically defined* a Host Railroad’s performance of “maintenance of way” (“MOW”) work that delays an Amtrak train as an HRD. (49 C.F.R. § 273.3). This is with good reason—Host Railroads schedule and perform MOW work on their respective systems. (Blair Rebuttal VS, ¶ 6). The Host, therefore, has complete control to conduct MOW work at a time and in a manner that does not

interfere with Amtrak's trains, or that at least mitigates such delays (by, for example, conducting that work at night or during off-peak Amtrak hours). (Id.). Delays to Amtrak trains resulting from CN's non-emergency MOW work, therefore, are "preventable" by CN. (Id.). If CN conducts the work in a manner that delays Amtrak's trains, then it is reasonable for that delay to be considered an HRD and for that delay to impact the calculation of CN's incentives or penalties.

Similarly, CN asserts that it cannot prevent delays coded as CTI and PTI. (CN Reply Br., p. 28). Again, FRA appropriately determined that delays caused by PTI and CTI are HRDs. (49 C.F.R. § 273.3). Hosts, such as CN, control the dispatching of passenger and commuter trains on their systems. (Blair Rebuttal VS, ¶ 7). Avoiding or minimizing meets between these train types which cause delays, are therefore, "preventable" in the exercise of prudent dispatching practices. (Id.). Even if a meet with a commuter or passenger train cannot be entirely avoided, CN determines where the trains will meet and can work to minimize the delays that impact them, including Amtrak's train involved in the meet. (Id.).

CN likewise complains about Amtrak's coding of various delays as FTI—yet another delay that FRA has defined as an HRD. (See 49 C.F.R. § 273.3). Again, CN controls the dispatching of its freight trains and, to the extent that those trains delay Amtrak's passenger trains, that delay is "preventable" (and those delays may be violations of CN's statutory duty to provide preference to Amtrak). (Blair Rebuttal VS, ¶ 8). Indeed, as with delays to Amtrak trains caused by meets with passenger and commuter trains, CN likewise determines where its freight trains will meet Amtrak trains, and CN can dispatch the trains in manner that minimizes delays. (Id.).

More specifically, CN claims that large blocks of FTI that Amtrak allegedly attributes to CN are for "cross-traffic delays at foreign controlled interlockings over which CN has no control."

(CN Reply Br., p. 29).⁴ But here, too, it is reasonable for such delays to be attributed to CN. Amtrak’s statutory preference right over freight traffic applies at crossings. (See 49 U.S.C. § 24308(c)). When an Amtrak train is approaching another railroad’s crossing of CN’s system, CN’s dispatchers are supposed to communicate that information to the crossing railroad to ensure that Amtrak trains are given preference. (Blair Rebuttal VS, ¶ 9). This is to assure that the crossing railroad holds any freight cross-traffic that might delay the approaching passenger train. (Id.). If CN fails to notify the crossing railroad—or to do so timely—then the resulting FTI caused when the crossing freight train delays an Amtrak train is reasonably attributable to CN. (Id.).⁵

Similarly, CN complains that it cannot prevent delays to Amtrak trains at crossings that are “activated automatically.” (CN Reply Br., p. 28). Automatic crossings—unlike controlled crossings manned by a dispatcher—are activated on a first-come, first-served basis. (Blair Rebuttal VS, ¶. 10). When a freight train and an Amtrak train approach an automatic crossing, if the freight train reaches the crossing first, it will be allowed to proceed across the path of the Amtrak train, causing delay to the Amtrak train. (Id.). If CN has decided to use automatic crossings on its system, that is CN’s operational decision. (Id.). In all events, the installation and operation of such automatic crossings are beyond Amtrak’s control. It is, therefore, reasonable for

⁴ CN has greatly overstated the frequency with which delays occur at foreign crossings. See Weiss Rebuttal VS, ¶¶ 16-20.

⁵ CN also disingenuously claims that, in the 2011 OA, “Amtrak agreed . . . that CN should not be held responsible for interlocking delays.” CN Reply Br., p. 30. This is incorrect. Amtrak only agreed that CN should receive an additional tolerance for “the amount of time a trip of an Amtrak train is delayed at interlockings not controlled by CN, *after CN’s dispatcher has transmitted the electronic indicator lining the signals for the CN route.*” 2011 OA, Appx V, § A(1)(g) (emphasis added). Therefore, under the 2011 OA, CN only obtained an additional tolerance if it signaled to the crossing railroad that Amtrak’s train was approaching the interlocking. Blair Rebuttal VS, ¶ 11. If CN failed to do so, it was not entitled to any relief.

that delay to be coded as FTI by Amtrak and attributed to CN. (*Id.*). Automatic crossings do not relieve CN of its obligation to provide preference or to assure the on-time operation of Amtrak's trains by notifying the crossing railroad of an Amtrak train's imminent arrival. (*Id.*).

Indeed, in its 2019 Decision, the Board urged the Parties to incorporate terms in a new OA that account for "which party is in the position to avoid or control" the delays impacting Amtrak's trains. (2019 Decision, p. 24). The examples used by CN represent delays that are within its control to avoid or minimize.

5. *HRDs Should Not be Disregarded Merely Because They May Not Cause A Train to be Late on its Schedule*

CN next contends that HRDs should not be incorporated into a new OA because they "measure[] against theoretical PRT," and "count[] indiscriminately delays that may or may not cause a train to be late on its schedule." (CN Reply Br., p. 18) (internal quotations omitted). Stated another way, CN contends that utilizing HRDs may penalize it for "delays that do not make Amtrak passengers late." (*Id.*, p. 25).

CN is, however, considering HRDs in a vacuum without reference to how they are applied in Amtrak's proposal. An individual HRD may not cause a train to arrive after its scheduled arrival time, but, Amtrak's proposal does not utilize HRDs in such a simplistic manner. Rather, Amtrak's proposal applies HRDs based on their correlation to COTP. For example, as discussed *infra*, Amtrak correlates 900 HRDs to 80% COTP. As CN admits, "COTP is measured against Amtrak's public schedules, including Recovery Time." (CN Reply Br., p. 36). By correlating HRDs to COTP, CN is only penalized if its HRDs are in excess of 924 and, therefore, are likely to cause performance below the minimum standard of 80% COTP on a route.

6. *The Host Running Time Metric Does Not Measure Responsibility for Delays*

As another basis for excluding HRDs from a new OA, CN claims that a preferable alternative is the Host Running Time metric established in the Final Rule. The Host Running Time metric measures “the average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad segment.” (85 F.R. at 72983; 49 C.F.R. § 273.5(g)). However, CN has selectively quoted FRA’s description of what the Host Running Time metric measures. CN quotes only FRA’s statement that Host Running Time may be “an indication of which host railroads may be responsible for chronic performance below standard and which ones are not.” (CN Reply Br., p. 17). But, CN then selectively *omits* the following: “[t]he metric *will not explain the cause of delays, nor will it assign responsibility for them.*” (85 F.R. at 72983) (emphasis added). In other words, because the Host Running Time metric measures the “actual elapsed travel time of a train’s travel on a host railroad” (*id.*), the metric necessarily includes *all* categories of delays (*i.e.*, HRDs, third-party responsible delays, and Amtrak-responsible delays).

In contrast, the HRD per 10,000 train miles metric specifically quantifies the delays caused by the Host Railroad. This metric provides a more direct measurement of whether, and to what extent, CN has caused delay to an Amtrak train operating on CN’s system. It is, therefore, a more appropriate metric to be used in an OA when determining whether CN earns incentives or incurs penalties, and to quantify those incentives and penalties.

B. Amtrak’s Correlation of 900 HRDs Per 10,000 Train Miles to 80% COTP is Reasonable

Amtrak incorporates a “degree of lateness” into its proposal utilizing CN-responsible HRDs per 10,000 trains miles for a route during a quarter. CN begins to earn incentives when its

HRDs are between 900-924. This is because 900 minutes of HRDs correlate to 80% COTP (the minimum standard under the Final Rule). CN claims that there is no such correlation and, therefore, using HRDs as a measure to set CN's incentives and penalties is unreasonable. (CN Reply Br., pp. 32-37). CN's arguments should be rejected.

1. *Amtrak's Analysis Establishes a Correlation Between 900 HRDs and 80% COTP*

Although CN does not propose any alternative number of HRDs that correlates to 80% COTP, it speculates that 900 HRDs "is probably significantly too low—a higher level of HRD would, on average, be compatible with 80%—going forward." (CN Reply Br., p. 34). To support this argument, CN claims that Amtrak's initial review is skewed because it included trains that operated from April 2019 through March 2022. CN claims that operations during this timeframe are "anomalous insofar as the Covid pandemic led to unusually low level of both freight and passenger traffic." (CN Reply Br., p. 34). According to CN, this resulted in "fewer train meets and therefore, typically fewer delays." (*Id.*). CN argues, therefore, that Amtrak's data is "characterized by anomalously low HRD and anomalously high COTP." (*Id.*).

Other than pointing out the obvious fact that Amtrak cancelled trains during the pandemic, CN does little to prove its argument. In truth, CN's position is simply inaccurate. (*See* Weiss Rebuttal Verified Statement, ¶¶ 24-36).

As explained in Mr. Weiss' Rebuttal Verified Statement, based on CN's own data, its freight volume remained relatively *constant* from October 2016 through the pandemic; it did not decrease. (*Id.*, ¶¶ 24-26, 30, and 35). Similarly, Amtrak reviewed HRDs that it coded from October 2016 through March 2022 on its City of New Orleans and Illini/Saluki routes (on which CN hosts the majority of the route miles) and, over that period, CTI and PTI also remained generally constant. (*Id.*, ¶¶ 30-31 33, and 35). Variations in COTP during that time frame were,

therefore, attributable to factors other than decreased freight traffic or decreases in train meets. (Id., ¶¶ 31, and 35-36).⁶

Amtrak also re-reviewed the 8,361 trains that were the subject of its initial review. (Id., ¶¶ 37 and 39). In this second round of review, however, Amtrak separately analyzed the 3,415 trains operated “pre-Covid-19” (using March 2020 as the demarcation line) and the 4,946 which operated “post-Covid-19.” (Id., ¶ 40). For pre-Covid-19 trains, the average performance was 74% COTP and 992 minutes of HRD per 10,000 train miles. (Id., ¶ 43). The median was 79% COTP and 944 minutes of HRD per 10,000 train miles. (Id.). Similarly, for the post-Covid-19 trains, the average performance was 79% COTP and 870 minutes of HRD. (Id.). The median was 84% COTP and 851 minutes of HRD. (Id.). As such, data for *the pre- and post-Covid-19 periods both* demonstrate an association between 900 HRDs per 10,000 train miles *and* 80% COTP. (Id.). CN cannot, therefore, simply write-off Amtrak’s data on the basis that it included trains that operated during the Covid-19 Pandemic.

Further, in light of CN’s assertions, Amtrak expanded its analysis to include earlier HRD and COTP data for Amtrak trains that operated from October 2016 through March 2019. (Id., ¶ 44). This additional data set included another 8,582 trains. (Id.). For these trains, the average performance was 74% COTP and 1,024 minutes of HRD per 10,000 train-miles. (Id., ¶ 46). The median was 79% COTP and 974 minutes of HRD per 10,000 train miles. (Id.). Again, this data demonstrates a reasonable association between 80% COTP and approximately 900 minutes of

⁶ Not unexpectedly, during the pandemic, the number of minutes of CTI and PTI decreased on the City of New Orleans and Illini/Saluki routes. See Weiss Rebuttal VS, ¶¶ 30 and 35. As explained in Mr. Weiss’ Rebuttal Verified Statement, however, variations in COTP during that time frame again were due to factors other than those decreases. Id., ¶¶ and 33, and 35-36.

HRD per 10,000 train-miles. (*Id.*).

CN next argues that Amtrak’s data shows that a COTP/HRD correlation is “immensely variable.” (CN Reply Br., p. 35). Amtrak recognizes that there is some variability in this correlation and that there are outliers in the data set. (Weiss Rebuttal VS, ¶ 48). But, that is expected in a data set of more than 16,000 trains. It is, therefore, unremarkable to see the variations that CN has identified on the Illini/Saluki and City of New Orleans routes. (CN Reply Br., p. 35-36). To characterize those variations as “immense” is a patent overstatement.⁷ In general, based on the data reviewed by Amtrak, correlations closer to 900 HRDs and 80% COTP are the rule, with few exceptions. (See Weiss Rebuttal VS, ¶¶ 43-48) (explaining that, after analyzing over 16,000 trains between October 2016 and March 2022, there is an association between 900 HRDs per 10,000 train-miles and 80% COTP, and that periods of variability in a data set that large are expected).

2. *The Correlation of 900 HRDs to On Time Performance Metrics Is Not New to the Railroad Industry or to Amtrak’s Host Railroads*

Amtrak’s correlation of 900 HRDs to 80% Amtrak OTP is not—as CN implies—a new approach that Amtrak sprung upon CN in this case. Instead, this correlation is well grounded and should be unsurprising to CN based upon historical practice.

⁷ While the data that Amtrak presented contains certain variations and outliers where 900 HRDs per 10,000 train miles do not equate precisely to 80% COTP, that is not problematic and, indeed, is to be expected. This does not present any impediment for the Board in adopting this metric. Government agencies, such as the Board, are often called upon to engage in line drawing. See, e.g., High Country Conservation Advocates v. United States Forest Serv., 951 F.3d 1217, 1227 (10th Cir. 2020) (“We recognize that agencies must engage in line-drawing and are due deference in that exercise.”). An agency’s line drawing is entitled to full deference and is appropriate unless it is “patently unreasonable or runs counter to the evidence before the agency.” Sierra Club v. United States Env’t Prot. Agency, 972 F.3d 290, 298 (3d Cir. 2020) (internal quotations and alterations omitted).

(a) FRA's 2010 Metrics and Standards

In its 2010 Metrics and Standards for Intercity Passenger Rail Service, FRA “set limits on permissible delays, capping the delays for which a host railroad may be responsible at *900 minutes per 10,000 route miles*.” Ass’n of Am. Railroads v. Dep’t of Transp., 865 F. Supp. 2d 22, 26-27 (D.D.C. 2012), *rev’d on other grounds*, 721 F.3d 666 (D.C. Cir. 2013), *vacated and remanded*, 575 U.S. 43 (2015) (emphasis added); see also Amtrak Opening Br., p. 52, n.39.⁸ FRA explained the process which led to its adoption of that metric as follows: “[r]egressions were run to determine the relationship between percent on time and delay minutes per 10,000 train miles” *Final Metrics for Intercity Passenger Rail Service*, Dkt. No. FRA-2009-0016, at Annex 3: Explanation of Train Delay Analysis, p. 34 (May 12, 2010) (“the 2010 Metrics and Standards”).

For routes off of the Northeast Corridor, FRA determined that “1,030 minutes of delay per 10,000 train miles correlates with an 80 percent endpoint on time arrival rate.” (*Id.*). Of that 1,030 total minutes of delay, FRA concluded that “690 minutes of host-responsible delay per 10,000 train miles correlates with 80% OTP.” (*Id.*) (emphasis added). FRA rounded that 690 minutes of HRD to 700. (*Id.*). During the public comment period, Host Railroads took the position that the correlation of 700 HRDs to 80% OTP was too low: some Hosts contended that the HRD metric should be increased to account for “out-of-slot trains and for planned track work.” (*Id.*, p. 20). Others contended, like CN suggests here, that the metric should be “implemented on a route-by-route basis instead of collectively to account for different characteristics among Amtrak routes.” (*Id.*, p. 21).

⁸ The 2010 Final Metrics and Standards are attached as Exhibit 1 to the Blair Rebuttal VS.

To accommodate the Host Railroads’ concerns, FRA increased the 700 HRDs per 10,000 train mile metric to *900 HRDs per 10,000 train miles*. (*Id.*, pp. 20-21). FRA did this: (a) to “help most railroads absorb delays they incur as a result of receiving late Amtrak trains”; and (b) to account for variations and different characteristics from route to route, because “a separate delay standard for each route is not practicable.” (*Id.*).

While the 2010 Metrics and Standards are no longer binding, there is no reason to question FRA’s analysis or its conclusions that a metric of 900 HRDs per 10,000 train miles—and its correlation to OTP—is an appropriate measurement of Amtrak’s performance on a Host Railroad.⁹ To the contrary, it demonstrates that the correlation of 80% OTP and 900 HRDs per 10,000 train miles is not novel, as CN contends—it has been a historic measurement of a Host Railroad’s performance in delivering Amtrak trains on time.¹⁰

Further, FRA’s rejection of a specifically tailored HRD per 10,000 train mile metric for each Host Railroad based on the unique conditions of that Host’s system—an argument that CN is also advancing here (*see* CN Reply Br., pp. 33-37)—lends further support to Amtrak’s assessment of a correlation using the data gathered from the more than 16,000 trains that operated on the system of Host Railroads nationwide, rather than just on CN’s system. (2010 Metrics and

⁹ Although the 2010 Metrics and Standards have since been superseded, the extensive litigation over PRIIA’s constitutionality focused on distinct issues. *See Ass’n of American Railroads v. U.S. Dep’t of Transp.*, 896 F.3d 539, 542-544 (D.C. Cir. 2018). FRA’s prior conclusions remain instructive here regarding the reasonableness of the 900 HRD per 10,000 train miles metric.

¹⁰ Amtrak acknowledges that, in 2010, FRA correlated 900 HRDs to an “endpoint” OTP metric, rather than a COTP metric (as Amtrak has done here). This does not undermine the analysis, however. Amtrak is arguing only that the correlation here between 900 HRDs per 10,000 train miles and on-time performance is not a new or arbitrarily created one, as FRA’s use of a similar correlation process in 2010 confirms.

Standards, p. 21).

(b) Amtrak Has Assessed Host Performance Using 900 HRD per 10,000 Train Miles for Several Years

Further, Host Railroads (including CN) have known for years of Amtrak's use of the 900 HRD per 10,000 train miles metric to measure the quality of a Host's performance. Since 2017, Amtrak has issued Host Railroad Report Cards ("Report Cards"), which are made publicly available on Amtrak's website. (Blair Rebuttal VS, ¶¶ 14-16).¹¹ The Report Cards grade each of the six Class I freight Host Railroads based on the delays that they caused to Amtrak trains operating on their systems over the preceding twelve-month period. (*Id.*, ¶ 14). In the Report Cards, Amtrak explains:

Amtrak evaluates host performance based on "host responsible delay minutes per 10,000 train-miles," which measure how much delay each host railroad causes to Amtrak trains. The measure is normalized by the number of miles traveled by each train (a "train-mile") so that routes of different lengths, and hosts with different levels of Amtrak service, can be compared to each other.

(See, e.g., Blair Rebuttal VS, Exh. 4, 2019 Report Card, p. 2 of 2, ¶ 7).

Further, the Report Cards state: "900 host-responsible delay minutes per 10,000 train miles is roughly correlated to performance that results in Amtrak trains that are 80% on time." (*Id.*, Note 4).¹² And, after the Final Rule was enacted in 2020, Amtrak updated its Report Cards to state that 900 HRDs correlated specifically to 80% OTP defined as "the percentage of customers that arrive at their destination station within 15 minutes of the scheduled arrival time" (*i.e.*, the COTP metric

¹¹ The Blair Rebuttal VS contains copies of the Report Cards for 2017 through 2021 at Exhibits 2 through 6.

¹² Each of the Report Cards contains substantially similar statements. See Blair Rebuttal VS, Exh. 2, 2017 Report Card, ¶ 3; Exh. 3, 2018 Report Card, ¶ 4 and Note 4; Exh. 5, 2020 Report Card, ¶ 9 and Note 4; Exh. 6, 2021 Report Card, ¶ 9 and Note 4.

established in the Final Rule). (See id., Exh. 5, 2020 Report Card, Notes).

* * *

For the reasons above, the 900 HRD per 10,000 train mile to 80% OTP correlation is not new to the railroad industry. Nor is the 900 HRD to 80% COTP correlation new to the Amtrak/CN relationship. There is, therefore, a reasonable basis for including HRDs in Amtrak’s proposed incentive and penalty system.

C. Amtrak’s Incorporation of COTP and the Ridership Factor Is Reasonable

CN also claims that Amtrak’s inclusion of COTP and the Ridership Factor as elements of its proposed incentive and penalty system is merely “window-dressing” to “disguise [Amtrak’s] overwhelming reliance on HRD.” (CN Reply Brief, p. 48). The Board should reject CN’s arguments, which are contrary to the Final Rule and the Board’s 2019 Decision.

1. *It is Reasonable to Use HRDs as an Element in Amtrak’s Incentive and Penalties System along with COTP and the Ridership Factor*

As stated above, it is reasonable for HRDs to be an element of an incentive and penalty system. In all events, CN complains that HRDs are given too much weight in Amtrak’s system. This argument is also without merit. As FRA held in establishing the HRD per 10,000 train mile metric, HRDs directly help to “assess[] an individual railroad’s performance on a route that has more than one host.” (85 F.R. at 72984). Indeed, CN complains that COTP is often *not* reflective of its performance. (See, e.g., CN Reply Br., p. 13). It is reasonable, therefore, to include here the metric that *does* measure CN’s performance—HRDs.¹³

¹³ CN seems to agree that its performance should be measured by metrics directly reflecting its performance. CN states: “[i]ncentives should be based on factors that directly measure the subject’s performance” CN Reply Br., p. 48. That is exactly what the HRD metric does.

CN also mischaracterizes Amtrak's proposal when it claims that HRDs "would be both the sole determinant of whether CN accrues penalties and incentives, and the principal determinant of their magnitude." (CN Reply Br., p. 12). Again, HRDs do not operate in a vacuum under Amtrak's proposal. Rather, they are correlated to COTP. Only to the extent that CN HRDs are driving poor performance (*i.e.*, they are above 924 per 10,000 train miles) will CN begin to incur penalties under Amtrak's proposed system. COTP and HRDs *both*, therefore, determine whether CN accrues penalties. CN is also wrong that HRDs are the "principal determinant of the magnitude" of its incentives or penalties. While HRDs are a factor, it is the Ridership Factor that, in the first instance, sets the pool of potential incentives or penalties applicable for a route. (See, infra, Point II (C)(3) (explaining the Ridership Factor, including how Amtrak proposes to quantify the available incentive/penalty pool); see also Amtrak Opening Br. pp. 36-39) (same)). The Board should adopt this reasonable approach.

2. *Inclusion of COTP In Amtrak's Proposed Incentives and Penalties System is Reasonable*

The COTP metric and the 80% COTP minimum standard are the cornerstones of the Final Rule, and they *must* be incorporated in the Parties' OA to the extent practicable. (PRIIA, § 207; 85 F.R. at 72973, 72977). CN has not argued that it is *impracticable* to incorporate COTP into the Parties' OA, and it could not tenably do so. CN simply does not *want* to include it because it argues that COTP represents performance on an Amtrak route as a whole, and not CN's individual performance on that route. (See, e.g., CN Reply Br., pp. 13, 48-49). These concerns are misplaced.

First, if a route is performing under 80% COTP, that route is not in compliance with the Final Rule, and this continued underperformance would justify a Board investigation under PRIIA § 213. (See 49 U.S.C. § 24308(f)). A penalty, rather than an incentive, is appropriate under such

circumstances. (49 U.S.C. § 24308(a)).

Here, however, Amtrak has reasonably provided for flexibility that benefits CN. Under Amtrak's proposal, if CN's HRDs indicate that CN is, in fact, likely not the cause of sub-80% COTP on a route, CN can earn at least some incentive (and not be penalized) when its HRDs are below 924. Amtrak's proposed system, therefore, does afford CN the opportunity to earn incentives even if the COTP on the route is under 80%. As CN observes, the *amount* of incentives that CN may earn is reduced based on the percentage of the low COTP, but that is entirely reasonable given that the route as a whole is underperforming.

Second, CN contends that COTP for a route as a whole is not an indication of the quality of its performance on the segment that CN hosts on that route. This is not accurate. As Amtrak has previously argued, even on routes where CN does not host significant route miles, delays on CN's system *can* impact COTP as a whole and at foreign stations. (See Amtrak Reply Br., pp. 27-29). Indeed, CN has admitted as much in its reply brief. (See CN Reply Br., p. 48) ("An individual host can generally do nothing to improve COTP *other than by reducing HRD on its own lines*") (emphasis added). Accordingly, even on routes where CN does not host the majority of route miles, CN is not merely a passive bystander. As to routes where CN hosts nearly all of the route miles (such as City of New Orleans and Illini/Saluki), CN's argument is inapposite, as COTP on those routes is a direct indicator of CN's performance.

Next, CN criticizes Amtrak's use of COTP as contrary to the Board's 2019 Decision. (See CN Reply Br., pp. 8-11). CN points out that the Board indicated a preference for a system that includes checkpoints. (Id.). However, what the Board stated specifically was that "the OTP metric would ideally include checkpoints *at all stations along a route.*" (2019 Decision, p. 11) (emphasis

added).¹⁴ That is precisely how COTP operates. COTP 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.” (See 85 F.R. at 72974; 49 C.F.R. 273.5(a) (emphasis added)). Under the COTP metric, each station is effectively a “checkpoint” at which the performance of Amtrak trains is measured.¹⁵

3. *Inclusion of the Ridership Factor in Amtrak’s Proposed Incentives and Penalties System is Reasonable*

CN also misconstrues Amtrak’s use of the Ridership Factor. CN claims that it “has very little to do with either measuring CN’s performance or focusing on the COTP goal.” (CN Reply Br., p. 50). However, that is not the primary purpose of the Ridership Factor; its main function is to establish the pool of incentives that CN may earn (or the penalties that it may incur) for each route based on CN’s prior incentive earnings in 2019 (and 2020/2021, for the Illini Saluki route). (See Amtrak Opening Br., pp. 36-42) (explaining calculation of initial Ridership Factors for routes).¹⁶

Moreover, the Ridership Factor is consistent with the 2019 Decision and the Final Rule, both of which place paramount importance on the experiences of each and every Amtrak

¹⁴ CN’s criticism underscores why its own proposed incentive and penalty system should be rejected. As argued in Amtrak’s reply brief, CN’s proposal includes “checkpoints” only at stations on its system. CN ignores the quality of the experiences of Amtrak’s passengers disembarking at all stations not located on CN’s system. See Amtrak Reply Br., pp. 22-31.

¹⁵ CN even goes so far as to suggest that, “notwithstanding the Board’s guidance, Amtrak’s proposal has no ‘checkpoints.’” CN Reply Br., p. 10. This argument is of no consequence here. Although Amtrak has not specifically labelled any points (stations or otherwise) as “checkpoints,” its incorporation of the COTP metric effectively treats each station as a checkpoint.

¹⁶ CN also mistakenly claims that the “Ridership Factor would not even apply as a variable until 2024.” CN Reply Br., p. 14. This is wrong. The Ridership Factor proposed by Amtrak will be part of Amtrak’s penalty and incentive calculations as soon as the new OA becomes effective.

passenger. (See Id., pp. 42-44). The Ridership Factor, and its annual adjustment, places a value on the miles travelled on CN's system by each passenger.¹⁷ When the Ridership Factor is adjusted annually, as Amtrak proposes, if there is an increase in ridership on CN's system, the pool of incentives that CN may earn will increase. (Id.).

Furthermore, the Ridership Factor incentivizes CN to help grow Amtrak's ridership. CN denies that it has any such incentive. (CN Reply Br., p. 51). But, that is simply an unreasonable position that the Board should reject out of hand—if a Host Railroad can increase its pool of incentives based on increased ridership, it is difficult to understand why it would not be incentivized to do so. CN claims instead that “incentivizing CN to help Amtrak achieve higher OTP . . . does the job more simply and efficiently.” (Id.). Amtrak concurs that CN is already incentivized to improve COTP because it is a direct factor in calculating the available pool of incentives. Under Amtrak's proposal, however, CN is incentivized to increase *both* COTP and ridership.

D. CN's Arguments as to the Operation of Amtrak's Incentives and Penalties Calculations Lack Merit

CN's additional arguments about Amtrak's proposed incentive and penalty calculations lack merit.

1. *Impact of High COTP and Ridership Factors on CN's Penalties*

Under Amtrak's proposed system, the potential pool of incentives that CN may earn or the penalties that it may incur is based on COTP multiplied by the Ridership Factor. The higher COTP

¹⁷ CN at least gives lip-service to this important consideration. See CN Reply Br., p. 13 (citing Board's guidance that “the experience, in terms of punctuality, of each and every passenger should count”). Again, however, CN's own proposed incentive and penalty system ignores the experiences of all Amtrak passengers that disembark at stations not located on CN's system.

and the Ridership Factor are, the greater the pool will be. The amount of incentives that CN will actually be paid from that pool (or the penalty that CN will incur) is based on the Delay Adjustment Factor that correlates to the number of CN-HRDs. The lower CN's HRDs, the greater the percentage of the incentive pool that CN will be paid. (See Amtrak Opening Br., pp. 40-42, 50-53) (discussing operation of Delay Adjustment Factor)). When CN's HRDs are between 750-799, CN will be paid 100% of that incentive pool under Amtrak's proposal. (See Amtrak Redline, Appx V, Table 2). The converse is true in the event that CN's HRDs exceed 925—*i.e.*, the greater CN's HRDs, the greater the penalty that CN incurs.

CN contends that this creates “perverse” incentives. (CN Reply Br., pp. 50-51). For example, CN claims that “if CN has HRD above 924 and, as such, accrues penalties, it will accrue more penalties – be worse off – the more Amtrak's ostensible goal – high COTP – is being achieved.” (CN Reply Br., p. 49). But, where CN's HRDs are in excess of 924, it has likely done *nothing* to contribute to the high COTP on the route. Rather, the route's high COTP was likely achieved *despite* CN's poor performance. That CN is penalized under those circumstances is perfectly appropriate.

CN makes the same argument as to the Ridership Factor. (See CN Reply Br., pp. 51-52) However, if CN's HRDs are high and the Ridership Factor is also high, then CN is delaying even *more* Amtrak passengers. It is, therefore, reasonable for CN to be penalized to a greater extent than if the Ridership Factor were lower (where fewer passengers would be delayed).

2. Amtrak's “Asymmetrical Incentives/Penalties Table”

Next, CN claims that Amtrak's “Delay Adjustment Factor” table reflecting the percentage of incentives paid to CN or the penalty incurred (Amtrak Redline, Appx V, Table 2) is improper because it is “asymmetrical”—*i.e.*, the percentage of penalties increases at a faster rate than does

the percentage of incentives (CN Reply Br., pp. 45-47). This argument is misplaced.

Penalties for poor performance are mandated by Congress; incentives are not. (See 49 U.S.C. 24308(a)). A function of penalties is to spur immediate action by the Host Railroad to address poor COTP. Accordingly, it is appropriate for penalties to begin to graduate at a faster rate than do incentives. Periods of sustained poor performance, coupled with low percentages of penalties, may do little to spur any action on the part of the Host Railroad—frustrating the purpose of imposing the penalty in the first place.

The same rationale does not apply to incentives, with good reason. At 900-924 HRDs (which correlate to the minimum standard of 80% COTP), CN would earn 10% of the available incentive pool (as calculated by COTP * Ridership Factor). (Amtrak Redline, Appx V, Table 2). At that point, CN has done no more than the *minimum* (i.e., its HRDs correlate to the minimum COTP standard of 80% established in the Final Rule). It is not unreasonable for a Host Railroad that has done the minimum to receive 10% of the available incentive pool. Amtrak's operational goal is, of course, to exceed that 80% COTP minimum standard. By graduating incentives at a slower rate than penalties, the Host Railroad will be incentivized to reduce its HRDs significantly, so that it may obtain the higher percentages of incentives available when HRDs are at 799 and below (at which point the Host will receive 100% or more of the available incentive pool).¹⁸

¹⁸ CN makes much of the statement in the Verified Statement of James Blair that Amtrak uses these adjusted prior earnings to calculate a number that “ensures that CN earns a similar amount of inflation-adjusted incentives under the new OA as it earned in 2019, if the subject route performs near 80% COTP.” CN Reply Br., pp. 46-47. CN appears to have read this statement wholly out of context as an assurance under Amtrak's proposal that, if COTP for a route is 80%, CN would earn the same amount of incentives it earned in 2019. *Id.* But, Mr. Blair's statement cannot be read without reference to the next metric in Amtrak's incentive and penalty calculation—the Delay Adjustment Factor. Only when the delay adjustment factor is 100% (which it is when CN's HRDs are in the range of 750-799) will CN earn an amount of incentives that is equal to its 2019

E. Amtrak’s Elimination of “Relief Items” from its Proposal is not Contrary to the 2019 Decision or the Final Rule

CN also contends that, in the 2019 Decision, the Board indicated that “relief items” (*i.e.*, additional tolerances and DNCs) should be included as part of an OTP and incentive and penalty system in a new OA. (CN Reply Br., pp. 9-11). But, the Board indicated no such thing and, in any event, in the Final Rule, FRA expressly disapproved of the use of relief items in calculating COTP.

CN quotes an excerpt from the Board’s 2019 Decision that it “encourages the parties to review Amtrak’s existing delay codes and consider incorporating an analysis of which party is in the position to avoid or control the delay.” (CN Reply Br., p. 9) (quoting 2019 Decision, p. 24). The Board, however, made this statement when rejecting CN’s unworkable “root cause” approach (which CN no longer appears to be pursuing).¹⁹ The Board in no way indicated that “relief items” must be part of an OTP or incentive and penalty system, as CN suggested.

In the Final Rule, FRA put this issue to rest by expressly rejecting contract-based approaches to measuring OTP, including the use of additional tolerances and other relief. (See Amtrak Reply Br., pp. 13-14). As FRA stated in the Final Rule: “FRA believes the most meaningful measurement of OTP is based on the customer experience of actually arriving at their destination on time, *not obscured by other tolerance or relief.*” (85 F.R. at 72984) (emphasis added).

incentives (adjusted upward for inflation).

¹⁹ The Board stated that “CN has neither adequately explained how a ‘root cause’ approach would work in practice nor shown that such an approach would not be too burdensome and time-consuming to apply.” 2019 Decision, p. 24.

* * *

For the foregoing reasons, CN's objections to Amtrak's proposed terms related to OTP, incentives and penalties should be rejected, and the Board should impose the terms proposed by Amtrak, as they are "reasonable" under § 24308(a).

POINT III

AMTRAK'S PROPOSED TERMS FOR CONCRETE REMEDIAL ACTION ARE REASONABLE AND SHOULD BE ADOPTED

The Board should reject CN's contention that Amtrak's tiered proposal for implementing "concrete action" is unreasonable and inconsistent with the 2019 Decision. Amtrak only proposes action in circumstances where CN's HRDs per 10,000 train miles (again, a metric endorsed in the Final Rule) demonstrate that CN is causing Amtrak trains to perform poorly. Allowing such poor performance to go unchecked is not in the public interest—a fact that the Board recognized in urging the Parties to include in their OA "mandatory actions by CN to improve service" in response to poor Amtrak performance on CN's system. (2019 Decision, p. 17).

A. Amtrak's Proposal Is Consistent with the Board's Decision

CN first argues that Amtrak's proposal does not include a "true reopener" (which Amtrak acknowledges). (CN Reply Brief, p. 60; Amtrak Opening Br., p. 67, n.48). But, the Board's 2019 Decision does not contemplate a "true reopener"—*i.e.*, a clause which requires the parties to "reopen" negotiations at some future date to modify their agreement. See Lear Siegler Inc. v. N.L.R.B., 890 F.2d 1573, 1575 (10th Cir. 1989) (stating that "reopener" provision "permits midterm modification of a contract.>").

The concept of a "reopener" was not one that the Board even raised. Rather, CN initially proposed the concept of a "true reopener." (2019 Decision, p. 16) ("CN proposes a 'reopener'

provision that would provide that, if CN's performance falls below a certain level, the parties will confer to determine how to improve service.”). In all events, the Board did not indicate that, in response to sustained poor performance inconveniencing Amtrak's passengers, the Parties should pause to “reopen” and renegotiate terms of the OA. The Board certainly did not contemplate the extended periods of inaction and delay inherent in the new “reopener” proposed by CN. (See Amtrak Reply Br., pp. 39-46) (discussing the inaction and delay inherent in CN's proposal).

Rather, the Board appropriately called for “concrete action” and “mandatory action” by CN to address promptly Amtrak poor performance—not cumbersome discussions, proposals, counterproposals, and negotiations about what those actions might ultimately be. Amtrak's proposal, therefore, is designed to implement corrective action without delay when it is most appropriate, *i.e.*, when CN's HRDs are unreasonably high. CN's proposed “true reopener” guarantees protracted negotiations between the Parties, but provides no expedited relief to Amtrak's passengers who are being delayed on CN's system.

B. Amtrak's Proposal Addresses “Sustained Poor Performance”

CN also argues that Amtrak's proposal “bears no relation to the potential for and the need to address ‘sustained performance’ the Board noted.” (CN Reply Br., p. 61). This argument is without merit. CN entirely misses the reason the Board urged the Parties to include concrete action within the OA in the first place.

CN argues that “the Board's rationale for a reopener” is to “address[] CN's potential loss of incentives for good performance *if* the lookback applies.” (Id.) (emphasis original). This is false. The Board's rationale in urging the Parties to include a “reopener” and “concrete action” has nothing to do with assuring that CN earns incentives (or that it does not receive less in incentives). It also has nothing to do with whether the lookback protects CN from having to pay

penalties during a given quarter.

Rather, the Board urged concrete action to address (and remedy) instances where Amtrak's passengers are routinely arriving late on an Amtrak route hosted by CN. That is why the Board stated that "periods of sustained poor performance must be acknowledged and addressed." (2019 Decision, p. 17). The rationale for including concrete action in the OA is, therefore, to protect Amtrak's passengers and expediently address conditions causing delays; it is not intended to insulate CN from penalties or to assure that CN receives incentives.

Next, CN argues that Amtrak's proposal implements Tier 1 remedies where CN's HRDs are over 924 "for a *single train* over a *single quarter*." (CN Reply, p. 61) (emphasis original). Indeed, implementing some remedial action under that circumstance is entirely appropriate. Under Amtrak's proposed OA, if CN's HRDs exceed 924 on routes such as City of New Orleans or Illini/Saluki, where CN hosts the majority of the track miles, that very likely means that COTP of the Amtrak train is under 80% for that quarter. Under Amtrak's proposed Tier 1 remedy, this is already *three months* of Amtrak's passengers being inconvenienced. In the event that COTP for the train is at 80% or higher, but CN's HRDs exceed 924, that means that the route is performing well *despite* CN's poor performance.²⁰ The latter scenario is likely to occur where CN hosts small route segments (*e.g.*, Wolverine and Texas Eagle). In both scenarios, there is no basis for deferring the implementation of remedial action.

CN next faults Amtrak's proposal because it may implement concrete action even when

²⁰ Similarly, CN argues that it is not appropriate for remedial action to be imposed if "CN-hosted trains, including the train at issue, are achieving Amtrak ostensible goal of at least 80% COTP." CN Reply Br., p. 61. As noted, if CN's HRDs are high, that poor performance should not be exempt from remedial action just because the route or train is performing well. Again, that strong overall route performance will likely have been achieved despite CN's poor performance.

CN has “earned net incentives over the life of the [OA].” (CN Reply Br., p. 61). That circumstance is irrelevant to whether Amtrak’s service on a particular route or train is *presently* being adversely impacted by CN. If it is, under the Board’s 2019 Decision, that issue warrants prompt attention.

Lastly, imposing Tier 1 remedies under Amtrak’s proposal after one quarter of poor performance is not a “hair-trigger” approach, as CN labels it. That characterization shows a lack of seriousness or urgency in addressing late arrivals and inconveniences to Amtrak’s passengers. Amtrak’s proposal is intended to implement at least some remedial action before sub-80% COTP for an Amtrak route has occurred for two consecutive quarters, and reaches the threshold for a PRIIA § 213 investigation by the Board. This early-intervention approach is eminently reasonable, and allows CN to take corrective action before the PRIIA § 213 failure standard is reached. CN has provided no basis to argue that the Parties must await the passage of two calendar quarters to address deficiencies through the OA.

C. Amtrak’s Proposed Tiered Remedial Actions are Reasonable

CN contends that the Board should not impose Amtrak’s terms because each tier of remedial action is unreasonable. (CN Reply Br., p. 62). The Board should reject CN’s arguments, which are based upon misapplications of the governing statutes and exaggerated claims about the impact upon CN’s operations.

As a threshold issue, CN is using an inappropriate standard of “reasonableness” under 49 U.S.C. § 24308(a). CN claims that the Board’s role “is not to impose terms that *no reasonable commercial party would ever accept*.” (CN Reply Br., p. 63) (emphasis added). However, CN’s argument overlooks that the Amtrak/CN contractual relationship is the product of the Public Bargain that created Amtrak, and is governed by the framework that Congress established to protect the public interest. Among other things, in exchange for Congress relieving the freight

railroads of their obligation to provide passenger services, the railroads agreed—and are required by statute—to provide Amtrak with access to their rail lines and facilities, and to give Amtrak trains preference over freight trains. See generally 49 U.S.C. § 24308; see also Nat’l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. 451, 455 (1985). And, Host Railroads may be part of an investigation by the Board under PRIIA § 213 in the event of two consecutive quarters of sub-80% OTP, and subject to damages and other relief if that poor performance results from their failure to provide preference to Amtrak trains. 49 U.S.C. § 24308(f) (codifying PRIIA § 213).

What is “reasonable” under 49 U.S.C. § 24308(a) depends on the facts and circumstances before the Board.²¹ In the context of the Amtrak/CN regulated relationship, it is reasonable for the Board to impose the terms that Amtrak has proposed, particularly regarding measures to improve CN’s dispatching, as that function, and implementing related procedures and protocols, is at the core of CN’s statutory hosting performance obligations, and is central to Amtrak’s ability to provide adequate service. When viewed in this context, Amtrak’s proposals are reasonable.

Amtrak’s proposed Tier 1 remedies are implemented after one quarter of poor performance by CN, as reflected by HRDs of more than 924. (Amtrak Redline, Appx V, § IV(1)). CN claims that Amtrak’s proposed requirement that it report on HRDs of more than five minutes is “largely pointless,” because such delays “cannot reasonably be prevented, so no corrective action could avoid a repeat.” (CN Reply Br., p. 64). But, CN admits that Amtrak’s trains are routinely subject

²¹ See Sherwin Alumina Co., LLC v. Union Pacific Railroad, NOR 42143, 2015 WL 5711004, at *4 (S.T.B. Sept. 28, 2015) (citing 49 U.S.C. § 11101(a), and stating that “[w]hat constitutes a reasonable request for service is not statutorily defined but depends on all the relevant facts and circumstances.”); see also Black’s Law Dictionary (11th ed. 2019) (defining “reasonable” as “fair, proper, or moderate under the circumstances; sensible”).

to these delays, ranging from five to fifteen minutes.²² As such, delays of five to fifteen minutes cannot be considered insignificant and disregarded as CN proposes. For example, it would only take, at most, three such delays to cause an Amtrak train to arrive after the fifteen-minute tolerance established by Congress. See 49 U.S.C. § 24101(c)(4) (establishing Amtrak’s goal to “operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables”).

Further, if those delays aggregate to more than 924 HRDs per 10,000 train miles during a quarter, there is no reason to delay an investigation. If there is “no corrective action” that can be taken, that may be borne out in the investigation and reporting process. The solution is not, as CN proposes, to simply do nothing. (Blair Rebuttal VS, ¶¶ 19-21).

CN also claims that its burden is amplified because it does not “know, when a delay occurs, how many minutes of delay Amtrak will record or whether Amtrak will categorize that delay as HRD.” (CN Reply Br., p. 65). This is baseless. CN has continuous access to and regularly reviews Amtrak’s delay data. Indeed, this is how, with increasing frequency, CN decides to challenge Amtrak’s delay codes.²³ (See Blair Reply Verified Statement dated July 26, 2022, ¶ 66) (explaining CN’s access to Amtrak delay code data). CN’s contention is, therefore, exaggerated, and the reporting requirement will not add any burden to CN’s existing process of reviewing

²² For example, on the City of New Orleans route, CN admits that Amtrak trains routinely incur “about 200 instances of delays of five minutes or more that Amtrak codes as HRD each month . . .” the majority of which are under fifteen minutes. CN Reply Br., p. 65. Although CN asserts that the City of New Orleans route has historically performed well, that is certainly not the case now, and it is certainly not true of other CN routes.

²³ See Weiss Rebuttal VS, ¶¶ 4-6; see also Matteucci/Kuxmann Joint Reply Verified Statement dated July 26, 2022, ¶ 35) (discussing CN’s review of Amtrak delay codes and CN’s change requests).

Amtrak's delay data. (Blair Rebuttal VS, ¶ 23).²⁴

CN's also disputes Amtrak's proposed Tier 1 remedy providing Amtrak with access to CN's dispatching screens, contending that the screens "contain highly sensitive commercial information about [CN's] operations." (CN Reply Br., p. 66). Amtrak's proposal is intended to address CN's poor performance, not to access CN's confidential information. (Blair Rebuttal VS, ¶ 25). Amtrak is amenable to a reasonable confidentiality undertaking in connection with its remedies. (*Id.*).²⁵

CN also objects to Amtrak's Tier 2 remedy which allows it to personally observe CN's dispatchers. Remarkably, CN claims that Amtrak's intent is to "intimidate" or "interfere" with its dispatchers' work. (CN Reply Br., p., 67). Not so. (Blair Rebuttal VS., ¶ 27). Amtrak's intent is to utilize its direct observations of CN's dispatchers to address any problems with CN's dispatching that is causing delays to Amtrak's trains, and to better understand the choices that CN dispatchers make that negatively impact Amtrak performance. (*Id.*). This increased level of review

²⁴ CN also claims that requiring a dispatcher to report on HRDs or to be counseled will "seriously harm CN's dispatching work environment and employee relations." CN Reply Br., p. 64. This concern, even if it were factually grounded, does not outweigh the need to investigate delays that adversely impact Amtrak's passengers. FRA previously noted, but rejected, similar concerns in adopting the COTP metric in the Final Rule. See 85 F.R. 72975 n.6 ("One commenter also stated that the customer OTP metric would harm the morale of the host railroad's employees who take pride in achieving good OTP. FRA appreciates the commitment of all employees, at Amtrak and the host railroads, and understand they work hard in support of Amtrak trains.").

²⁵ The Board has routinely endorsed the use of protective orders and confidentiality agreements to protect proprietary or commercially sensitive information. See, e.g., Duke Energy Corp. v. CSX Transp., Inc., STB Docket No. 42070, 2002 WL 335180, at *2 (S.T.B., Mar. 1, 2002); Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Rwy Co., STB Docket No. 42056, 2001 WL 112303, at *2-3 (STB, Feb. 9, 2001) (same); see also Nat'l Classification Comm. - Agreement, 4 S.T.B. 496, 2000 WL 149642, at *2 (S.T.B., Feb. 9, 2000) (stating that parties "can devise ways to meet all legitimate confidentiality concerns, by means such as protective agreements.").

is appropriate because this Tier 2 remedy is implemented only after CN's high HRDs have continued for two consecutive quarters. (*Id.*).²⁶

CN also claims that Amtrak's Tier 2 remedy requiring it to notify Amtrak, and to obtain written approval from Amtrak for non-emergency maintenance work, "would be a fiasco," and that "CN's railroad is CN's, not Amtrak's." (CN Reply Br., p. 68). CN's concerns are greatly overstated. Amtrak is not trying to control work on CN's system, nor to dictate how or when such work is conducted. (Blair Rebuttal VS, ¶ 28). This remedy applies if, and only if, CN decides that it will perform non-emergency work at a time, place and manner that is "reasonably expected" to delay Amtrak's trains. (*Id.*).²⁷ If, in the face of six-months of excessive CN HRDs and related poor performance for Amtrak, CN conducts maintenance work that will likely aggravate those delays, it is not unreasonable for CN to provide notice to Amtrak and for Amtrak to have a right to veto that non-emergency work.²⁸

²⁶ CN also claims that "[i]nserting outsiders into [their dispatchers'] work environment . . . literally looking over their shoulders, would seriously impair vital labor-relations, operational and confidentiality interests." CN Reply Br., p. 67. Again, these work-environment related concerns do not justify rejecting Amtrak's proposal (*see* n.23, *supra*), and any alleged "confidentiality interests" can be addressed through a confidentiality undertaking. *See Duke Energy Corp.*, 2002 WL 335180, at *2. Additionally, the oversight is limited to the time that Amtrak trains are operating on CN's lines. For most dispatchers, this would represent only a small portion of their shift.

²⁷ Contrary to CN's assertion, Amtrak has never taken the position that preference violations on CN's system are exclusively attributable to CN's dispatching practices. CN Reply Br., p. 69. There is no exception to CN's obligation to provide preference for instances where it schedules non-emergency maintenance work for a time, place and manner that is expected to delay Amtrak's trains. *See* 49 U.S.C. § 24308(c).

²⁸ CN claims that "Amtrak lacks the necessary experience, visibility over all of CN's traffic, employee relations, and understanding of and interest in efficiency to do the job safely." CN Reply Br., p. 68. Contrary to CN's arguments, Amtrak has extensive experience in railroad scheduling and maintenance, and Amtrak will not simply object to all of CN's work. Indeed, Amtrak—which dispatches and maintains the Michigan Line and the 457 mile long Northeast Corridor (the busiest

With respect to Amtrak’s proposed Tier 3 remedy to take over (or having a contractor take over) dispatching after four consecutive quarters of excessive CN HRDs, CN claims that “no HRD level . . . can justify Amtrak’s proposed expropriation of CN’s control over its private property.” (CN Reply Br., p. 70). CN predicts that: “Amtrak would cripple CN freight operations and destroy network fluidity by banning freight trains from vast swaths of CN’s largely single spine network whenever Amtrak’s trains are on the line.” (CN Reply Br., p. 73).

CN’s contentions are again exaggerated. There is no reason to believe that, if Amtrak or its contractor takes over dispatching of a CN subdivision on which an Amtrak train has been plagued with CN delays for a year, that CN’s operations will be “crippled.” (Blair Rebuttal VS, ¶ 32).

With *one whole year* of excessive CN HRDs on a route where CN hosts the majority of route miles (such as the Illini/Saluki or the City of New Orleans routes), CN will have been delivering performance that has likely caused sustained sub-80% COTP for a year. (*Id.*). If the route is one where CN has few route miles (such as the Texas Eagle), CN’s high level of HRDs is likely to have been causing poor performance on its portion of the route, and is likely to be adversely impacting Amtrak’s performance on other parts of the route hosted by other railroads. (*Id.*). At that point, there is clearly a failure of the basic dispatching functions that are necessary for Amtrak’s intercity passenger service to receive preference and to operate on time. (*Id.*). And, while dispatching is “complex,” it is an overstatement for CN to imply that CN, and CN alone, can handle the task on its system. (*Id.*). To the contrary, if Tier 3 remedies are triggered, then it is

right-of-way in the country)—has more than sufficient experience and expertise to meaningfully assess whether CN’s work should be approved or not, based on the impact on Amtrak’s passenger traffic. Blair Rebuttal VS, ¶ 30.

clear that there have been shortcomings in CN's dispatching practices, which the Board should not allow to continue. (Id.).

While Amtrak believes that this Tier 3 remedy is "reasonable" under 49 U.S.C. § 24308(a), in the event that the Board has concerns with Amtrak's suggested approach and crafts an alternative approach, Amtrak believes that the remedy must provide Amtrak with input into CN's dispatching. For example, this could be accomplished by permitting Amtrak to have Amtrak supervisors present at CN's dispatching center so that Amtrak can observe and have input into CN's dispatching decisions, or reassigning dispatchers involved in causing significant delays to Amtrak's trains. (Blair Rebuttal VS, ¶¶ 33-34).

* * *

Amtrak is not proposing remedial measures to be punitive. Amtrak's goal is not, and has never been, to use its OAs as a means of collecting penalties or to run a Host Railroad's business. Instead, the aim is to incentivize Host Railroads to operationalize their Congressionally mandated and statutory obligations. Furthermore, Amtrak is proposing to implement remedial measures only when there is evidence—in the form of persistently high CN HRDs—that CN is causing delays to Amtrak's service on CN's system. Under those circumstances, it is reasonable, and in the public interest of Amtrak's passengers, for CN to be subject to the tiered remedial measures that Amtrak has proposed.

CN's refrain that Amtrak's proposals are unprecedented are overstated and inaccurate. Current real-world practices already involve significant coordination between CN and Amtrak with respect to safety issues, maintenance work, and other issues designed to maintain network fluidity. CN has to do the same every day with other railroads, such as other freight and commuter railroads. Amtrak's proposal does no more than enhance that level of coordination at a time where

CN is consistently delivering poor service to Amtrak. There is no danger of “takeover” of CN’s operations.²⁹

D. Amtrak’s Proposal Is Consistent with The Governing Statute

CN next claims that the Board should reject Amtrak’s proposal because it conflicts with 49 U.S.C. § 24308(f), which codifies PRIIA § 213 and provides for a Board investigation when OTP of an Amtrak train is below 80% for two consecutive quarters. But, CN’s position is contrary to the Board’s 2019 Decision and is internally inconsistent.

1. *CN’s Argument is Contrary the 2019 Decision*

In the 2019 Decision, the Board described 49 U.S.C. § 24308(f) as a “completely *separate mechanism*” from the “concrete action” that the Board contemplated. (2019 Decision, p. 17) (emphasis added). If § 24308(f) were the sole mechanism for addressing poor performance of Amtrak trains on CN’s system, the Board would have said so. Instead, while acknowledging the remedies available under § 24308(f), the Board nonetheless urged the Parties to include concrete action in a new OA to address that issue. The concrete action proposed by Amtrak may suffice to remedy problems with performance on CN’s system. If it does, that would obviate the need for a Board investigation under § 24308(f), and would conserve the time and resources of Amtrak and

²⁹ CN also argues that certain Board decisions “confirm that Amtrak’s proposal conflicts with the broader regulatory regime.” See CN Reply Br., pp. 83-85 (citing Rail-Term Corp. - Petition for Declaratory Ord., No. FD 35582, 2014 WL 7405858, at *8 (S.T.B., Dec. 30, 2014); Rail-Term Corp. - Petition for Declaratory Ord., No. FD 35582, 2013 WL 6078414, at *1 (S.T.B., Nov. 15, 2013) (CN Reply Br., p. 83)). CN claims that these decisions establish that “dispatching is an essential railroad function” over which CN must maintain exclusive control. Amtrak agrees that dispatching is an important function. Indeed, because dispatching is so integrally related to CN’s management of passenger and freight traffic on its system, if CN’s HRDs are high, there are very likely to be problems with CN’s dispatching practices. This is what necessitates remedial measures of the kind that Amtrak is proposing.

CN, and potentially prevent more invasive action by the Board.

2. CN's Interpretation of § 24308(f) is Overbroad

CN argues that § 24308(f)'s provision for a Board investigation into untimely Amtrak performance on a Host Railroad's network is: (a) a specific provision which controls over the general provisions of § 24308(a) requiring the Board to impose "reasonable" contract terms; and (b) contains the exclusive remedy for violations of Amtrak's preference. (CN Reply Br., p. 76-77). In short, CN appears to contend that the Board cannot impose any terms in a new OA for the review or remedy of its dispatching—even if it is causing delay to Amtrak's trains—unless the prerequisites for a Board investigation under § 24308(f) are met (*i.e.*, two consecutive quarters of sub-80% OTP for an Amtrak train). CN argues that Amtrak's three tiers of remedial action "all are intended to address preference and on-time performance, and all are inconsistent with § 24308(f)." (*Id.*, p. 81).

CN's interpretation of § 24308(f) is overbroad and incorrect. As the Board is aware, the OTP-related metrics established in the Final Rule *must* be incorporated into the Parties' next OA to the extent practicable.³⁰ Indeed, Appendix V of the OA as proposed by both Parties is dedicated to measuring OTP of Amtrak's trains, an issue which is inextricably bound with whether Amtrak's preference is being honored on CN's system. OTP and preference-related issues are, therefore, clearly matters that the Board may consider in a proceeding to set reasonable terms and compensation under § 24308(a). The "concrete action" provisions that the Board urged the Parties to include—and which are the subject of Amtrak's three-tiered proposal—are simply additional

³⁰ See, *e.g.*, PRIIA, § 207(c) (requiring FRA metrics and standards be incorporated into Amtrak/Host OAs); 85 F.R. at 72976-77 (same).

terms aimed at addressing those issues.

Further, CN has included terms in its proposal for the Parties to investigate CN's own dispatching practices after periods of poor performance. (See CN Redline, Appx V, § G(1)(i)). This undermines CN position that a review of and potential remedies related to its dispatching are confined to proceedings under § 24308(f). In fact, CN has itself proposed such remedies in this § 24308(a) proceeding.

Next, CN complains that Amtrak's triggers for remedial action (CN's HRDs) do not align with the triggers in § 24308(f) for a Board investigation—*i.e.*, Amtrak's concrete action proposal is not triggered by sub-80% OTP after two consecutive quarters. But, again, this is so that remedial action in the Amtrak/CN OA is triggered only when CN is causing excessive delays to Amtrak's trains based on CN's own HRDs. (See Amtrak Opening Br., pp. 66-67).

As FRA recognized, COTP is *not* a Host-specific metric, and would not necessarily indicate that CN is causing delays to Amtrak—particularly on routes where CN has few route miles. (See 85 F.R. at 72975). On the other hand, CN's HRDs directly measure whether, and the degree to which, CN is delaying Amtrak's trains. See 85 F.R. at 72984 (HRD per 10,000 train miles metric reflects “an individual railroad's performance on a route that has more than one host.”). If CN's HRDs indicate that it is not causing delays to Amtrak's trains (*i.e.*, its HRDs are less than 924 per 10,000 train miles), there is no reason for implementing “concrete action” directed at CN's performance. As Amtrak has previously explained, implementing Tier 1 remedial action after one-quarter for CN HRDs above 924 is intended to take an “early intervention” approach to addressing poor performance, and to do so before the threshold for a Board investigation under § 24308(f) is reached. (Amtrak Reply Br., p. 40).

E. Amtrak's Tier 2 and Tier 3 Remedies are Not Takings

CN next argues that Amtrak's Tier 2 and Tier 3 remedies are physical occupations that constitute *per se* takings. (CN Reply Br., pp. 85-88). Amtrak's proposed Tier 2 remedies would be implemented after two consecutive quarters where CN's HRDs exceed 924 and, *inter alia*, allow Amtrak to enter CN's premises to observe its dispatching practices. (Amtrak Redline, Appx V, § IV(2)). Amtrak's proposed Tier 3 remedies would be implemented after four consecutive quarters of CN HRDs in excess of 924, and allow Amtrak (or its designee) to take over dispatching of the subdivision where the underperforming Amtrak train is operating. (*Id.*, § IV(3)). Amtrak's presence on CN's property under its proposed system is temporary, not permanent. (*See Id.*, §§ IV(2)(b)), IV(3)(b)).³¹ These provisions, if imposed by the Board, do not constitute a taking.

First, as the Board observed in the 2019 decision, and applying longstanding precedent, the imposition of terms and compensation in a proceeding under 49 U.S.C. § 24308(a) does not constitute an unconstitutional taking. (2019 Decision, p. 21) (citing Metro. Transp. Auth. v. I.C.C., 792 F.2d 287, 296 (2d Cir. 1986) ("proceeding by way of section 402(a) [now § 24308] is not a taking"). If the Board agrees that Amtrak's proposed Tier 2 and 3 remedies are "reasonable" under § 24308(a), they are simply further terms imposed by the Board allowing Amtrak additional access to CN's "facilities" to effectively provide intercity passenger service on CN's system.

Second, CN cites the Supreme Court's decision in Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (2021) for the sweeping proposition that the Board's imposition of Amtrak's Tier 2 and Tier

³¹ Amtrak's Tier 2 remedies are discontinued after twelve months or earlier in Amtrak's discretion. Amtrak Redline, Appx V, § IV(2)(b). Amtrak's Tier 3 remedies shall remain in effect "for the longer of: (a) a period of two (2) years, or (b) until CN's HRDs have been at or below 924 minutes per 10,000 train miles for twelve (12) full consecutive months." *Id.*, § IV(3)(b).

3 remedies would constitute a *per se* taking because it involves a “physical appropriation of property.” (CN Reply Br., p. 86). That case does not support CN’s position, but rather supports Amtrak’s. The Court in Cedar Point held that “the government may require property owners to cede a right of access as a condition of receiving certain benefits without causing a taking.” Id. at 2079.³² The condition, however, must bear an “essential nexus” and “rough proportionality” to the proposed impact on the owner’s property. (Id.) (citing Nollan v. California Coastal Comm’n, 483 U.S. 825, 836 (1987)).

Here, in the Public Bargain, CN ceded a right of access to its facilities to Amtrak in exchange for the considerable benefit conferred by Congress allowing CN to relinquish its financial and regulatory obligation to provide passenger service—a service that Amtrak would provide. That condition was coupled with the assumption, and statutory requirement, that CN would support Amtrak’s on time operation of its passenger trains on CN’s system. When CN has delayed Amtrak’s trains for six months to one year, it is reasonable for CN (as part of its ceding to Amtrak of a right of access to its facilities) to allow Amtrak access to CN’s dispatching facilities and personnel to address the problem. Further, Amtrak’s proposed remedies, as Cedar Point requires, have an “essential nexus” and “rough proportionality” to Amtrak’s temporary occupation of CN’s property. Amtrak’s temporary occupation is directed toward addressing CN’s dispatching issues that are causing Amtrak delays.³³

³² As an example, the Court observed that the government may condition issuance of a “permit, license or registration on allowing access for reasonable health and safety inspections.” Cedar Point, 141 S.Ct. at 2079

³³ Further, Amtrak’s Tier 2 and 3 remedies are not takings because they are part of an effort to remedy significant sustained periods of CN poor performance on Amtrak’s routes. Particularly on routes where CN has the majority of the train miles (e.g., the Illini/Saluki and City of New Orleans routes), that poor performance is likely to result in sub-80% COTP. It is in the public

POINT IV

AMTRAK’S PROPOSED TERMS RELATED TO THE LOOKBACK ARE REASONABLE

Both Parties agree that the OA should include a lookback provision. Amtrak proposes that the lookback period should be the then-applicable life of the OA; CN proposes to retain the one-year limitation on the lookback. (CN Reply Br., p. 57). Amtrak also proposes that the lookback will be assessed as to all of CN’s routes as a whole, while CN proposes to apply the lookback on a per-route basis (except for the Lincoln and Texas Eagle routes, which it proposes to assess together). (*Id.*, p. 58). The Board should adopt Amtrak’s proposed lookback.

A. The Lookback Provision Should Apply Over the Life of the Agreement

Congress mandates that Amtrak’s operating agreements “shall include a penalty for untimely performance.” 49 U.S.C. § 24308(a)(1). Any lookback provision operates to prevent Amtrak from collecting a penalty and, in the process, frustrates Congress’ intent to penalize Host Railroads for untimely performance of Amtrak trains on their system. (*See* Amtrak Opening Br., p. 61). CN’s resistance to extending the lookback period beyond one-year seeks to do exactly that—limit the imposition of Congressionally mandated penalties when they are most appropriate during periods of sustained poor CN performance.

At the outset, CN is incorrect in arguing that Amtrak’s proposal is intended to enable it to “collect[] the most penalties it can.” (Blair Rebuttal VS, ¶ 36). Penalties are mandated by Congress, and provided for in Amtrak’s proposal, when Amtrak trains are operating late, resulting

interest to attempt to remedy these issues. As the Supreme Court has held, “it has often upheld substantial regulation of an owner’s use of his own property where deemed necessary to promote the public interest.” *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982) (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978)).

in delivery of poor service to Amtrak's passengers. (Id.). Amtrak strives to meet its Congressionally mandated goal of delivering its passengers on time (49 U.S.C. § 24101(c)(4)), and has no desire to craft an OA that will drive a windfall of penalties. (Blair Rebuttal VS, ¶ 36). That would only mean that Amtrak is providing poor service. But, where CN is causing poor performance of Amtrak trains, penalties are mandated by Congress and, thus, entirely appropriate to incentivize CN's performance as a Host Railroad and to improve Amtrak service.

CN's approach is precisely the opposite—its expressed intent is to seek terms that avoid imposition of penalties, even during periods where CN is causing poor performance. CN goes so far as to state that: “a reasonable contract would give CN more than just the assurance that over an eight year (or longer) period, it *will not incur net penalties.*” (CN Reply Br., p. 58-59) (emphasis added). But CN is not entitled to any “assurance” that it will not be penalized. Congress requires it be penalized when it provides poor performance.

Furthermore, in the event of poor CN performance, all Amtrak's proposal does by lengthening the lookback is to make it more likely that Amtrak will be able to collect that penalty. In turn, this is intended to help restore Amtrak's service to above 80% COTP and to sustain it over the life of the new OA.

Amtrak's proposal for a longer lookback period includes a term that penalties cannot exceed the incentives that CN has collected over the life of the OA, thus addressing the Board's concern that CN's compensation should not be less than its incremental costs. (See Amtrak Opening Br., pp. 65-66). CN, however, contends this is not true because its “incremental cost compensation under the [OA] will not compensate CN fully for its actual incremental costs” (CN Reply Br., p. 57). Stated another way, CN appears to be arguing that that it is incurring certain unidentified incremental costs for which it is actually not receiving compensation from Amtrak.

Even if true, this would not meet the Board’s 2019 standard of demonstrating clear, verifiable, and quantifiable costs.

CN has had every opportunity in this case to demonstrate to the Board those costs that it believes are reimbursable incremental costs. CN has already failed as to a number of alleged costs,³⁴ but nonetheless persists in claiming that certain “freight delay costs” are reimbursable by Amtrak as incremental costs. For the reasons set forth in Amtrak’s reply brief, the Board should reject those arguments. CN should not succeed in opposing Amtrak’s request for a longer lookback based on its bald assertion that there are unspoken “incremental costs” that CN is incurring that might render CN’s overall compensation less than its actual incremental costs.

CN further argues that a longer lookback (and potential exposure to penalties) will not incentivize it to foster timely performance of Amtrak trains because it already has “ample incentives to avoid sustained poor performance.” (CN Reply Br., p. 57). For example, CN argues that poor Amtrak performance on its lines could result in “criticism of CN (whether deserved or not)” and a PRIIA § 213 investigation. (*Id.*) However, these potential events do not justify ignoring Congress’ mandate that penalties be part of an OA between Amtrak and CN. A PRIIA § 213 investigation by the Board is not a substitute for penalties, as CN implies. Indeed, Congress’s mandate for penalties is included in the same statute codifying PRIIA’s § 213 investigative mechanism. See 49 U.S.C. § 24308(f)(1) (codifying PRIIA § 213).

The Board, therefore, should impose Amtrak’s proposed term extending the lookback to

³⁴ See 2019 Decision, p. 22 (“The Board therefore rejects the non-quantified or otherwise amorphous costs CN proposes to include as incremental costs, such as freight rate suppression, capacity costs, foregone volume, lost opportunity costs, and other currently non-quantified costs CN might later identify.”).

the life of the OA.

B. The Lookback Should Apply to CN's Routes Collectively

CN opposes Amtrak's proposal to apply the lookback collectively to all of Amtrak's routes on CN's system. Instead, it proposes to apply the lookback on a per-route basis (except collectively for the Texas Eagle and Lincoln routes). CN's rationale is that: "one bad month could wipe out many months of diligent work earning incentives," because "one bad service could prevent CN from accruing any net incentives despite stellar performance on all Amtrak's other services." (CN Reply Br., p. 58). That, however, is exactly why the lookback should be applied collectively to all routes.

If the lookback is assessed by route, a Host Railroad could simply "write off" a route that is underperforming or that presents operational challenges for them. In such a scenario, CN would be able to earn and retain incentives on performing routes, yet operate penalty-free as a result of the lookback as to the underperforming route. This essentially insulates CN from any penalties on the underperforming route, which: (a) eliminates incentives for CN to restore timely performance on the route; and (b) effectively renders Congress' mandates for penalties a nullity as to that route. If, as Amtrak proposes, incentives earned on the performing routes are part of the lookback, penalties would be assessed on the underperforming route. This would incentivize CN to improve performance on that route.

CN also argues that the lookback should be assessed on a per route basis because, "separation of various services for application of incentives and penalties was specifically added by the parties in their last restatement of the [OA] in 2011, precisely to preserve independent incentives." (CN Reply Br., p. 58). Amtrak accommodated CN's request in 2011, but this further disadvantaged Amtrak; indeed, this accommodation resulted in the precise scenario that Amtrak

was concerned about.

At CN's request, and as a matter of compromise, in 2011, Amtrak agreed to a three-part split of CN's routes for assessing incentives, penalties, and the lookback.³⁵ (Blair Rebuttal VS, ¶ 40). Amtrak's agreement to this contract term was based, in part, on CN's contentions that CN's respective operating subdivisions would, in the event that a route within the division earned incentives, directly benefit from those incentives and continue to provide strong OTP to Amtrak on that route. (*Id.*). For example, CN represented that this would allow CN to direct the incentive payments it received from Amtrak to those CN employees most responsible for Amtrak's good performance on CN's system. Notably, CN has not provided any evidence or statement in this case confirming that it distributed incentives received from Amtrak in that manner. (*Id.*).

Conversely, if a route was penalized, the subdivision would be more responsive in addressing operational problems causing delays to Amtrak trains. (*Blair Rebuttal VS, ¶ 41*). However, this did not happen. (*Id.*). To the contrary, the construct resulted in the exact problem Amtrak discussed above—service on the Illini/Saluki route was extremely poor, and remained poor for a sustained period of time. (*Id.*). For example, COTP on the Illini/Saluki route from October 2016 through December 2019 was between a low of 9.4% (in June 2019) and 45.4% (in December 2019). (*Id.*). During this period, CN was penalized for that route; contrary to CN's assertion, penalties did nothing to improve service on the Illini/Saluki route. And, during this time frame, CN collected incentives for its other routes. For example, in 2019, Amtrak paid CN ██████████ in incentives—and not a penny of that was offset by the poor performance of the

³⁵ Historically, Amtrak's OAs with Host Railroads contain lookback provisions applied on a system-wide basis, not a per route basis. In fact, CN's 2011 OA is the only OA in which Amtrak agreed to a per-route analysis for a lookback provision. Blair Rebuttal VS, ¶ 40, n. 3.

Illini/Saluki route. (Id., ¶ 42). Furthermore, by operation of the lookback provision in the 2011 OA, despite CN’s poor performance in the Illini/Saluki route, Amtrak was unable to collect [REDACTED] of penalties that were assessed against CN during that timeframe. (Id.).

POINT V

THE BOARD SHOULD NOT IMPOSE CN’S PROPOSED TERMS “CLARIFYING” THAT SCHEDULES ARE SUBJECT TO ARBITRATION

In the 2019 Decision, the Board held that recovery time in Amtrak’s schedules should be adjusted “to give CN a meaningful opportunity to meet its performance obligations.” (2019 Decision, p. 11). The Board held, however, that there was no basis for requiring Amtrak to lengthen its schedules overall. (Id., p. 12).

Pursuant to the Final Rule, the Parties have certified 20 of the 26 schedules for Amtrak trains operating on CN’s rail lines. (CN Reply Br., p. 89). In its opening submission, Amtrak explained how its proposed reallocation of recovery time for the six disputed schedules affords CN a “meaningful opportunity” to earn incentives by meeting the 80% COTP metric for those trains. (Weiss Verified Statement dated May 27, 2022, ¶¶ 38-79).

CN claims that Amtrak’s optimization of the disputed schedules by reallocating recovery time is unreliable. (CN Reply Brief, pp. 93-96). And, completely ignoring the Board’s 2019 finding that there is no basis for lengthening Amtrak’s schedules, CN persists in claiming that the overall time in the schedules should be lengthened.³⁶ (Id., pp. 91-93). Again, consistent with its

³⁶ In doing so, CN violates its own representation to the Board that it “does not intend, in this Post-Interim Decision round of evidence and argument, to challenge the interim findings or guidance in the [2019 Decision].” CN Opening Br., p. 1, n.2.

other positions, CN appears unwilling to accept anything other than a guarantee that Amtrak trains will always meet the 80% COTP standard. Indeed, CN's position appears to be that more and more time should be added into a schedule, simply so that the train will achieve 80% COTP (and net CN incentives in the process).

Despite CN's complaints, it asserts that the Board need not "enmesh itself . . . in the details of the schedule disputes" between the Parties. (CN Reply Br., p. 92, n.297). Instead, CN claims that its proposal is aimed at assuring that "the right to arbitrate such disputes under the [OA] be clarified." (*Id.*). But, as discussed in Amtrak's reply in response to CN's opening submission, no such clarification is needed because the OA—as proposed by both Parties—*already* provides a procedure for the Parties to review Amtrak schedules and to arbitrate disputes related to them.³⁷

In Amtrak's reply submission, it has fully responded to CN's proposed terms "clarifying" the Parties' arbitration of scheduling related disputes. (Amtrak Reply Br., pp. 108-109). Among other things, Amtrak argued that: (1) terms which both Parties agree to include in the OA already provide for resolution of scheduling issues and disputes, including through arbitration; and (2) CN's request that the Board impose terms mandating that arbitrators "shall" consider certain issues and order certain remedies in a schedule arbitration cannot be imposed absent Amtrak's consent. Amtrak repeats and incorporates those arguments by reference.³⁸ The Board, therefore, should not

³⁷ See Amtrak Reply Brief, Point VII, pp. 104-109. As noted in Amtrak's reply brief, terms related to the arbitrability of disputes concerning Amtrak's schedules and the authority of arbitrators in such proceedings, were not issues left open by the Board in the 2019 Decision. *Id.*

³⁸ See Viking River Cruises, Inc. v. Moriana, 142 S. Ct. 1906, 1923 (2022) ("The most basic corollary of the principle that arbitration is a matter of consent is that a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration") (citations and internal quotations omitted); Dispute Resolution Procedures under the Fixing America's Surface Transp. Act of 2015, EP 734, 2016 WL 6993670, at *4 (S.T.B. Nov. 22, 2016) ("as Amtrak points out, parties have to agree on arbitration as the method to resolve their disputes. Therefore, provisions

impose CN's proposed terms.³⁹

POINT VI

THE BOARD SHOULD ADOPT AMTRAK'S PROPOSED TERMS AND POSITIONS ON OTHER MISCELLANEOUS CONTRACT ISSUES

A. The Parties' New OA Should Apply Prospectively, Including as to CN's Alleged "Freight Delay Costs"

The Parties agree that their new OA should apply prospectively, with certain exceptions. For example, the Parties agree that their Side Letter Agreements dated May 1, 2011 provide for retroactive application of their terms. The Parties' central disagreement is whether CN should be able to retroactively recover its "freight delay costs," if the Board finds, in the first instance, that these are reimbursable "incremental costs."

Amtrak argues that recovery of these costs should be prospective only. CN contends that recovery should be retroactive to September 1, 2019 because "Amtrak has been on notice from the very beginning of this proceeding that CN would be seeking compensation for" those alleged costs. (See CN Reply Br., p. 97). Amtrak has addressed this notice argument in its reply brief, and also set forth several other reasons why retroactivity is inappropriate (including that the Board has consistently held that it will not apply its decisions retroactively, absent consent of all parties).⁴⁰

for binding arbitration will not be included as part of the regulations adopted here").

³⁹ Amtrak agrees that the Board need not issue rulings concerning the Parties' competing schedule proposals for the disputed routes. Rather, that is an issue for negotiation and arbitration under existing § 3.2(D) (if the Parties do not ultimately agree on the schedules). Amtrak notes, however, that CN has made certain patently incorrect statements in its reply brief concerning Pure Running Time ("PRT") and Amtrak's position concerning the length of the schedules that remain disputed. Although those issues are not before the Board on the merits and will not be discussed here, to ensure accuracy of the record, CN's incorrect statements are addressed in detail in the Rebuttal Verified Statement of James Blair of Amtrak, ¶¶ 43-49.

⁴⁰ See, e.g., New Eng. C. R.R., Inc. - Trackage Rights Order - Pan Am S. LLC, FD 35842,

(See Amtrak Reply Br., pp. 96-103; see also Amtrak Opening BR., pp. 72-73).

For these reasons, the Board should declare that the terms it imposes in the Parties' new OA shall apply prospectively only, except to the extent the Parties' have agreed to retroactivity in the Side Letter Agreements.

B. The Board Should Adopt Amtrak's Terms as to Confidentiality

CN agrees with Amtrak's proposal to keep the indemnity provisions of § 7.2 of the OA confidential. (See CN Reply Br., p. 102). CN opposes Amtrak's proposal to maintain Appendices IV (entitled "Current Costs and Price Level Adjustments"), V (which states the terms related to OTP of Amtrak trains and incentive and penalty calculations) and IX (entitled "Payment for Amtrak Operations over the St. Charles Airline Route") confidential, *except* for the "rates and costs" contained therein. (CN Reply Br., p. 103). CN claims that the other non-monetary terms in the Appendices *should not* be confidential because the Board will prescribe them and, therefore, they are "a matter of public interest." (*Id.*). The Board should reject CN's position.

First, the Parties largely agree on nearly all of the terms in Appendix IV. The lone disputed issue is whether CN's newly proposed "freight delay costs" will be added to Appendix IV. (Compare Amtrak Redline, Appx IV with CN Redline, Appx IV). Even if the Board were to award these unsupported costs, CN believes that only the monetary terms of Appendix IV should remain confidential. CN offers no compelling reason for generally disclosing the other terms of Appendix IV, and there is none. To the contrary, disclosing those terms could prejudice Amtrak in

2017 WL 5639660, at *24-*25 (S.T.B., Oct. 30, 2017); Nat'l R.R. Passenger Corp. Appl. Under Section 402(a) of the Rail Passenger Serv. Act, 1 I.C.C.2d 243, 248 (1984); Nat'l R.R. Passenger Corp. & Union Pac. R.R., Use of Tracks & Facilities & Establishment of Just Compensation, 348 I.C.C. 926, 935-37 (1977)). Notably, CN has not sought to distinguish any of these cases.

negotiations with other Host Railroads. (Blair Rebuttal VS, ¶ 51). Indeed, the line items for costs in Appendix IV vary among Amtrak's OAs with other Host Railroads. (Id.). Requiring public disclosure of such costs and terms would be akin to CN disclosing to its competitors the line items or other important terms in its shipper agreements. (Id.).

Second, neither Party proposes any changes to Appendix IX. (See Amtrak Redline, Appx IX; CN Redline, Appx IX). As CN acknowledges, where the Parties agree on terms, there is "no need to allow [] disclosure for the guidance of the public or for transparency of agency decision making." (CN Reply Br., p. 103). There is, therefore, no need for disclosure of any part of Appendix IX, either in the Board's decision or thereafter once the terms of the new OA are established.

Lastly, the terms of Appendix V are obviously in dispute. Amtrak acknowledges that the Board "disfavors confidential decision making," and appreciates the Board's efforts "to avoid references to confidential or highly confidential information in Board decisions." (2019 Decision, p. 2, n.4 and p. 28). The issue here, however, is whether Appendix V should remain confidential in its entirety after the new OA is effective. Amtrak believes that it should. Again, disclosing wholesale the terms of Appendix V could prejudice Amtrak in its negotiations with other Host Railroads. (Blair Rebuttal VS, ¶ 52). CN's basis for objecting to this is unclear, and entirely inconsistent with its filing of its proposed Appendix V terms under seal.

For these reasons, the Board should impose Amtrak terms of confidentiality, making § 7.2 of the OA and Appendices IV, V and IX confidential in their entirety.

C. The Board Should Adopt Amtrak’s Straightforward Proposal to Incorporate the Side Letters into the OA by Appending Them As Exhibits

The Parties disagree on how best to incorporate the May 1, 2011 Side Letter Agreements into the new OA. Amtrak has simply proposed to incorporate them as Exhibits to the new OA, allowing the terms of the Side Letters—which were prepared as independent, standalone agreement on specific matters—to speak for themselves, and by cross-referencing the Letters where appropriate in the OA. CN objects to this straightforward approach, and instead argues that the Board should endorse its approach, which cherry-picks verbiage of the Side Letters into various sections of the new OA.

As Amtrak explained in its reply brief, CN’s cherry-picking varied the substantive terms of the Side Letters by excluding important, limiting language, including specifying that: (1) the Side Letters only applied to specific timeframes, after which only maintenance costs would be reimbursable; and (2) Amtrak had a right to review plans for implementation and maintenance of equipment “prior to any expenditure by CN.” (See Amtrak Reply Br., p 119). CN’s alterations are not trivial—they materially change the terms of the Side Letters. At minimum, CN’s approach creates ambiguity about what the Parties actually agreed to in the Side Letters.

CN erroneously claims Amtrak has simply tacked the Side Letters onto the proposed new OA, and that Amtrak has done no actual “incorporation” of their terms into the OA. (CN Reply Br., p. 101). This is false. Amtrak’s proposed new OA defines the “Side Letters” to mean: “the letter dated May 1, 2011 regarding Reimbursement of Incremental [PTC] and the letter dated May 1, 2011 regarding Reimbursement of CN Incremental Safety Appliance Costs, both of which are attached hereto as Exhibit A.” (Amtrak Redline, Article 1). Then, where appropriate in the substantive terms of the new OA, Amtrak cross-references the “Side Letters.” (See Amtrak Redline

§§ 4.3 (B) (regarding increases in maintenance costs) and 5.1(A) (regarding the bases for payments from Amtrak to CN). Amtrak’s approach is therefore the most efficient means of incorporating the Side Letters without altering their substantive terms.

For these reasons, and those previously stated by Amtrak, the Board should impose Amtrak’s terms related to the incorporation of the Side Letters into the new OA.

D. The Board Should Reject CN’s Proposed Changes to §8.8(E)⁴¹

CN also proposes a change to § 8.8(E),⁴² which it claims is necessary because of the survival provision in §8.8 (B) of the 2011 OA.⁴³ (CN Reply Br., p 100). Section 8.8(B) currently states:

The provisions of Subsection 4.1 B, Section 4.2, Section 8.9 and Appendices I and IV with respect to the St. Charles Air Line Route and the Markham-to-Grand Crossing Route shall survive any termination of this Agreement. The provisions of Subsection 4.1 C, Appendix IV, Item 14 and Appendix IX with respect to the St. Charles Air Line Route shall survive any termination of this Agreement.

(2011 OA, § 8.8 (B)).

CN argues that it is “appropriate to explicitly terminate” § 8.8(B)’s survival provision and

⁴¹ CN places this argument under the same subsection addressing the general term of the new OA. The Parties agree that their new OA should have a term of seven years. CN Reply Br., p. 98; see Amtrak Redline, § 8.8(A). Amtrak’s proposed revision to § 8.8(A)—as CN accurately points out—inadvertently included a renewal clause that could keep the agreement in effect for *eight* years. CN Reply Br., pp. 98-99. Amtrak, therefore, agrees with CN’s proposed change to Amtrak’s proposed § 8.8(A). Amtrak notes, however, that use of the year “2028” presumes the Board issues a final decision setting terms and compensation for the new OA in 2022. If the Board’s decision is not issued until 2023, then the year “2029” should be substituted into § 8.8(A).

⁴² CN’s proposed changes appear in the redline accompanying its opening submission. However, CN only addressed the change in its reply submission.

⁴³ CN also describes its proposal for § 8.8(C) as a “change.” However, this “change” simply retains the language in § 8.8(B) and makes slight changes to punctuation. Since, Amtrak’s proposal also includes retaining the language of § 8.8(B), it has no objection to CN’s proposed § 8.8(C).

to replace it with a “similar provision” in § 8.8(E). (CN Reply Br. p. 100). CN suggests replacing the second sentence of § 8.8(E) to read as follows:⁴⁴

Notwithstanding anything contrary in Section 8.8B. of the 2011 Agreement, the provisions of (i) Subsection 4.1.C., (ii) Appendix IV, Item 14, and (iii) Appendix IX of the 2011 Agreement are superseded by the corresponding provisions of this Agreement.

(CN Reply Br. at 100; Redline at 8.8(E)).

However, CN’s change is internally inconsistent. Section 8.8(B) of the 2011 Agreement (which appears at § 8.8(C) of CN’s Redline) states: “Subsection 4.1 C, Appendix IV, Item 14 and Appendix IX with respect to the St. Charles Air Line Route shall survive any termination of this Agreement.” Yet, CN now proposes to add language stating that those very provisions are superseded (*i.e.*, no longer in force). CN does not acknowledge this inconsistency and offers no explanation to reconcile the new language with the language contained in the 2011 OA (which acknowledged that the provisions would survive termination of the 2011 OA).

Therefore, the proposed change to § 8.8(E) should be rejected by the Board.

F. Other Proposed OA Terms

Finally, CN contends that Amtrak’s redline includes “many modifications” to the Operating Agreement that are “neither discussed nor supported” in Amtrak’s submissions. (CN Reply Br., p. 104). CN has grouped these into terms that it deems “acceptable” (in whole or in part) (*id.*, pp. 105-107) and “unacceptable.” (*Id.*, Appendix). Amtrak address these provisions in the Appendix to this Brief.

⁴⁴ CN and Amtrak agree that the second sentence of the provision should be eliminated as it appears in the 2011 OA. Compare CN Redline at 8.8 (E) with Amtrak Redline at 8.8 (D).

CONCLUSION

For the reasons explained in this rebuttal brief, and Amtrak's opening and reply submissions, Amtrak requests that the Board:

1. Deny CN's requests to impose its proposed terms and conditions of a new Operating Agreement between CN and Amtrak; and
2. Grant Amtrak's requests to impose its proposed terms and conditions of a new Operating Agreement between CN and Amtrak.

Eleanor D. Acheson
Chief Legal Officer, General Counsel &
Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971
achesoe@amtrak.com

/s/ Jerry A. Cuomo
Mark S. Landman
Jerry A. Cuomo
Timothy J. Collazzi
Landman Corsi Ballaine & Ford P.C.
120 Broadway, 13th Floor
New York, NY 10271
(212) 238-4800
mldman@lcbf.com
jcuomo@lcbf.com
tcollazzi@lcbf.com

*Counsel for National Railroad
Passenger Corporation*

Dated: August 24, 2022

APPENDIX - OTHER MISCELLANEOUS OPERATING AGREEMENT TERMS

Part I - Terms Acceptable To CN in Whole or in Part

Preliminarily, CN's attempt to "admonish" Amtrak for modifications with which the Parties *agree* serves no legitimate purpose. Even CN's attempt to frame Amtrak's modifications as "unsupported" strains credibility. For example, Amtrak's Redline proposes additional language requiring CN to use "its best efforts to remedy" slow orders. (Amtrak Redline at § 4.2 (B)). CN acknowledges that "in the previous round in this proceeding, CN stated that it had no objection to Amtrak's proposed inclusion to [sic] this provision." (CN Reply Br., p. 106, n.330). It unclear, then, why CN would now suggest that Amtrak needed additional "support" for the inclusion of language that CN previously agreed to.⁴⁵ CN has raised other misguided arguments as well, for example, its contention that Amtrak did not "support" its proposals to keep the "liability provisions of Section 7.2" confidential. (CN Reply Br., p. 107). But, § 7.2 contains only *indemnity* obligations, and Amtrak briefed why § 7.2 should be subject to Amtrak's proposed confidentiality provision. (Amtrak Opening Br., p 75).

Notwithstanding the above, in § V(E)(1) of its Brief, CN agrees with many of Amtrak's "unsupported" proposed changes with no changes of its own.⁴⁶ For others, CN has proposed minor

⁴⁵ Similarly, it is unclear what CN's motivation is for contesting Amtrak's proposed change to § 5.3 which is "identical to one made by CN in the [OA] markup that was attached to its Opening Submission." CN Reply Br. p. 107, n. 333.

⁴⁶ Amtrak's proposals falling into this category are: deleting Appendix VI and references to same (CN Reply Br., p. 105); consolidating defined terms in the OA under Article I (*id.*); deletion of the definitions of "IC Lines" and "Performance Segment" from Article I (*id.* at p. 106); deletion of "as set forth in Appendix I" from § 4.2(A)(1) (*id.*); adding provision in Section 4.2(B) requiring CN to "use its best efforts to remedy" slow orders (*id.*); modifications to § 4.2(e) and deletion to § 3.2(e) (*id.*); inserting a reference to Appendix IX in § 4.3 (*id.*, pp. 106-107); proposed revisions to § 5.3 to reflect contract advance amount increases (*id.*, p. 107); proposed addition to § 8.5 requiring notice via "a nationally recognized overnight courier postage prepaid" (*id.*); and that the

changes that are acceptable to Amtrak and, therefore, warrant no further discussion.⁴⁷ Some of CN's proposed changes, however, are not acceptable to Amtrak and are addressed below.

(a) CN's proposal to change certain definitions

CN has proposed to change the definitions of "Dwell Time," "Miscellaneous Time," "Pure Running Time," and "Recovery Time" to include a "note that they constitute or may constitute components of Amtrak's schedules." (CN Reply Br., p. 106). Amtrak opposes CN's proposal as it relates to "Pure Running Time," because Pure Running Time is included in all of Amtrak's schedules. As for the other definitions, Amtrak has no objections to CN's proposal. However, a more accurate notation is necessary and should state: "Dwell Time," "Miscellaneous Time," and "Recovery Time" "constitute or may constitute components of *portions of* Amtrak's schedules, as *they appear in Appendix II.*"⁴⁸

(b) Amtrak's capitalization of the term "Amtrak Trains"

CN's next proposed change relates to Amtrak's proposal to capitalize "Amtrak Trains" throughout the Agreement. (CN Reply Br., p. 106). CN suggests that capitalizing "Amtrak Trains" requires a definition be added for same in Article I. This is unnecessary. The term "Amtrak Trains" *already appears* in in Article I of Amtrak's Redline; it is tied directly to the definition of "Intercity Rail Passenger Trains." Therefore, an additional definition would be redundant.

provisions of § 7.2 be kept confidential (id.).

⁴⁷ Amtrak has no objection to CN's proposed changes to its proposal to: add additional language to the OA's preamble (CN Reply Br., p. 105); and adding a definition of "Base Timetable Speed" to Article I (id. at p. 106).

⁴⁸ Appendix II contains the schedule skeletons for the subject Amtrak routes operating on CN's system.

(c) Amtrak's proposed modifications to § 4.3

Amtrak has proposed removing the phrase “and at the sole expense of Amtrak for any additional cost not reimbursed under Appendix IV” from § 4.3, and adding the following sentence: “Amtrak will pay CN the incremental cost attributable solely to such increase in the level of utility to the extent such incremental cost is not already paid to CN under Appendix IV or Appendix IX.” (Amtrak Redline, § 4.3(A)).

CN disagrees with most of these changes, as they allegedly “create uncertainty” and “call into question whether costs incurred in raising the Level of Utility for Amtrak’s benefit and at Amtrak’s request are reimbursable as incremental costs.” (*Id.* at 106-107). Amtrak’s proposal does no such thing. It is noteworthy that CN’s defense of the 2011 language relies on “incremental costs.” Amtrak agrees generally with CN about what the provision *should* state. But, the provision—as it appears in the 2011 Operating Agreement—makes *no reference* to “incremental costs.” Rather, it uses the vague phrase “additional costs.” The phrase “additional costs” is too broad and creates uncertainty as to what is reimbursable. Therefore, Amtrak’s proposes language that *expressly states* that Amtrak is obligated to reimburse CN for the “incremental costs” incurred in raising the Level of Utility where they are not already paid to CN under Appendices IV and IX. For these reasons, the Board should adopt Amtrak’s proposed language.

Part II - Terms Not Acceptable to CN Related to Incremental Costs⁴⁹

⁴⁹ Preliminarily, CN lumps numerous complaints about “unsupported” changes into footnote 337 of its Reply Submission. Yet, CN acknowledges that the changes identified therein are “connect[ed] with Amtrak’s compensation and incentive/penalty proposals.” CN Reply Br., p. 108, n. 337. Amtrak spent extensive time in its submissions detailing its proposed incentive and penalty system in theory and practice. There is no basis for CN to claim that additional “support” is needed for terms either directly related to the implementation of that system or defining terms used in the system. For example, CN opposes the insertion of a definition of “Customer OTP.” *Id.* COTP is integral to Amtrak’s proposed incentive/penalty system, and the concept was fully

(a) Amtrak’s deletion of the definition of ‘Incremental Costs’”⁵⁰

CN argues that Amtrak proposed to remove the definition of “Incremental Costs” from the OA without any support. But, Amtrak explicitly articulated that it was proposing to delete this term from the OA, and why. (Amtrak Opening Br., pp. 71-72). CN even acknowledges this. (See CN Reply Br., Appx., p. 2, n. 3).

As for CN’s claim that the definition of “incremental costs” that it proposed to retain in the OA is “consistent” with the Board’s refined the meaning of the term in the Interim Decision, CN is flatly wrong. CN’s definition fails to incorporate the concepts of causation and “specificity, verifiability, and quantifiability” discussed in the Interim Decision. (See 2019 Decision, pp. 22-23). Therefore, the Board should reject it.

As for Amtrak’s proposed change to specify that reimbursable costs are those “attributable solely” to Amtrak, CN argues it is unnecessary and “would appear to be a recipe for future disputes.” (CN Reply Br., Appx., pp. 2-3). However, this language is consistent with the Board’s 2019 Decision, and it is necessary in light of CN’s attempt to improperly charge Amtrak for, among other things, delays to out-of-slot CN trains. (See Amtrak Reply Br., pp. 79-81).

(b) “Section 5.1.A: Insertion of Language Purporting to Acknowledge that the Operating Agreement Sets Out “All of” CN’s Incremental Costs.”

CN claims that Amtrak’s proposed change to § 5.1(A) is not only “unsupported” but “completely unacceptable,” because CN “decidedly does not agree.” (CN Reply Br., Appx., p. 4).

explained in Amtrak’s submissions.

⁵⁰ The arguments in this section apply equally to the complaints that CN raises under its next bullet entitled: “Revision of Sections 4.2.B, 4.2.C, 4.3.A, 4.3.B, and 5.1 (Primarily to Add Language Regarding Incremental Costs and Costs ‘Solely Attributable’ to Actions for Amtrak’s Benefit).” See CN Reply Br., Appendix, p. 3.

CN is misinterpreting the change proposed by Amtrak.

Amtrak supported this proposal in its opening submission clearly reads: “Amtrak believes that Appendix IV includes all of the currently known and quantifiable ‘incremental costs’ for which Amtrak must reimburse CN, *and Amtrak has included a term to that effect in its new OA.*” (Amtrak Opening Br., p. 71 (citing Blair V.S., ¶ 137)). Furthermore, as for CN’s “concern” that the language forecloses CN’s ability to later seek reimbursement of additional “incremental costs,” Amtrak’s proposal does no such thing. CN itself acknowledges it cannot quantify, verify, or specify certain amorphous costs that it supposedly “incurs”—this is why it has only sought “freight delay costs” (fuel expenses, crew expenses and equipment expenses) in its post-2019 Decision briefing.⁵¹ Amtrak disputes whether those “freight delay costs” are properly reimbursable as incremental costs.

Therefore, Amtrak’s proposed language in § 5.1(A) is accurate—the costs identified in Appendix IV include all of the known incremental costs for which Amtrak must reimburse CN. Until CN establishes that other costs it has incurred meet the Board’s criteria for incremental costs, Amtrak’s proposed language remains appropriate and reasonable.

⁵¹ Other than the “non-quantified or other amorphous costs CN propos[ed] to include as incremental costs”—which the Board rejected (2019 Decision at p. 22)—it is unclear what “other costs” CN is referring to, and CN has provided no basis to support its arguments

Part III - Terms Not Acceptable to CN Related “Amtrak’s proposed restructuring of the incentive/penalty system”⁵²

(a) “Billing Procedures (Section 5.2A)”

CN takes issue with the supposedly “complex billing system” that Amtrak has proposed. (CN Reply Br., Appendix, p. 7). CN’s primary arguments are that: (i) resolution of disputes would be “entirely in Amtrak’s hands”; and (ii) CN’s “only recourse” is the audit procedure. (Id., pp. 7-8). CN is wrong.

Amtrak’s proposal aims to streamline the billing process and to minimize disputes between the Parties. Under Amtrak’s proposal, Amtrak first submits a Statement of Payment to CN. (Amtrak Redline, § 5.2(A)(1)). This Statement includes the amounts Amtrak that “knows” it owes to CN. (Id.). For example, the Statement of Payment includes fixed and flat rate items under Appendices IV and the incentive or penalty under Appendix V (as calculated by Amtrak). (Id.; see also id. at Appendix VII, Statement of Payment). CN then calculates its Statement of Charges, which include charges that are not known to Amtrak until it receives CN’s Statement and supporting documentation. (Amtrak Redline, § 5.2(A)(2)). For example, the Statement of Charges includes non-fixed/flat rate items appearing in Appendix IV. (Id.; see also id., Appx II, Statement of Charges). CN’s Statement will also include the incentives/penalties that CN believes it has earned/incurred.

Where the Parties’ Statements align, there is no dispute; Amtrak will pay the amount

⁵² CN’s raises nominal complaints about Amtrak’s proposed changes to § 5.2(B). Amtrak agrees with CN’s suggestion that the opening words to § 5.2 (B) be changed to “Any payment by Amtrak or CN.” CN Reply Br., Appendix, p. 9. As for CN’s complaint about changing the word “prove” to “indicate”, CN incorrectly claims this was an “attempt to lower the burden of proof required before a party can be compelled to replay an alleged overpayment.” (Id.). Nevertheless, Amtrak agrees to change the word “indicates” back to “proves.” See Amtrak Redline, § 5.2(B).

reflected in CN's Statement of Charges. Where they differ, Amtrak and CN will work to resolve the disputes. Where they cannot, Amtrak will pay the amount reflected in the Statement of Payment. This aims to get a payment to CN efficiently and timely.

More importantly, Amtrak's proposed system minimizes the frequency of disputes and the amounts in dispute that occurred under the 2011 OA. Under the 2011 OA's system (and the system proposed by CN), a single delay minute may make the difference between a route being at 80% (and thus subject to incentives) or subject to penalties (if close to the 70% threshold for penalties under the 2011 OA). In other words, every delay minute can be a major point of contention.⁵³ But, under Amtrak's proposed system, the impact of a single delay minute is far more limited. For example, a single delay minute *may* result in the Delay Adjustment Factor increasing to a higher level. But, under Amtrak's proposed system, Amtrak will have already *paid* CN based on the lower Delay Adjustment Factor. Therefore, while Amtrak may owe CN additional incentives (based on the higher Delay Adjustment Factor), the amount owed to CN will only be the net-difference between the two Adjustments.

While CN is correct that—in the first instance— resolution of disputes is governed by Amtrak's Statement of Payment, CN is incorrect that CN's "only recourse" is the Audit provision. Billing disputes can be resolved through the Adjustment provision, which applies to both Parties. (See Amtrak Redline, § 5.2(D) ("In the event either Party believes it has made a payment which exceeds (or has received a payment which is less than) . . ."). But, more importantly, Amtrak's proposal *excludes* amounts owed under Appendix V from this process. Under Amtrak's proposed Appendix V, disputes over an incentive or penalty are subject to even additional review and, if

⁵³ See Weiss Rebuttal VS, ¶¶ 4-9 (discussing increase in CN's challenges to delay coding and how, if the Board approves a contract-based OTP metric, CN's challenges will likely increase).

necessary, arbitration. (See Amtrak Redline, Appendix V, § II (Administrative Process) including § II(2)(c) (allowing for resolution in accordance with Article VI (Arbitration)).

While removing incentives/penalties from § 5.2 *does* limit the time in which CN may raise a dispute about incentives or penalties, there is nothing inherently unfair about this. Amtrak’s proposed Appendix V provides ample opportunity for audits, review, and discussion between the Parties. Under the Adjustment clause, there is no language limiting the time within which a party must bring a claim. But, it would be prejudicial to both CN and Amtrak if—several years after the fact— either party tried to raise a claim and defend (or challenge) coding decisions and calculations about trips of trains years ago. In other words, at some point there needs to be finality.

(b) “Revisions to Billing Forms (Proposed New Section 5.2.A.3; existing Section 5.2.A)”

CN’s objections to Amtrak’s proposed changes to § 5.2 are baseless. First, the deletion of language in § 5.2(A)(2) is appropriate given the Board’s guidance on what qualifies as “incremental costs.” Indeed, CN can seek reimbursement for costs it incurs “but for” Amtrak (provided that CN meets the causation requirement and CN can quantify, verify and specify same). Therefore, there is no need to include a provision that says the Parties can negotiate compensation when Amtrak makes a request to change the format of the Statement of Charges. (See 2011 OA, §5.2(A)).

Moreover, Amtrak’s proposal *is more favorable* to CN than the current provision in the 2011 OA because it removes the condition precedent to negotiating compensation (*i.e.*, that CN must first demonstrate that the “requested revision would significantly change the amount of work required by CN in connection with billing Amtrak”). (Id.).

Finally, there is nothing “unilateral” about Amtrak’s proposal. Under Amtrak’s proposal

“[e]ither Party may request revisions in the forms of methods of billing.” (Amtrak Redline § 5.2(A)(3). Therefore, if CN believes Amtrak’s request for the form of billing is too burdensome, it is free to pursue relief under the proposed provision.

(c) “Adjustments to Past Overpayments, Current Billings”

CN’s arguments about Amtrak’s proposed change to § 5.2(D) are unpersuasive. CN complains that subjecting incentive/penalties to the adjustment process proposed in Appendix V is unfair because it: “cut[s] off CN’s right to make a challenge more than 60 days following the end of a calendar quarter; removes the right to develop jointly a format for a claim submission; and deprives the parties of the right to “interest at the 90-day treasury rate.” (CN Reply Br., Appendix, pp. 9-10).

Under Amtrak’s proposal, Amtrak will be providing delay data to CN on a daily basis for CN’s review. (See Amtrak Redline, Appx V, § II (1), “Daily Process”). And, while CN must raise challenges to Amtrak’s calculations of incentives/penalties within 60-days, CN will have the underlying information necessary to expediently evaluate Amtrak’s calculations for a majority of trains on a rolling basis. In other words, it is only the last few trains of the quarter where CN will “only” have 60-days to raise a challenge. CN will have ample time to review the calculations associated with the overwhelming majority of trains, including those occurring at the beginning of the quarter. Further, provided that CN raises a challenge within 60 days after the Quarterly Process, Amtrak has provided for additional processes that ultimately will end in either agreement or Arbitration (pursuant to Article VI). (See Amtrak Redline, Appx V, §§ II (2)(b), (c)).

CN arguments about a joint format for claim submissions puts form over substance. Indeed, CN does not explain how joint forms are helpful in resolving disputes over incentives/penalties, nor how CN is harmed by their absence in the process. CN is also free to use

the forms previously developed by the Parties.

As for CN's complaint about interest, Amtrak did not intend to "cut off interest at the 90-day treasury rate." Therefore, Amtrak will agree to add a provision to its proposed Appendix V reflecting a right to interest under § 5.2(D).

Part IV - Terms Not Acceptable to CN Related to "Burdensome new informational requirements"

CN misrepresents Amtrak's proposed change to § 7.3 (Inspections and Reports) in its hyperbolic argument that it would represent an "astonishing authorization for Amtrak . . . to delve into sensitive CN business matters." (CN Reply Br., Appendix, p. 10). Specifically, CN claims: "Amtrak would alter [§ 7.3] so that the report would 'include, but not be limited to' the listed subjects, and that they would include 'operating and dispatching procedures,' as well as maintenance procedures." (*Id.*).

Preliminarily, Amtrak's proposed changes do not represent an "astonishing authorization" or a grand departure from the terms of the 2011 OA. The Parties have already agreed that—as part of the Audit provision—Amtrak can perform "both financial and operational" Audits of CN *and* that those Audits may include "*CN's controls, practices and procedures and their effect upon the efficiency and quality of performance provided by CN.* (See 2011 OA, § 5.2(B) (emphasis added)). CN itself proposes no change to that language in its most recent Redline. (CN Reply Submission, Redline at § 5.2(B)). In other words, CN has already agreed to provide to Amtrak the same (or similar) information that Amtrak has included in its proposed revised § 7.3.

Furthermore, contrary to CN's statements, § 7.3 *already* required CN to provide maintenance procedures in the reports to Amtrak under the 2011 OA. (See Amtrak Redline, § 7.3). As for operating and dispatching procedures, these are clearly relevant to Amtrak's "examin[ation]

of [CN's] Rail Lines . . . pertaining to the Base Level of Utility and operations on the Rail Lines.” (Id.). The “Base Level of Utility” is “defined as a condition that permits each Amtrak train to operate: 1) at no less than the Base Timetable Speeds set forth in Appendix I (the “Base Timetable Speeds”); and 2) with a reasonable level of reliability; and 3) with a reasonable degree of passenger comfort.” (2011 OA at § 4.2(A)). Therefore, this allows Amtrak to evaluate whether, for example, CN’s failure to permit each Amtrak train to operate reliably is a byproduct of CN’s maintenance issues, operational decision making or dispatching decisions, *or* something else.

CN’s concern about the “sensitive” nature of the procedures can be addressed by a confidentiality undertaking to the extent necessary.

Finally, as for CN reference to the “incremental costs” associated with providing the documents to Amtrak, it is unclear what additional costs CN is claiming it will incur. Amtrak is only proposing to add an obligation for CN to provide copies of operational and dispatching procedures. These are documents that CN has already created in the normal course of business and can access. Presumably, CN would only need to attach the procedures to the reports it already provides to Amtrak. Nevertheless, nothing in Amtrak’s proposed language would prevent CN from seeking reimbursement of said costs, provided they are caused by Amtrak and specific, verifiable and quantifiable.

Part V - Terms Not Acceptable to CN Related to the “Insertion of proposed new section 5.1F requiring CN to reimburse Amtrak for costs arising from annulled, rescheduled, or terminated trains”

Amtrak’s proposed change to § 5.1(F) creates an obligation for CN to reimburse it for “reasonable costs” when “*due to reasons within CN’s reasonable control*,” a train is annulled, canceled, rescheduled or not completed. This is not “tantamount to a requirement that CN guarantee completion of the runs of its trains over CN’s lines.” (CN Reply Br., Appendix, p. 11).

Amtrak is only proposing that CN be responsible when—*for reasons within CN’s control*—Amtrak is forced to annul, cancel or reschedule a trip of a train. Amtrak is not proposing that CN be responsible when trains are canceled due to reasons *outside* its control. In short, there is nothing unreasonable or unfair about Amtrak’s proposed change.

Part VI - Terms Not Acceptable to CN Related to Amtrak’s “Revision of Section 3.4.B.2 limiting CN’s obligation to avoid excessive train delays so as to apply only to Amtrak trains”

CN objects to Amtrak’s insertion of the word “Amtrak” into § 3.4(B)(2). In short, CN objects to clarifying that CN has an obligation to make reasonable efforts to “avoid excessive delay to [Amtrak] trains.” CN argues this is “unnecessary” because “Amtrak trains” is encompassed by the reference to “trains” generally. CN also argues the unmodified provision is appropriate because it “acknowledges CN’s duties to its freight customers.” (CN Reply Br. Appendix., p. 12). However, the new OA is an agreement between Amtrak and CN. To suggest that avoiding unnecessary delays to CN’s freight trains is encompassed in a section *detailing CN’s obligations to Amtrak* is meritless. There is no reason for the Board to reject this common-sense clarification in § 3.4(B)(2).

[CONTAINS REDACTED INFORMATION TO BE FILED ON PUBLIC DOCKET]

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

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

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

1. I submit this Rebuttal Verified Statement in response to the reply submission of the Canadian National Railway Company (“CN”) in this matter dated July 26, 2022.

2. This Rebuttal Verified Statement will also provide support for certain assertions made by Amtrak in its rebuttal brief.

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

A. CN’s Assertions Concerning Host-Responsible Delays

4. In CN’s reply submission, it advances a number of arguments about why it believes that Amtrak’s inclusion of CN’s Host-Responsible Delays (“HRDs”) as an element of the penalty and incentive system included in Amtrak’s proposed new Operating Agreement (“OA”) is unreasonable.

5. Among those arguments, CN contends that certain delays, which are defined in FRA’s Final Rule and in Amtrak’s proposal as HRDs, are not “preventable” by CN. The specific examples of delays identified by CN do not support that assertion. Further, in its 2019 Decision, the Board urged the Parties to incorporate terms in a new OA that account for “which party is in the position to avoid or control” the delays impacting Amtrak’s trains. The examples used by CN

represent delays which are within their control to avoid or minimize and are addressed below.

6. CN claims that it is unable to avoid delaying Amtrak trains when it performs maintenance work on its system. (CN Reply Br., p. 28). This is not accurate. CN, like Amtrak's other Host Railroads, schedules and performs maintenance of way ("MOW") work on its system. It is, therefore, within CN's control to conduct non-emergency MOW work at a time and manner that does not interfere with Amtrak's trains or at least mitigates such delays (by, for example, conducting that work at night or during off-peak Amtrak hours). Delays to Amtrak trains resulting from CN's MOW work are, therefore, "preventable" by CN. If CN decides to conduct that MOW work in a manner that delays Amtrak's trains, then it is reasonable for that delay to be considered an HRD and for that delay to impact the amount of incentives CN earns or penalties it incurs.

7. CN also asserts that it cannot prevent delays coded as commuter train interference ("CTI") and passenger train interference ("PTI"). (CN Reply Br., p. 28). But, CN controls the dispatching of passenger and commuter trains on its system. Avoiding or minimizing meets between these trains which cause delays is, therefore, within CN's control in the exercise of prudent dispatching practices. Even if a meet with a commuter or passenger train cannot be avoided, CN determines where the trains will meet and can work to minimize the delays that impact the trains, including Amtrak's train involved in the meet.

8. Similarly, CN complains that delays coded as freight train interference ("FTI") cannot be prevented. Again, however, CN is in control of dispatching its freight trains and, to the extent they delay Amtrak's passenger trains, that delay is within CN's control. As with delays to Amtrak trains caused by meets with passenger and commuter trains, CN likewise determines where its freight trains will meet Amtrak trains and it can dispatch the trains in a manner that minimizes delays.

9. CN more specifically contends that large blocks of FTI Amtrak allegedly attributes to CN are for “cross-traffic delays at foreign-controlled interlockings over which CN has no control.” (CN Reply Br., p. 29). It is, however, reasonable for such delays to be attributed to CN. When an Amtrak train is approaching another railroad’s crossing of CN’s system, CN’s dispatchers are supposed to communicate that to the crossing railroad to ensure Amtrak trains are provided preference. The purpose of this is to assure that the crossing railroad holds any crossing freight traffic that might delay Amtrak’s approaching passenger train. If CN fails to notify the crossing railroad, or to do so timely, then the resulting FTI caused when the crossing freight train delays Amtrak’s train is reasonably attributable to CN.

10. Similarly, CN complains that it cannot prevent delays to Amtrak trains at crossings that are “activated automatically.” (CN Reply Br., p. 28). Automatic crossings - - unlike controlled crossings manned by a dispatcher - - are activated on a first come, first served basis. When a freight train and an Amtrak train approach an automatic crossing, if the freight train reaches the crossing first, it will be allowed to proceed across the path of the Amtrak train, causing delay to the Amtrak train. Where CN has decided to use automatic crossings on its system is CN’s operational decision. But, when those automatic crossings delay Amtrak trains, it is reasonable for that delay to be coded by Amtrak as FTI and attributed to CN. Automatic crossings do not relieve CN of its obligation to provide preference or assure the on-time operation of Amtrak’s trains by notifying the crossing railroad of an Amtrak train’s imminent arrival.

11. CN also incorrectly claims that, in the Parties’ 2011 OA, “Amtrak agreed . . . that CN should not be held responsible for interlocking delays.” (CN Reply Br., p. 30). This is incorrect. Amtrak only agreed that CN should receive an additional tolerance for “[t]he amount of time a trip of an Amtrak train is delayed at interlockings not controlled by CN, after CN’s

dispatcher has transmitted the electronic indicator lining the signals for the CN route.” (2011 OA, Appx V, § A(1)(g)). Therefore, in the 2011 OA, CN only obtained an additional tolerance if it signaled to the crossing railroad that Amtrak’s train was approaching the interlocking. If CN failed to do so, it was not entitled to any relief.

B. CN’s Assertions as to Amtrak’s Correlation between 900 HRDs and 80% Customer On-Time Performance

12. In its reply submission, CN advances several arguments contesting Amtrak’s correlation of 900 HRD minutes to 80% Customer On-Time Performance (“COTP”). As discussed in detail in Amtrak’s rebuttal brief, evidence and data support that such a correlation exists.

13. For example, as discussed in Amtrak’s rebuttal brief, FRA adopted a similar HRD metric in its Final Metrics and Standards in 2010. A copy of those metrics and standards, entitled *Final Metrics for Intercity Passenger Rail Service*, Dkt. No. FRA-2009-0016, (May 12, 2010), is attached hereto as **Exhibit 1**.

14. Also, since 2017, Amtrak has issued Host Railroad Report Cards, which are publicly available on Amtrak’s website. The Report Cards grade each of the six Class I freight Host Railroads based on, among other metrics, the delays they caused to Amtrak trains operating on their systems over the preceding twelve month period. Amtrak’s Host Railroad Report Cards for 2017, 2018, 2019, 2020 and 2021 are attached as **Exhibits 2-6**.

15. In the Report Cards, Amtrak explains:

Amtrak evaluates host performance based on “host responsible delay minutes per 10,000 train-miles,” which measure how much delay each host railroad causes to Amtrak trains. The measure is normalized by the number of miles traveled by each train (a “train-mile”) so that routes of different lengths, and hosts with different levels of Amtrak service, can be compared to each other.

(See, e.g., Exh. 4, 2019 Report Card, p. 2 of 2, ¶ 7).

16. Further, the Report Cards state: “900 host-responsible delay minutes per 10,000

train miles is roughly correlated to performance that results in Amtrak trains that are 80% on time.” (*Id.*, Note 4). After FRA issued the Final Rule in 2020, Amtrak updated its Report Cards to state that 900 HRD minutes correlated to 80% OTP defined as “the percentage of customers that arrive at their destination station within 15 minutes of the scheduled arrival time” (*i.e.*, the COTP metric established in the Final Rule). (Exh. 5, 2020 Report Card, Notes).

C. CN’s Assertions as to Amtrak’s Tiered Proposal for “Concrete Action”

17. In CN’s reply submission, it has advanced a number of arguments contesting the reasonableness and lawfulness of Amtrak’s proposal to address periods of poor performance of Amtrak trains on CN’s system under a three-tiered approach.

18. Amtrak’s proposed Tier 1 remedies are implemented after one quarter of poor performance by CN (reflected by HRD minutes of more than 924). (Amtrak Redline, Appx V, § IV(1)). Under Tier 1, CN would be required to: (a) prepare reports concerning HRDs in excess of five minutes (“the Reporting Requirement”); and (b) provide Amtrak (and the Board in its discretion) with visibility into CN dispatching screens (“the Screen View Requirement”). (*Id.*).

19. CN contends that Amtrak’s Tier 1 Reporting Requirement is “largely pointless” because delays that Amtrak codes as HRDs are relatively “short” and “cannot reasonably be prevented, so no corrective action could avoid a repeat.” (CN Reply Br., pp. 64-65). While this argument is baseless, implicit in CN’s position is that there is no need to try to improve Amtrak service if the delays are caused by repeated delays in the range of five to fifteen minutes.

20. Notably, CN itself admits that Amtrak’s trains are routinely subject to such delays.¹

¹ For example, on the City of New Orleans route, CN admits that Amtrak trains routinely incur “about 200 instances of delays of five minutes or more that Amtrak codes as HRD each month” CN Reply Br., p. 65. Although CN asserts that the City of New Orleans route has historically performed well, that is not currently the case and that certainly is not true of other CN routes.

As such, delays of five to fifteen minutes cannot be considered insignificant and disregarded as CN proposes. For example, it would only take, at most, three such delays to cause an Amtrak train to arrive after the fifteen minute tolerance established by Congress. See 49 U.S.C. § 24101(c)(4) (establishing Amtrak's goal to "operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables").

21. Further, If CN's HRDs in excess of 924 for an entire quarter (the trigger for Amtrak's Tier 1 remedies) are comprised of such delays, there is no reason to not investigate them simply because they are in the range of five to fifteen minutes. If there is "no corrective action" that can be taken, that may be borne out in the reporting process included in Amtrak's Tier 1 remedies. The solution is not, as CN proposes, to simply do nothing.

22. CN claims that the burden of preparing reports of HRDs in excess of five minutes would be "enormous and disproportionate" because delays are an "unavoidable part of railroading" and a "five-minute delay is generally insignificant." (CN Reply Br., p. 65). Again, if CN's HRDs in excess of 924 are comprised of delays in the range of five to fifteen minutes, those delays are not "insignificant" and having CN report on them is not "disproportionate." Rather, when aggregated, those delays are likely to be causing COTP to fall below 80%. They should not simply be ignored based on CN's baseless assertion that they are "unavoidable" or "short."

23. CN also claims that its burden is amplified because it does not "know, when a delay occurs, how many minutes of delay Amtrak will record or whether Amtrak will categorize that delay as HRD." (CN Reply Br., p. 65). CN complains that it will have to "reconstruct a delay after-the-fact, after receiving Amtrak's delay report, which would define CN's reporting obligations." (*Id.*). CN already has access to and reviews Amtrak's delay data - - indeed, this is how, with increasing frequency, CN decides to challenge Amtrak's delay codes. (See also Blair

Reply Verified Statement dated July 26, 2022, ¶ 66) (explaining CN’s access to Amtrak delay code data). CN’s contention is, therefore, exaggerated and the Reporting Requirement will not add any burden to CN’s existing process of reviewing Amtrak’s delay data.

24. CN’s criticism of the Screen Review Requirement is primarily that its screens “contain highly sensitive commercial information about its operations.” (CN Reply Br., p. 66). CN claims that it “should not be compelled to share dispatching information” without a “compelling regulatory basis.” (*Id.*).

25. Amtrak’s proposed remedial measures are intended to address CN’s performance which is impacting the timely arrival of Amtrak trains. Amtrak’s intent is not to gain access to any of CN’s confidential information. Amtrak is, therefore, amenable to entering into a reasonable confidentiality undertaking in connection with implementation of Amtrak’s proposed remedies, including Tier 1’s Screen View Requirement.

26. Amtrak’s proposed Tier 2 remedies are implemented after two consecutive quarters of poor performance by CN (as reflected by HRDs of more than 924). (Amtrak Redline, Appx V, § IV(2)). When that occurs, in addition to Tier 1 remedies: (a) Amtrak (and the Board, in their discretion) may have a representative observe CN’s dispatchers in real time (“the Observation Requirement”); and (b) CN must obtain Amtrak’s prior written approval before scheduling any non-emergency Right of Way (“ROW”) repairs (such as signal upgrades) or MOW work, which is expected to impact the OTP of Amtrak trains on the subject route (“the MOW/ROW Work Notice/Approval Requirement”). (*Id.*).

27. CN claims that Amtrak’s intent with respect to the Observation Requirement is to “intimidate” or “interfere” with its dispatchers’ work. (CN Reply Br., p. 67). This is not the case. Amtrak’s intent is simply to utilize its personal direct observations of CN’s dispatchers - - coupled

with the Tier 1 Reporting and Screen View requirements - - to endeavor to address any problems with CN's dispatching which are causing delays to Amtrak's trains. This increased level of review of CN's dispatching practices is appropriate because this Tier 2 remedy is implemented only after CN's high HRDs have continued for two consecutive quarters.

28. With respect to the MOW/ROW Work Notice/Approval Requirement, CN claims that requiring it to notify Amtrak and obtain written approval from Amtrak for non-emergency work that is expected to delay its trains "would be a fiasco" and "CN's railroad is CN's, not Amtrak's." (CN Reply Br., p. 68). Amtrak is not trying to control MOW/ROW work on CN's system, nor dictate how or when it is conducted. This Tier 2 requirement is implemented if, and only if, CN decides that it will perform non-emergency ROW/MOW work at a time, place and manner which is "reasonably expected" to disrupt and delay Amtrak's passenger trains on CN's system. Again, this remedy is available only after there have been two consecutive quarters of excessive CN-responsible HRDs impacting an Amtrak train. If, in the face of these sustained delays, CN then decides to conduct maintenance work that is expected to continue (and possibly worsen) delays to the subject Amtrak's train, it is not unreasonable for CN to provide notice to Amtrak² and for Amtrak to have a right to veto that non-emergency work.

29. Notably, even if Tier 2 remedies are triggered, as discussed above, it is within CN's control to avoid this requirement altogether by conducting ROW/MOW work at a time, place and manner that *will not* be expected to delay Amtrak's trains. And, this requirement does not pertain to any emergency work that CN must perform on its system.

30. CN also claims that "Amtrak lacks the necessary experience, visibility over all of

² Notably, CN concedes that it already provides advance notice to Amtrak of maintenance work on its lines. See Verified Statement of Derek Taylor, ¶ 48.

CN's traffic, employee relations and understanding of and interest in efficiency to do the job safely." (CN Reply Br., p. 68). CN seems to be implying that Amtrak does not understand railroad scheduling and maintenance and will arbitrarily object to all of CN's ROW/MOW work for which it notifies Amtrak. It is untenable to suggest that Amtrak - - who, among other things, dispatches and maintains the 457 mile long Northeast Corridor system and the Michigan line - - lacks the "necessary experience" to meaningfully assess whether CN's ROW/MOW work should be approved or not, based on its impact on Amtrak's passenger traffic. For example, Amtrak is qualified to assess whether a reasonable alternative exists for CN to perform the subject work at a time or in a manner that will *not* delay Amtrak's trains or will mitigate such delays. Given that this remedy is implemented after six consecutive months of CN delays, this is a reasonable remedy.

31. After four consecutive quarters of excessive CN HRDs, Amtrak's proposed Tier 3 remedy of taking over (or having a contractor take over) dispatching on the subdivision used by the subject Amtrak train is implemented. (Amtrak Redline, Appx V, § IV(3)). CN claims that "no HRD level . . . can justify Amtrak's proposed expropriation of CN's control over its private property." (CN Reply Br., p. 70). CN predicts that: "Amtrak would cripple CN freight operations and destroy network fluidity by banning freight trains from vast swaths of CN's largely single-line network whenever Amtrak's trains are on the line." (CN Reply Br., p. 73).

32. There is no reason to believe that, if Amtrak or its contractor takes over dispatching of a CN subdivision on which an Amtrak train has been plagued with CN delays for a year, that CN's operations will be "crippled." If there has been one year of excessive CN HRDs on a route where CN hosts the majority of route miles (such as the Illini/Saluki or City of New Orleans routes), CN will have been delivering performance that has likely caused sustained sub-80% COTP for a year. If the route is one where CN has few route miles (such as the Texas Eagle), CN's high

level of HRDs is likely to have been causing poor performance on its portion of the route and is likely to be adversely impacting Amtrak's performance on other parts of the route hosted by other railroads. At that point, there is clearly a failure on the relevant CN subdivision of basic dispatching functions that are necessary for Amtrak's intercity passenger service to receive preference and to operate on time. And, while dispatching is "complex," it is an overstatement for CN to imply that CN, and CN alone, can handle the task on its system. To the contrary, if Tier 3 remedies are triggered, then it is clear that there have been shortcomings in CN's dispatching practices which the Board should not allow to continue.

33. Amtrak is not proposing to implement this remedy to be punitive, but rather simply to try to address a problem that has severely adversely impacted its passengers for an entire year. At that point, dispatching should no longer be left to CN's sole discretion and it is reasonable for Amtrak (or its contractor) to have more direct involvement.

34. Although Amtrak believes that this Tier 3 remedy is "reasonable" under 49 U.S.C. § 24308(a), in the event the Board has concerns with Amtrak's suggested approach and imposes an alternative approach, Amtrak believes the remedy must provide Amtrak with input into CN's dispatching. For example, this could be accomplished by permitting Amtrak to have supervisors present at CN's dispatching center to have input into CN's dispatching decisions or reassigning dispatchers involved in causing significant delays to Amtrak trains.

D. CN's Assertions as to the Lookback Provision

35. In CN's reply submission, it advances a number of arguments opposing Amtrak's proposal that the "lookback" provision of a new OA should: (a) apply over the entire term of the new OA, as opposed to being limited to one-year as CN proposes; and (b) apply on a system-wide basis, as opposed to a "per route" basis as CN proposes.

36. As a threshold issue, CN is incorrect that Amtrak's proposal is intended to enable it to "collect[] the most penalties it can." (CN Reply Br., p. 56). Penalties are mandated by Congress, and provided for in Amtrak's proposal, when Amtrak trains are operating late resulting in delivery of a poor service to Amtrak's passengers. Obviously, Amtrak strives to meet its Congressionally-mandated goal of delivering its passengers on time. See 49 U.S.C. § 24101(c)(4). Amtrak, therefore, has no design to obtain a windfall of penalties it can collect. That would only mean it is providing poor service. But, where CN is causing poor performance of Amtrak trains, penalties are an appropriate remedy and are specifically mandated by Congress.

37. In asking the Board to impose terms which apply the lookback on a "per route" basis, CN argues that under a system-wide lookback provision: "one bad month could wipe out many months of diligent work earning incentives" because "one bad service prevents CN from accruing any net incentives despite stellar performance on all Amtrak's other services." (CN Reply Br., p. 58). But, this illustrates why the lookback *should* be applied collectively to all routes.

38. If the lookback is assessed by route, a Host Railroad could simply "write off" a route that is underperforming or that presents operational challenges for it. In such a scenario, CN would be able to earn and retain incentives on performing routes, yet operate penalty-free as a result of the lookback as to the underperforming route. This essentially insulates CN from any penalties on the underperforming route, which: (a) eliminates incentives for CN to restore Amtrak performance on that route; and (b) effectively renders Congress' mandates for penalties a nullity as to that route. If, as Amtrak proposes, incentives earned on the performing routes are part of the lookback, Amtrak could collect penalties on the underperforming route. This would certainly incentivize CN to try to improve performance on the underperforming route.

39. CN complains that the lookback should be assessed on a per route basis because

“separation of various services for application of incentives and penalties was specifically added by the parties in their last restatement of the [OA] in 2011, precisely to preserve independent incentives.” (CN Reply Br., p. 58).

40. At CN’s request, and as a matter of compromise, in 2011 Amtrak agreed to the three-part split of CN’s routes for assessing incentives, penalties and the lookback.³ Amtrak’s agreement to this contract term was based, in part, on CN’s assertions that CN’s respective operating subdivisions would, in the event that a route within the division earned incentives, directly benefit from those incentives and continue to provide strong OTP to Amtrak on that route. For example, CN represented that this would allow CN to direct the incentive payments it received from Amtrak to those CN employees most responsible for Amtrak’s good performance on CN’s system. Notably, CN has not provided any evidence or statement in this case confirming that it distributed incentives received from Amtrak in that manner.

41. Conversely, if the route was penalized, CN claimed that the subdivision would be more responsive in addressing operational problems causing delays to Amtrak trains. However, that did not happen. To the contrary, this construct resulted in the exact problem Amtrak discussed above - - service on the Illini/Saluki route was extremely poor, and remained poor for a sustained period of time. COTP on the Illini/Saluki route from October 2016 through December 2019 was between a low of 9.4% (in June 2019) and a high of only 45.4% (in December 2019).⁴ During this

³ Historically, Amtrak’s OAs with Host Railroads contain lookback provisions applied on a system-wide basis, not a per route basis. In fact, CN’s 2011 OA is the only OA in which Amtrak agreed to a per route analysis for a lookback provision.

⁴ Attached as **Exhibit 7** is a table stating COTP for the Illini/Saluki route from October 2016 through December 2019. This data is based upon Amtrak’s calculations of COTP in the normal course of business. The first month for which Amtrak began these calculations is October 2016.

period of time, CN was penalized as to the Illini/Saluki route. Contrary to CN's assertion, however, the data demonstrates that this did nothing to improve service on the Illini/Saluki route.

42. Also, during this time frame, and based upon data tracked by Amtrak's Host Railroad Finance Group, Amtrak paid incentives to CN on its other routes. For example, in 2019, Amtrak paid CN \$[REDACTED] in incentives - - and not a penny of that was offset by the poor performance of the Illini/Saluki route. Furthermore, by operation of the lookback provision in the 2011 OA, despite CN's poor performance on the Illini/Saluki route, the lookback provision prevented Amtrak from collecting [REDACTED] of penalties from CN each year from 2016 through 2019.

E. CN's Assertions as to Scheduling

43. In CN's reply submission, it makes a number of mistaken assertions concerning the Parties' review of Amtrak's schedules during the schedule certification process set forth in the Final Rule.

44. CN claims that, in my letter of May 3, 2022 (**Exhibit 8**), Amtrak has "concede[d] that additional PRT [Pure Run Time] is required" for the disputed Illini/Saluki schedules. (CN Reply Br., p. 92). CN claims that Amtrak's alleged position on PRT reflected in my letter should have resulted "in lengthening the overall schedule" for the those routes. (*Id.*). This is incorrect. Amtrak's May 3, 2022 schedule proposal considered that Amtrak's use of heavier equipment (Superliners) on the Illini/Saluki route led to faster operating times because that equipment was not subject to speed restrictions on CN's system. (Exh. 8, 5/3/22 Ltr, p. 1). As a result, less recovery and miscellaneous time was needed in the Illini/Saluki schedules to compensate for delays experienced en route.

45. Given the need for less recovery time because of Amtrak's use of heavier

equipment not subject to CN's speed restrictions, Amtrak would have been justified in taking the position that the overall schedule could have been *shortened*. Instead, purely as a matter of proposed compromise - - and in light of CN's continued insistence that the schedules be lengthened - - Amtrak proposed to shift that excess recovery time into PRT for the disputed routes.⁵

46. My May 3, 2022 letter, however, clearly stated:

The City of New Orleans and Illini/Saluki COTP have consistently averaged above 80% over a one-year period, demonstrating that the schedules are aligned with the COTP metric, with their performance repeatedly exceeding the minimum standard. Reallocating existing recovery time does improve performance, especially for the Illini/Saluki, which we support. *The addition of more time to the schedules as CN desires, would result in unnecessary delay for Amtrak passengers.*

(Exh. 8, 5/3/22 Ltr., p. 1) (emphasis added).

47. In a further effort to justify lengthening Amtrak's schedules, CN takes the position that "scheduling principles typically dictate that recovery time should increase, not decrease, as PRT increases." (CN Reply Br., p. 93). The problem with CN's approach to scheduling is that it seeks to add far more recovery time into a schedule that is appropriate based on the PRT for a schedule.

48. I previously addressed this issue with CN during the schedule certification process. In CN's April 7, 2021 schedule proposal, CN contended that it was appropriate to add both recovery time and PRT to the Illini/Saluki schedule based on the ratio of the average schedule time to distance in comparison to thirteen other Amtrak routes with lengths of 200 to 400 miles. (**Exhibit 9**, CN 4/7/21 Letter, p. 4, Attachment 5).

⁵ Amtrak acknowledges that, as CN states, "PRT and recovery/miscellaneous time . . . serve different functions within a schedule and are no[t] interchangeable." CN Reply Br., p. 92. But, as stated, Amtrak simply proposed adding time to the PRT for the route as a matter of compromise, not because PRT and recovery time were "interchangeable."

49. In disagreeing with CN's proposal (which, again, sought to lengthen the Illini/Saluki schedules), I noted in my responsive letter of May 7, 2021 that CN's "proposed addition of recovery time would create a schedule with a Recovery Time to PRT ratio far higher than any of the other routes" to which CN compared its proposal. (**Exhibit 10**, p. 1). Specifically, CN's proposal would result in recovery time that was 22% of the PRT for the Illini/Saluki route. (*Id.*, Appendix A). Recovery time in the other thirteen routes that CN used for comparison purposes was between only 9%-16% of PRT. (*Id.*).

E. CN's Assertions as to Confidentiality

50. In CN's reply submission, it contests Amtrak's proposal to maintain certain Appendices of the proposed OA confidential.

51. With respect to Appendix IV (entitled "Current Costs and Price Level Adjustments"), the Parties largely agree on a majority of the terms. The disputed issue is whether CN's newly proposed "freight delay costs" will be added to Appendix IV. Even if the Board were to award these unsupported costs, CN believes that only the monetary terms of Appendix IV should remain confidential. But, CN offers no compelling reason for generally disclosing the other terms of Appendix IV, and there is none. To the contrary, disclosing those terms could prejudice Amtrak in negotiations with other Host Railroads. Indeed, the line items for costs in Appendix IV vary in all of Amtrak's OA's with other Host Railroads. Requiring public disclosure of such costs and terms would be akin to CN disclosing to its competitors the line items (albeit not pricing) of its shipper agreements.

52. CN takes the same position with respect to Appendix V, the terms of which are obviously in dispute. Amtrak believes that, when the new OA becomes effective, Appendix V should remain confidential in its entirety. Again, disclosing wholesale the terms of Appendix V

could prejudice Amtrak in its negotiations with other Host Railroads.

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

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Dated: August 25, 2022
Philadelphia, PA



James A. Blair

EXHIBIT 01

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2009-0016]

Metrics and Standards for Intercity Passenger Rail Service

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Response to Comments; Issuance of Metrics and Standards

SUMMARY: Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (Division B of Pub. L. 110-432) (PRIIA) charged the Federal Railroad Administration (FRA) and Amtrak jointly and in consultation with other parties, with developing new or improving existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. In compliance with the statute, the FRA and Amtrak jointly drafted performance metrics and standards for intercity passenger rail service and, on March 13, 2009, posted a draft document, entitled "Proposed Metrics and Standards for Intercity Passenger Rail Service," on the FRA's Web site at <http://www.fra.dot.gov/us/content/2165>.

Simultaneously, the FRA published a notice in the Federal Register (74 FR 10983) requesting comments on the Proposed Metrics and Standards from the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, nonprofit employee organizations representing Amtrak employees, and groups representing Amtrak passengers. Seventeen comments were submitted to the corresponding docket (number FRA-2009-0016) at regulations.gov by the end of the comment period on March 27, 2009 and as a result, revisions have been made to the Metrics and Standards. The Final Metrics and Standards are included at the end of this document.

DATES: These metrics and standards are in effect as of May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Neil E. Moyer, Chief, Financial and Economic Analysis Division, Office of Passenger and Freight Programs, Federal Railroad Administration (e-mail Neil.Moyer@dot.gov; telephone 202-493-6365); or Edgar E. Courtemanch, Sr. Principal, Operations Service Planning, Amtrak (e-mail CourteE@amtrak.com; telephone 202-906-3249).

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I. Background

Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (Division B of Pub. L. 110-432) (PRIIA) charged the Federal Railroad Administration (FRA) and Amtrak with jointly developing, in consultation with the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, nonprofit employee organizations representing Amtrak employees, and groups representing Amtrak passengers, as appropriate, new or improving existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services. The statute further provided that such metrics shall, at a minimum, include the percentage of avoidable and fully allocated operating costs covered by passenger revenues on each route, ridership per train-mile operated, measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier and, for long-distance routes, measures of connectivity with other routes in all regions currently receiving Amtrak service and the transportation needs of communities and populations that are not well-served by other forms of intercity transportation.

In compliance with the statute, the FRA and Amtrak jointly drafted performance metrics and standards for intercity passenger rail service and, on March 13, 2009, posted a draft document, entitled “Proposed Metrics and Standards for Intercity Passenger Rail Service,” on the FRA's Web site at <http://www.fra.dot.gov/us/content/2165>. Simultaneously, the FRA published a notice in the Federal Register (74 FR 10983) requesting comments on the Proposed Metrics and Standards from the stakeholders named in the PRIIA. In total, seventeen comments were submitted to the corresponding docket (number FRA-2009-0016) at regulations.gov by the end of the comment period on March 27, 2009.

The FRA and Amtrak have considered the comments of the respondents to Docket No. FRA-2009-0016, and through this notice are issuing final Metrics and Standards for Intercity Passenger Rail Service. This document also contains the FRA's responses, developed with Amtrak's concurrence, to the docket comments. The changes incorporated in the Metrics and Standards published with this notice in some cases reflect clarifications of, and in others, revisions to, the March 13 proposal. A more detailed explanation of these changes is provided below.

II. Discussion of Comments and Revisions to the Proposed Metrics and Standards

A wide variety of interested parties submitted written comments to FRA in response to the Proposed Metrics and Standards. Comments were submitted to the docket from five State Departments of Transportation, three State and regional passenger railroad agencies, three freight railroads, three railroad-related associations, and one labor organization. FRA also received one comment from an individual of unknown affiliation, likely an interested private citizen, and one brief procedural comment from the Surface Transportation Board. A full list of the parties that submitted comments can be found in Annex 4.

The comments are categorized according to the four main topics identified in the Proposed Metrics and Standards document. An additional category was created to address comments and recommendations of a more general nature. Within each category, this Supplementary Information includes a comparison of the proposed with the final Metrics and Standards; a brief summary of the comments received; and a response to those comments. In many cases, a response is provided to individual comments; in other cases, where a common

theme existed across two or more comments, the comment was consolidated and a single response provided. In both types of cases, we have noted where FRA and Amtrak have made changes to the Proposed Metrics and Standards based upon the comments and recommendations received.

The FRA and Amtrak sincerely appreciate the time and effort put forward by all participants in this effort.

A. General Comments on the Proposed Metrics and Standards

1. Procedural Comments

Implementation timing of Metrics and Standards. *Comment:* A procedural comment addressed the timing of the implementation of the metrics and standards and expressed concern that new performance measures will be applied retroactively to quarters prior to their finalization and implementation. ***Response:*** The FRA agrees that, in all fairness, stakeholders should only be held responsible for operations conducted following implementation of these Metrics and Standards. Accordingly, FRA will not publish the first quarterly report until the required data are available for the first full quarter following the publication of these Metrics and Standards. Thus, for example, if the present document is published by between April 1, 2010, and June 30, 2010, the first full quarter of effectiveness of the Metrics and Standards would extend from July 1, 2010 through September 30, 2010; data for that quarter would be obtained and analyzed, and the report would be prepared, in the subsequent weeks; and the first quarterly report would be published as soon as possible thereafter, and no later than January 1, 2011.

In keeping with the FY 2008 and successive appropriations acts, the FRA will continue to prepare and publish its quarterly On-Time Performance report until the quarterly reporting on these Metrics and Standards begins.

Reporting periods. *Comment:* The same party also noted that PRIIA only requires one quarter of data to be published in each quarterly report. ***Response:*** In actuality, the statute states that “[t]he Administrator of the Federal Railroad Administration shall collect the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations....” That is, it says that the FRA will publish a quarterly report, not that it will publish a report containing a quarter’s worth of data. Moreover, it is the FRA’s position that for the metrics to be meaningful, it is necessary to collect and/or publish data for a variety of periods. For example, depending on the metric and the availability of comparable data, a typical quarterly report might show data for one or more of the following: (a) the quarter being reported upon, (b) the prior quarter (in the case of on-time performance data), (c) the four quarters ending with the quarter being reported upon, (d) the eight quarters ending with the quarter being reported upon (for rolling eight-quarter averages), and (e) the same periods detailed above ending one year previously.

Sufficiency of comment period. *Comment:* The Docket received two comments expressing concern with the stakeholder consultation that took place in developing the Proposed Metrics and Standards. In particular, the Transport Workers Union of America (TWU) stated that the 14-day period provided for submitting comments to the docket was inadequate and that any revisions to the Proposed Metrics and Standards document should incorporate a longer comment period (at least 30 days) with increased stakeholder involvement. ***Response:*** The FRA understands that some stakeholders would have liked more time to comment on the Proposed Metrics and Standards. However, the FRA and Amtrak have seriously considered all the

comments submitted and believe that the Final Metrics and Standards document reflects a marked improvement over the original proposal. In addition, subsequent to the enactment of the PRIIA, the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) allocated \$8 billion in economic stimulus funding to a High-Speed Intercity Passenger Rail (HSIPR) investment program. As described in the strategic plan and guidance documents published by the FRA pursuant to the Recovery Act (and available at <http://www.fra.dot.gov/us/content/31> and <http://www.fra.dot.gov/us/content/2243>, respectively), various partnerships and implementing agreements among the stakeholders will be prerequisite to achievement of the HSIPR program goals in most corridors. Essential to such implementing agreements will be a mutual knowledge of the operational performance expectations of the various parties. As benchmarks for many of these expectations will be established in these Metrics and Standards, their timely publication is essential to the early completion of State/rail owner/passenger operator negotiations and thus, to the speedy implementation of the HSIPR program.

Accordingly, the Metrics and Standards presented at the end of this notice represent the performance measures that the FRA and Amtrak will implement, and on which the FRA will base its quarterly report to Congress. The Metrics and Standards themselves identify specific topics within the Other Service Quality and Public Benefits categories that will require further analysis, proposals, and public comment.

2. Comments Regarding Penalties

Enforcement and penalties. *Comment:* Several parties submitted concerns regarding the enforcement of standards and the penalties for not meeting the standards. The TWU and multiple State agencies requested further explanation on how the metrics will be applied to routes as well as the outcomes for meeting and for not meeting the standards. In particular, the TWU requested clarification regarding the enforcement mechanism for each standard as well as the name of the agency responsible for enforcement. It also requested details on the development of guidance for enforcement procedures. ***Response:*** As explained in the PRIIA, the Surface Transportation Board (STB) is the primary enforcement body of the standards, making them an appropriate entity to develop and communicate enforcement protocols.¹ As such, the FRA believes that the enforcement procedures are properly separate from these metrics and standards. The FRA’s only enforcement responsibility pertains to performance progress analysis of the worst-performing long-distance routes as provided for in Section 210 of PRIIA (49 U.S.C. 24710). None of these routes is currently State-supported.

Susceptibility of routes to enforcement. *Comment:* The California Department of Transportation (Caltrans) questioned whether Amtrak routes themselves can be penalized for not meeting performance standards. ***Response:*** Under Section 213 of PRIIA,² penalties for infraction of the standards are not intended for direct application to Amtrak routes, but rather to host rail carriers under specified circumstances. PRIIA Section 210 does give the FRA authority

¹ As explained in Section 213 of PRIIA, if service quality fails to meet the established standards for 2 consecutive calendar quarters, the STB may (and in some circumstances must) initiate an investigation to determine whether and to what extent this failure is due to causes that could reasonably be addressed by the host rail carrier or by Amtrak or other intercity passenger rail operators. If it determines that the failure to meet the standards is attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation, it may award damages against the host rail carrier, which the carrier shall remit either to Amtrak or to an entity for which Amtrak operates intercity passenger rail service as the STB deems appropriate.

² Section 213 describes Surface Transportation Board responsibilities for enforcement of the Metrics and Standards, particularly as they regard host rail carriers.

to withhold non-safety-related funds from a long-distance route that is among the worst performers under these Metrics and Standards, but only if that route fails to adhere to an Amtrak-devised performance improvement plan, and only after mandated notifications and an opportunity for Amtrak to request a hearing.

Effects of the standards on State-supported services. *Comment:* Washington State Department of Transportation (WSDOT) expressed concern that States funding Amtrak services could be penalized for underperforming routes and that such penalties could discourage future State support. WSDOT also inquired whether “credits” can be earned for routes that exceed performance standards. ***Response:*** PRIIA includes no provision imposing consequences or penalties on States, in their capacity as sponsors or subsidizers of intercity passenger services, if those routes fail to meet the standards specified in the Metrics and Standards. Similarly, PRIIA makes no provision for the awarding of credits for routes exceeding the standards. However, other benefits naturally accrue to States, Amtrak, and host railroads for outstanding performance, including lower-cost and/or higher-revenue operations, as well as heavier rail traffic volumes and consequent public benefits. Furthermore, the States, Amtrak, and host freight railroads are free to build direct incentives into their agreements, and in some cases have already done so.

Uses of the performance measures. *Comment:* The Caltrans requested clarification on how the performance measures will affect Amtrak’s and the FRA’s decision-making authority on State-supported routes. Caltrans also asked whether the Proposed Metrics and Standards were designed to compare routes against their own past performance or against those of other routes. ***Response:*** The Metrics and Standards are designed to allow for both historical and cross-sectional analysis and comparisons. In addition to their general use and utility, PRIIA mandates that Amtrak use them in evaluating its long-distance routes (Section 210) and in developing a plan to improve on-board service (Section 222), and that FRA use them in evaluating bids under the Alternate Passenger Rail Service Pilot Program (Section 214).

3. Concerns with Metrics and Standards Data

Independence and data integrity. *Comment:* One commenter was concerned about the lack of independence with respect to the gathering of data for and the calculation of the Proposed Metrics and Standards. In particular, the commenter suggested that insufficient separation exists between Amtrak personnel and the data used for these performance measures. Another party stated that sole use of Amtrak-provided operational and performance data is not justified in PRIIA. ***Response:*** PRIIA, the statutory basis for these performance measures, directly incorporates Amtrak into their creation by stating that FRA and Amtrak “shall jointly” develop the Metrics and Standards. It establishes no completely independent agency or funding mechanism for gathering and analyzing the relevant data. Thus, the statute affords no scope or basis for action regarding this comment.

Fairness. *Comment:* Two railroads expressed misgivings about the fundamental fairness of the performance measures. One railroad indicated that the proposed performance measures were biased towards Amtrak and provided insufficient improvements on existing measures. The other cited what it said were fairness issues with tying performance penalties to Amtrak’s schedules, which it argued are sometimes unrealistic. ***Response:*** The FRA and Amtrak aimed to encourage cooperation between Amtrak and the host railroads. For example, Annex 1 contemplates that Amtrak and its individual host railroads may agree that during a specific quarter, a specific train may incur more delay than usual, or may have an adjustment made to its public schedule, due to a major maintenance and construction project. Scheduling remains

primarily a topic for collaboration between Amtrak, its host railroads, and any sponsoring States, subject to the indirect constraints of the Effective Speed standard for OTP.

4. Effects of the Metrics and Standards

Administrative burdens. Comment: Several freight railroads stated that the proposed performance measures present an administrative burden and will require significant operational changes to make current Amtrak schedules realistic. They went on to assert that the Proposed Metrics and Standards will increase the cost of hosting Amtrak trains and noted that those costs may need to be passed on to Amtrak. **Response:** Amtrak and its host railroads each have their own train performance databases that often utilize different metrics or different definitions for the same metrics. As train performance data thus lacks uniformity among railroads, additional resources may be necessary to achieve comparable data. Similarly, the new All-Stations OTP will increase the number of OTP data points that may be subject to dispute between Amtrak and its hosts. Conversely, the heightened attention under PRIIA to performance measures on the part of both Amtrak and host railroads may lead to operational improvements that can result in lower costs and/or higher revenues to Amtrak and increased incentive payments to host railroads, mitigating administrative costs that stem from the Metrics and Standards. The FRA encourages Amtrak and host railroads to align metrics within their respective databases where possible and encourages Amtrak to continue with efforts to enhance train delay data through automation.

Effects on Amtrak/host relationships. Comment: Norfolk Southern Corp. (NS) stated that the proposed performance measures will hinder its working relationship with Amtrak, while the Association of American Railroads (AAR) and CSX Transportation, Inc. (CSX) said the Proposed Metrics and Standards may dissuade freight host railroads from agreeing to new Amtrak services. **Response:** The Metrics and Standards are not intended to deter future Amtrak service; rather they are to lead to improvements in whatever Amtrak service is offered. Based on the collaborative approach described in Annex 2, and on the freight railroads' long record of passenger operations, the FRA and Amtrak expect that all stakeholders will work closely together to implement this Congressional mandate efficiently and effectively, and in so doing minimize the burdens and maximize the benefits felt by each other.

5. Relationship to State Agency/Amtrak Contracts and Standards

Development of Metrics and Standards for State-supported services. Comment. Washington State Department of Transportation (WSDOT) made the case that States with State-supported services and Amtrak should be responsible for developing the Proposed Metrics and Standards in a process supported by a Federal appeals forum. **Response:** States have a role in the process of defining the Metrics and Standards as well as a vital interest in the end product of this process. However, Section 207 of PRIIA mandates that Amtrak and the FRA act as the lead parties in developing these performance measures.

Effect of Metrics and Standards on contracts between the States and Amtrak. Comment: A number of State agencies expressed concern regarding the effect the Proposed Metrics and Standards might have on their intercity passenger rail agreements. In particular, several agencies stated that the Proposed Metrics and Standards should not replace State operating and performance contracts with Amtrak and other railroads. State agencies argued for the continued right to negotiate their own standards for State-supported services with rail carriers and to perform and use their own performance analyses. **Comment:** These Final Metrics and Standards are not intended to (a) alter or replace operating and performance agreements between States and Amtrak; (b) hinder States or Amtrak from negotiating standards

with each other, or from incorporating an appeals process into their agreements; or (c) limit the analytical tools employed by States or other stakeholders.

6. Relationship to agreements between Amtrak and host railroads.

Comment: Metro-North sought confirmation that the Metrics and Standards will not supersede any Amtrak-host railroad OTP agreements. **Response:** Section 207 of PRIIA states that, “to the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards . . . into their access and service agreements.”

7. Metrics and Standards, PRIIA, and ARRA

Comment: State agencies were also concerned with the possible interrelationships between the Proposed Metrics and Standards and both the American Recovery and Reinvestment Act of 2009 (ARRA) and other PRIIA-defined initiatives. Caltrans, in particular, requested clarification as to whether grant proposals under the FRA’s High-Speed Intercity Passenger Rail (HSIPR) program will be evaluated based on a project’s ability to improve performance measures or on a route’s previous ability to meet performance standards. Also, assurance was sought that projects requesting Federal funding will only be evaluated against applicable performance measures. The Capital Corridor Joint Powers Authority (CCJPA) indicated that high performing routes will be at a disadvantage when being considered for HSIPR funding. CCJPA also noted that non-Federal capital funding sources and traffic volume are not discussed as evaluation criteria.

Response: In response to these comments about the relationship of the Metrics and Standards to other PRIIA provisions and the HSIPR program, it is worth noting that:

1) The HSIPR program involves a merit-based evaluation process as described in Section 5 of the Interim Program Guidance, available at <http://www.fra.dot.gov/us/content/2243>.

2) In the absence of agreed Metrics and Standards at the time the Interim Program Guidance was published, the review criteria in Section 5 of the Guidance adopted generalized topics reflecting the underlying purposes of PRIIA Section 207—for example, “increased on-time performance.”

3) The application and review process for the first round of HSIPR funding (pursuant to the Interim Program Guidance published in the Federal Register on June 23, 2009) reached its conclusion on January 28, 2010, with the announcement of the first recipients selected to receive grant funding. As these Final Metrics and Standards had not been published at that time, they could not be applied to the first HSIPR funding competition.

4) The applicability of these Final Metrics and Standards to the application, review, and/or selection processes in future solicitations under the HSIPR program would be clarified in the HSIPR notices announcing such solicitations.

5) The above points do not preclude the FRA from incorporating, at its discretion, these Final Metrics and Standards in grant award negotiations with any entities selected to receive HSIPR grants.

B. Comments on Financial and Operating Measures

1. Summary of the Proposal and of the Final Metrics and Standards.

The Proposed Metrics and Standards included five different metrics under the Financial/Operating category: (1) Percent of Short-Term Avoidable Operating Cost Covered by Passenger-Related Revenue (excluding capital charges); (2) Percent of Fully Allocated Operating Cost Covered by Passenger-Related Revenue (excluding capital charges); (3) Long-term Avoidable Operating Loss per Passenger Mile (excluding capital charges); (4) Passenger-Miles per Train-Mile; and (5) Adjusted (Loss)³ per passenger-mile. The first four of these were to be reported at the route level and the last, at the system level. For all five, the proposed standard was to be continuous year-over-year improvement.

In these Final Metrics and Standards, the same measures are retained; all financial measures will be calculated both with and without State subsidies included in revenue. Continuous year-over-year improvement will be reported and assessed on a moving two-year (eight-quarter) average basis.

2. Comments and Responses

a. Additional Measures Needed

Comment: The Midwest High-Speed Rail Association (MHSRA) recommended incorporating measures on load factor and passenger and ticket revenue by origin-destination. It also proposed adding a metric and standard for passengers declined rail service due to lack of available space. **Response:** The metrics proposed by MHSRA are potentially useful for a number of purposes. However, they are very detailed, involve origin-destination data that is typically proprietary to common carriers, and (in the case of passengers denied rail service) involve steep challenges of measurement, including the elimination of duplicate inquiries by a single passenger for the same space. For all these reasons, these measures would exceed the scope and purpose of Section 207 of PRIIA and add significant complexities to the quarterly report. Therefore, these new measures are not included in the final Metrics and Standards.

b. Calculations of Financial Measures

The Docket received a number of comments regarding the process for calculating the various financial measures.

Treatment of State operating subsidies. Comment: A number of State agencies called for calculating the route-by-route financial measures both with and without State contributions included in revenue, in order to better illustrate Amtrak's operating losses before receiving State funds. **Response:** Numerous Amtrak routes are supported by State contributions, which—while indispensable to support continuing operations—tend to obscure an analysis of the inherent efficiency of the routes in question. It would be useful, feasible, and not unduly burdensome to report cost recovery and operating loss per passenger-mile calculations both with and without State contributions, and the Metrics and Standards now incorporate this change.

Treatment of fully-allocated costs. Comment: CCJPA questioned the fairness of the proposed fully allocated cost calculation, in particular, the fact that while overhead is allocated to State-supported services, revenues from Amtrak's ancillary businesses are not allocated in a similar manner. **Response:** A certain amount of Amtrak's overhead is related to each of Amtrak's routes and ancillary business. Amtrak's new fully allocated cost methodology allocates system-wide costs, such as General and Administrative and other overhead costs, to all

³ The definition of Adjusted (Loss) is: Net Operating Loss (before net interest expense), less Depreciation, Other Post-Employment Benefits (OPEB's) and project costs covered by capital funding.

of Amtrak's routes and businesses in a logical and equitable manner. CCJPA is correct that the fully allocated cost methodology does not simply spread revenues earned from Amtrak's operations among all routes, but assigns them to the routes and ancillary businesses with which they are associated. Attributing both costs and revenues to the routes and ancillary businesses to which they are related allows Amtrak to assess the performance of each individual route or business. Additional detail on Amtrak's fully allocated cost methodology is provided in the FRA's and Volpe Center's report entitled *Methodology for Determining the Avoidable and Fully Allocated Costs of Amtrak Routes*, available at <http://www.fra.dot.gov/Pages/1996.shtml> under "Intercity Passenger Rail Cost Analysis."

Accuracy of Amtrak's route accounting. Comment: The Wisconsin Department of Transportation (WisDOT) expressed concerns with the accuracy of Amtrak's new cost accounting system after experiencing perceived accuracy issues under the previous system.

Response: Amtrak is in the process of implementing a new cost accounting system, called Amtrak Performance Tracking (APT), which will be used to calculate Short-Term Avoidable Operating Costs, Long-Term Avoidable Operating Costs, and Fully Allocated Costs for each route on a monthly basis. APT was designed to enhance transparency and also to assign costs more fairly, accurately, and consistently. All topics related to APT are addressed in great detail in the *Methodology* report referred to above.

Effects of service changes on fully-allocated costs. Comment: CCJPA also stated that fully allocated costs will need to be recalculated if a State discontinues a service. **Response:** That statement is accurate, but presents no challenges since Amtrak's new system will calculate the fully allocated costs of each Amtrak route monthly.

Equipment ownership. Comment: CCJPA requested that the Short-Term Avoidable Operating Cost calculation be defined in such a way that it can determine the effects of owning rail equipment. **Response:** Again, the FRA's and Volpe Center's forthcoming report provides a detailed explanation on how Fully-Allocated and Avoidable Operating Costs are estimated in Amtrak's new accounting system.

c. Continuous Improvement Measure

Comment: Both NS and Caltrans disagreed with the continuous year-over-year improvement standard proposed for certain metrics. Caltrans observed that such a standard serves to penalize high performing routes, and that—with regard to the financial measures—certain expenses, like fuel, cannot be controlled. **Response:** The FRA and Amtrak considered these comments in revising the Metrics and Standards. Continuous improvement standards will be based on an eight-quarter rolling average instead of a single quarter in order to smooth out the effects of transitory events. The Final Metrics and Standards also will apply an inflation adjustment to the dollar-denominated data from prior years used in multi-year rolling averages, to make them comparable with current-year data. With regard to high performing routes, as mentioned above, such routes will derive direct benefits from their high performance, independent of these performance measures.

d. Financial Measures Unsuitable for State Needs

Comment: One stakeholder, CCJPA, argued that the financial performance measures did not meet the needs of the States. CCJPA stated that the proposed metrics are not flexible enough to pertain to their contracts with California, Amtrak, and other railroads (e.g., CCJPA's fixed price annual contract with Amtrak). For that reason, it maintained that the proposed financial

standards should not supersede existing agreed-upon methods for calculating and reporting train performance at the State level. **Response:** As stated above under “Effect on State Agency Contracts and Standards,” the Metrics and Standards are not intended to circumscribe the flexibility of the States and Amtrak to arrive at mutually satisfactory agreements.

e. Mail Revenue

Comment: The National Association of Railroad Passengers (NARP) noted that although mail revenue is a component of a route’s total revenue calculation, Amtrak discontinued its mail transporting services in 2004. NARP recommended that Amtrak reexamine carrying mail on its trains to improve its financial performance. **Response:** NARP’s comment relates to business decisions of and between Amtrak and the U.S. Postal Service and does not affect the definition or implementation of the Metrics and Standards.

C. Measures of On-Time Performance (OTP) and Train Delays

1. Summary of the Proposal and of the Final Metrics and Standards

The Proposed Metrics and Standards dealt separately with OTP and train delays. A route’s OTP was to be discerned on the basis of three tests (only two tests until FY 2010): 1) Change in Effective Speed,⁴ 2) percent on time at the endpoint (Endpoint OTP), and 3) percent on time at all stations served (All-Stations OTP). For all routes, effective speed was to be no worse than in the baseline year, FY 2007. The Proposed Metrics and Standards implied that the effective speed for each quarter was to match or better that for all of FY 2007.

OTP under the final standard is to be discerned on the basis of three tests (only two tests until FY 2012): 1) Change in Effective Speed, 2) percent on time at the endpoint (Endpoint OTP), and 3) percent on time at all stations served (All-Stations OTP) (Effective as of FY 2012). The final standard makes clear that the effective speed is to be calculated on a rolling four-quarter basis and compared with a fixed FY 2008 baseline.

The standard for percent on time was to vary by route type and by year, as follows:

Route Type	Percent on time in first year	Percent on time in fifth year
Acela	90%	95%
Other Northeast Corridor (NEC) routes	85%	90%
All other corridors	80%	90%
Long-distance routes	80%	85%

The same OTP standards are to be applied to both Endpoint and All-Stations OTP, although the tolerances for determining whether a train was late would differ between the two metrics. The OTP percentages above have been retained intact in the Final Metrics and Standards.

The following table compares the original proposal for Train Delays with that contained in the final document:

⁴ Effective speed is defined as a train’s mileage, divided by the sum of (a) the scheduled end-to-end running time plus (b) the average endpoint terminal lateness.

Metric (Minutes per 10,000 Train-Miles)	Original Proposal	Final Metrics and Standards
<i>Off Northeast Corridor</i>		
Amtrak-responsible delays	250	325
Host-responsible delays	700	900
Cause of delay shown for information?	Yes	Yes

Metric (Minutes per 10,000 Train-Miles)	Original Proposal		Final Metrics and Standards	
On Northeast Corridor				
	Acela	All other services	Acela	All other services
Total train delays	-	-	265	475
Infrastructure delays	104	123	-	-
Passenger and Commuter Train Interference	67	116	-	-
Third-party delays	37	44	-	-
All other delays	76	187	-	-
Cause of delay shown for information?	No		Yes	

As indicated in the table, the delay allowances have been raised and (in the case of the NEC) simplified from those originally proposed. For both off- and on-NEC performance, further information on causes of delay will be provided in the quarterly reports (although not part of the standards). Annex 3 provides the rationale for the chosen allowances.

In an important change from the original proposal, Annex 1 provides a mechanism for collaboration between Amtrak and its host railroads in adjusting published timetables and delay allowances under certain circumstances involving major planned construction and maintenance efforts.

2. Comments and Responses

The largest number of comments on the Proposed Metrics and Standards concerned the measures for on-time performance and train delays.

a. General Comments on OTP

Which routes are covered? Comment: CCJPA inquired which Amtrak routes would be subject to the Proposed Metrics and Standards and asserted that corridor services are more sensitive to OTP than long-distance trains. **Response:** PRIIA draws no distinction among the types of routes to be evaluated; thus all intercity passenger rail routes are covered by the Metrics and Standards, irrespective of the source(s) and methods by which they are funded, their relative sensitivity to the metrics, or the order in which they were established as part of the Amtrak system.

State-supported routes. Comment: WSDOT recommended adding “State-Supported Routes” to the list of Amtrak service types in the report to explicitly highlight the fact that they are covered by the Metrics and Standards. **Response:** Isolating State-supported routes as a

service type for these Metrics and Standards would produce insufficient benefits to justify the added complexity. For example, some corridor routes have both State-supported and non-State-supported trains; and annual changes in Amtrak-State contracts could produce an ever-shifting set of State-supported routes, thus detracting from year-to-year comparability. Finally, the number of non-State supported corridors is very low, and has shown signs of diminishing over the long term, thus limiting the utility of isolating these few corridors as a separate service type.

“Host railroad.” *Comment:* Metro-North asked for clarification of the definition of a host railroad. *Response:* Host railroads are all entities that own and/or operate the track over which Amtrak operates. Host railroads include not only freight railroads, but also all commuter railroads and State or regional agencies that own track used in intercity passenger service. Amtrak itself serves as a host railroad when operating over its own infrastructure. Train delays will be identified by route by host railroad for each host railroad that Amtrak utilizes for an appreciable distance (15 miles or more).

Effects of the OTP standards. *Comment:* A few parties submitting comments expressed concern about the potential effect (or lack of effect) of the OTP standards. BNSF argued that the Proposed Metrics and Standards will not substantially improve Amtrak OTP. The Maryland Transit Administration and the Southern California Regional Rail Authority (SCRRA) both were concerned that Amtrak OTP improvements might negatively impact commuter railroads and commented that such OTP improvements should not come at the expense of commuter rail operations. *Response:* PRIIA Section 207 is a promising sign of increasing national attention to the reliability of Amtrak’s service, and the OTP provisions of the Metrics and Standards constitute complementary performance indicators addressing the multiple facets of reliable service. Consequently, there is every reason to expect further improvements in Amtrak’s OTP—especially when viewed against the backdrop of the progress in OTP that occurred in FY 2009 over FY 2008, as well as the ongoing Federal commitment to intercity passenger rail investments evidenced in the HSIPR program. The Metrics and Standards are not intended to disturb existing mechanisms that safeguard the integrity of commuter rail operations, such as agreements among commuter authorities, commuter rail operators, and railroads hosting commuter service.

Suitability of Amtrak schedules. *Comment:* Several freight host railroads indicated that Amtrak’s current schedules are not suitable for and, in fact, cannot support reliable OTP. To meet the performance standards, these respondents asserted, the schedules will need to be revised using computer modeling techniques that account for current traffic and seasonal patterns. For instance, BNSF stated that Amtrak’s current schedules are based on pure run time, not on Amtrak’s ability to meet on-time arrival standards; and that longer-distance trains need to build additional recovery time into their schedules since they encounter a greater number of random delays. *Response:* The setting of schedules is primarily a matter between Amtrak, its host railroads, and any sponsoring States; scheduled train timings fall within the scope of the Metrics and Standards only to the extent that they contribute, in combination with endpoint terminal delays, to an increase in effective speed over the baseline. While modern scientific techniques (e.g., train performance calculators, simulations of route performance given fixed passenger schedules and random arrivals of freight trains) are desirable and encouraged, —as they can assist the two parties and other stakeholders in developing reasonable and workable schedules,—there is no substitute for teamwork and goodwill among the parties. Indeed, Annex 2 addresses that very topic, by encouraging the stakeholders to work through these issues in a collaborative manner. That the freight railroad industry devoted significant attention to its

docket responses on the Metrics and Standards indicates that the industry understands their importance and desires to collaborate in their successful implementation.

OTP and infrastructure improvements. Comment: Freight railroad and State agency respondents wondered whether and how the Proposed Metrics and Standards will deal with the need for ongoing and future rail infrastructure improvements. Freight railroads argued that significant infrastructure improvements will be needed (with Federal funding) to achieve reliable OTP results given current Amtrak schedules. One freight railroad, CSX, specifically tied the Effective Speed measure back to the issue of necessary rail capital investments. **Response:** These Metrics and Standard will yield increasingly robust OTP and delay reports that will provide a valuable data resource to Amtrak, States, and host railroads in pinpointing the routes that are most in need of improvement, and in isolating the causes of the most serious delays on each route. In that way, the Metrics and Standards will assist all parties in identifying the most effective and efficient ways to improve intercity passenger rail service. In turn, that knowledge will help to provide a basis for investments by, and partnerships among, the various stakeholders, and will assist them in prioritizing capital funds from available sources.

Adjustments for major construction and maintenance. Comment: Several State agencies recommended incorporating a mechanism into the OTP standards to adjust for periods when track work is being performed. For example, WSDOT recommended dismissing performance penalties that stem from delays occasioned by track work. **Response:** Annex 1 to the Metrics and Standards provides guidelines under which stakeholders can work together to temporarily adjust delay allowances and public Amtrak schedules during planned periods of major maintenance and construction.

Automation. Comment: Several stakeholders were concerned about the data collection process for OTP data and stated that more automated and technically advanced data collection mechanisms are needed in order to reliably track OTP. They also noted that such mechanisms would take time to implement. **Response:** The FRA agrees that more automated data collection mechanisms could be beneficial to the OTP reporting process and acknowledges that such improvements will take time for development, testing, and deployment. Amtrak has stated that it will investigate the possibility of integrating OTP data gathering capabilities with new technologies that it may be implementing (e.g. GPS tracking systems); in that regard, Annex 2 mentions “potential automation of station arrival and departure time recording.”

Data availability. Comment: One commenter stated that data collection methods need to be developed for the Effective Speed and All-Stations OTP measures. **Response:** Amtrak has assured the FRA that it is currently capable of providing data for both Effective Speed and All-Stations OTP. Furthermore, the FRA has been successfully making use of Amtrak data to calculate effective speed in seven quarterly OTP reports to Congress (available at <http://www.fra.dot.gov/us/content/1996>),

b. Comments on Effective Speed Measure

Several concerns emerged regarding the proposed Effective Speed measure.

Rationale for an “effective speed” test. Comment: Several freight host railroads argued that the Effective Speed measure has limited applicability to OTP. BNSF argued that the baseline set for the standard was never agreed upon and the AAR stated that the associated schedules are unrealistic. For this reason, it expressed its opposition to using the measure to guard against lengthened schedules. AAR claimed that train speed is not a consideration for

passengers choosing to travel by train, while CSX maintained that the Effective Speed metric was superfluous since passengers are most concerned with on-time arrivals. Caltrans stated that the metric cannot be used to assess the possible speed of a route.

Response: The FRA and Amtrak strongly believe that the preservation of the “effective speed” test fulfills a number of purposes simultaneously:

- It serves as a bulwark against the “schedule creep” that has seen actual travel times experienced by passengers on many—but not all—American passenger rail routes worsen significantly over the past half-century.⁵
- Similarly, by underlining the importance of shortening (or at least preventing deterioration in) door-to-door travel times, it emphasizes the key role of the rail mode in serving the public convenience and necessity and accords in principle with the high-speed emphasis of the Administration as described in its Strategic Plan for high-speed rail.⁶ To solve OTP challenges simply by lengthening schedules does not comport with prevailing Federal policy toward intercity passenger rail.
- Finally, as is the case with all-stations OTP, it emphasizes that the expeditious and reliable transportation of **all** intercity rail passengers on **all** routes—regardless of the region, the population density, and the type of rail service—is an important goal of both the FRA and Amtrak. In particular, in view of the thousands of city-pair markets and diverse travel purposes served by long-distance trains, the FRA and Amtrak cannot agree with some respondents that OTP is more important on some types of routes than on others; nor can it accept that door-to-door travel times are irrelevant to rail passengers.

Baseline. Comment: Multiple stakeholders stated that the proposed baseline for the Effective Speed measure is not adequate and/or reasonable. The Virginia Department of Transportation (VDOT) stated that the baseline should be derived from comprehensive route and consist analyses. **Response:** The FY 2007 baseline was historically and logically based, as FY 2007 was the fiscal year immediately preceding the enactment of the Consolidated Appropriations Act, 2008 (Public Law 110-161, December 2007); it was this Act that first expressed the Congressional mandate for the Secretary of Transportation to establish OTP standards for Amtrak routes, and to publish a quarterly report on each route’s OTP. The FRA and Amtrak believe, however, that the PRIIA (enacted October 16, 2008) represents a more enduring manifestation of Congressional intent, as it is a multi-year authorization rather than an appropriation. Accordingly, the baseline year for Effective Speed has been changed to FY 2008, the last full Fiscal Year prior to the enactment of PRIIA Section 207. While subject to certain refinements in calculation methods,⁷ the FY 2008 baseline must be regarded as representing most closely the prevailing Congressional intent as expressed in the PRIIA.

⁵ Some of these variations reflect changes in routes and in stopping patterns, often caused by the reduction in service from many trains to one train daily in each direction on most long-distance routes.

⁶ The Strategic Plan is available at <http://www.fra.dot.gov/us/content/31>.

⁷ For the reports to Congress, the FRA calculated the baseline indirectly, adding (for each route) the scheduled trip time to the average minutes late over the course of FY 2007. Amtrak has more direct methods of calculating effective speed from its operating data, which will be implemented for purposes of the quarterly Metrics and Standards reports.

Seasonality. Comment: AAR and several freight host railroads stated that the baseline does not account for seasonal differences in rail operations or for the expected increase in freight-rail demand. BNSF, in particular, commented that late Amtrak trains during periods of heavy freight traffic are the result of congestion and that Amtrak should respond to such congestion in the same manner as the freight railroads do by increasing its run times during such periods. BNSF and AAR recommended that the effective speed baseline be adjusted seasonally to account for seasonal variations in rail operations.

Response: The baseline covers an entire fiscal year, thereby accounting for a full four-season spectrum of traffic and climate conditions. The FRA agrees that the result for a single quarter could potentially reflect a seasonal skew, and has therefore adjusted the Metrics and Standards to use a four-quarter rolling average instead. However, to directly adjust the effective speed (or any other OTP) standard on a seasonal basis would be undesirable in that it would contradict one of the basic tenets and inherent advantages of passenger rail transportation—consistency of schedules and performance in all seasons.

Connection between effective speed and delays. Comment: NS stated that Effective Speed has no direct relation to delays or to the causes of delays. **Response:** Effective Speed is indeed related to delays since it incorporates the average lateness of trains, which results from the delays that trains encounter.

Deletion of effective speed measure. Comment: One respondent recommended simply eliminating Effective Speed and proposed substituting in its place the average running speed of individual trains. **Response:** The FRA and Amtrak perceive no reason to substitute, for effective speed, a measure that does not incorporate the effects of both OTP and scheduled train timings.

c. Comments on Endpoint OTP Measure

Despite a number of issues raised by respondents and discussed below, the FRA and Amtrak maintain that the Endpoint OTP measures are useful. For example, Performance Improvement Programs resulting from OTP scores that fall below the standard will act as catalysts for identifying operational improvements and near-term infrastructure projects in which to invest.

Schedules and recovery time. Comment: VDOT recommended utilizing the FRA's methodology for calculating recovery time when adjusting schedules. **Response:** As mentioned above under "Suitability of Amtrak schedules," schedule-setting *per se* remains primarily the responsibility of Amtrak, the host railroads, and a route's sponsoring State (if any). The FRA's recovery time calculation, included in the guidance manual "Railroad Corridor Transportation Plans" (<http://www.fra.dot.gov/us/content/1415>), is one tool that can be used to help assess the need for adjusted schedules. However, the FRA and Amtrak realize that the model's applicability varies among actual operating environments, which may necessitate significant adjustments to the calculations.

Endpoint OTP Tolerances. Comment: Related to the issue of schedule is that of OTP tolerances. CSX and the AAR commented that on-time arrival tolerances associated with the long-distance trains are insufficient for their route length. As described in the Proposed Metrics and Standards, a train is considered "late" if it arrives at its endpoint terminal more than 10 minutes after its scheduled arrival time for trips up to 250 miles; 15 minutes for trips 251-350 miles; 20 minutes for trips 351-450 miles; 25 minutes for trips 451-550 miles; and 30 minutes for trips of 551 or more miles; except that all Amtrak trips are considered late if they arrive at their

endpoint terminal more than 10 minutes after their scheduled arrival time. **Response:** Long-distance trains already have more recovery time built into their schedules than corridor-type services,⁸ which compensates for on-time arrival tolerances being capped at 551 or more miles. Thus, we are not persuaded of the need to change the tolerances.

Endpoint OTP and freight traffic levels. Comment: The AAR also stated that, historically, Amtrak OTP levels above 80 percent have occurred during periods of decreased demand for freight rail. **Response:** By definition, to be “reliable,” the quality of passenger rail service should be consistent over time, from season to season and year to year, regardless of the demand levels for freight and commuter service. If, in future periods of freight traffic growth, the application of these Metrics and Standards reveals negative trends, Section 207 will have served an important purpose: the identification of routes needing improvement to restore operating consistency. Once that identification is made, focused studies and Performance Improvement Programs can reveal specific remedies and assist stakeholders in setting priorities and seeking funding.

Limitations and proposed changes to Endpoint OTP. Comment: Some respondents pointed to limitations of, and possible changes to, the Endpoint OTP metric. CSX, for example, observed that Endpoint OTP does not reveal Amtrak’s performance on individual host railroads or the causes of substandard OTP. As such, CSX requested that Endpoint OTP be deemed an insufficient trigger for STB investigations.

Response: Section 213 of PRIIA mandates that percent on-time standards be used by the STB as a basis for initiating investigations on Amtrak’s service: “If [among other possible reasons] the on-time performance [i.e., Endpoint OTP] averages less than 80- percent for two calendar quarters,” the STB’s investigative discretion or mandate takes effect. Each of the OTP metrics, by itself, reveals only one aspect of service reliability. Train delay data by cause and by host railroad has been incorporated into the Metrics and Standards to complement the Endpoint OTP figures, which only illustrate the frequency of lateness.

Endpoint OTP and host railroad performance. Comment: AAR recommended reporting Endpoint OTP by host railroad while CSX and NS recommended using host railroads’ contract performance with Amtrak instead. **Response:** As noted above, individual host railroad performance will be illustrated through the train delay metrics. Thus, the FRA does not believe that it is necessary to also report Endpoint OTP by host railroad. (Nor would it be consistently meaningful: many routes make use of more than one host, and Endpoint OTP says nothing about responsibilities for late delivery of trains at intermediate junctions between hosts.) In response to the comments by CSX and NS, the standards embedded in host railroad contracts are not suitable as general performance measures for the purposes of this effort as contracts differ among the host railroads, significantly limiting their comparability. Furthermore, as mentioned above, Congress directed Amtrak and the host railroads to adopt these Metrics and Standards in their access and service agreements—not the reverse.

Proposal for site-specific standard-setting. Comment: Caltrans stated that the performance standards should be based on current track conditions and track improvements that will realistically occur by 2013. **Response:** Although useful, this concept raises practical

⁸ For example, trains in the San Joaquin corridor between Bakersfield and Oakland, CA (316 miles) have approximately 40 minutes of recovery time and other adjustments incorporated into their schedules. The Auto Train between Sanford, FL and Lorton, VA (855 miles) has approximately 2 hours, 45 minutes of recovery time and other adjustments.

difficulties in that (a) implementation of these Metrics and Standards must precede project selection decisions in the HSIPR program, thus making track conditions impossible to predict; (b) the concept implies separate standards for each route, a source of undesirable complexity; and (c) for intercity passenger rail to attract the kind of demand that will allow it to reach its full potential to yield public benefits, the standards for 2014—while achievable—must also be customer-centric and competitive with other modes, rather than constrained by current conditions.

d. Comments on All-Stations OTP Measure

Numerous parties expressed misgivings about the All-Stations OTP measure and its potential impact on operations. The FRA and Amtrak, however, firmly believe that the benefits of this measure will more than counterbalance its potential drawbacks. Furthermore, as a matter of principle, the nature of passenger rail service mandates All-Stations OTP: a single train, unlike an airline flight, can serve hundreds of origin/destination pairs, the passengers on each of which deserve a consistently high quality of service that can only be obtained if trains are on time throughout their runs.

Potential drawbacks. Comment: The CCJPA, AAR, and several freight host railroads stated that analysis of All-Stations OTP data would be an excessive administrative and financial burden, which the AAR claimed would be unjustified given the light passenger traffic at intermediate stations. VDOT implied that All-Stations OTP might actually have the effect of harming Amtrak's Endpoint OTP. Caltrans stated that spreading out recovery time for the All-Stations OTP metric will require thorough analysis and consideration of current operating practices. BNSF commented that Amtrak trains holding at intermediate stations because of reallocated recovery time will create additional delays down their rail line.

Response: FRA analysis shows that passengers utilizing intermediate stations amount to a significant portion of Amtrak's ridership—indeed, on many routes, a majority of the riders. Moreover, FRA and Amtrak believe that every intercity rail passenger deserves a consistently high quality of service under the OTP and other metrics and standards. Thus, both principle and travel demand patterns call for the measurement of OTP at intermediate points, despite the potential burden and operational impacts of this standard as identified by the respondents.

Scheduling implications. Comment: Both State agencies and freight host railroads acknowledged that the All-Stations OTP metric will require Amtrak and host railroads to agree to schedule adjustments to reallocate recovery time among intermediate stations.

Response: The FRA and Amtrak fully realize that introduction of the All-Stations OTP standard will involve a challenging process of readjustment, in which Amtrak, its railroad hosts, and (where applicable) State sponsors of service will collaboratively analyze and, as needed, modify train schedules. The FRA encourages these parties to develop a strategy and plan to address this challenge as soon as possible. To allow for an orderly transition to All-Stations OTP, the FRA and Amtrak have adjusted the implementation schedule: the All-Stations standard will not go into effect until FY 2012, two years after the other standards, to provide additional time for needed operational and scheduling adjustments. (All-Stations OTP data will, however, be published for information only, beginning with the first quarterly Metrics and Standards report.)

Effects of planned construction and maintenance. Comment: NS stated that freight host railroads have inadequate input into the schedule setting process, and that—even with

revised schedules—All-Stations OTP will unfairly penalize host railroads when conducting planned track work and receiving late Amtrak trains in the midst of such work. **Response:** Annex 1 provides a means of revising public schedules (hence the operation of All-Stations OTP) during periods of major construction and maintenance as agreed upon by Amtrak, the freight railroad host, and (as appropriate) the State sponsor of service.

Alternative approaches. Comment: Several parties proposed alternatives to the All-Stations OTP or alternative methods for calculating All-Stations OTP. CSX and multiple State agencies recommended simplifying the All-Stations OTP metric by calculating OTP only at strategic intermediate points. Caltrans, on the other hand, recommended maintaining this metric but calculating it based on the average minutes of early or late arrivals at each station. The CCJPA recommended eliminating the All-Stations OTP measure on shorter routes, while NS recommended eliminating the measure completely. **Response:** The Final Metrics and Standards retain “All-Station OTP” as originally proposed. Reducing the number of stations covered raises serious questions about how the list of stations is to be pruned, and implies that some passengers’ and some cities’ quality of train service is more important than that of others. As Amtrak has assured the FRA that the production of All-Stations OTP data is eminently feasible, there is no reason to implement changes to it on the grounds of data availability.

Other issues. Comment: Caltrans asserted that the All-Stations OTP standards are unrealistically high and, further, that results for this metric will necessarily be lower than for Endpoint OTP. **Response:** FRA’s own analysis suggests that, at least for some routes, All-Stations OTP could be comparable to or even higher than Endpoint OTP. It should also be noted that the calculation of All-Stations OTP uses a 15 minute grace period, which allows for that level of delays while still recording on-time operation. Even if All-Stations OTP temporarily yields less favorable results than those of Endpoint OTP, the heightened attention to intermediate stations will have long-term benefits both for rail passengers and for Amtrak’s traffic volumes and revenues. **Comment:** Caltrans also requested confirmation that State agencies will not be responsible for collecting and analyzing the All-Stations OTP data. **Response:** Amtrak—and not State agencies or other parties—will be responsible for collecting All-Stations OTP data, which will be analyzed by both Amtrak and FRA personnel.

d. Comments on Train Delay Measures

Which delays to report? Comment: The AAR and CSX stated that measuring delays for trains that are on-time is an excessive burden and irrelevant to passengers (i.e., this performance measure should only be used to report delays for late trains). **Response:** Reporting delays only for late trains limits the insight and comparability of the train delay data. Reporting all delays experienced by all trains better aligns the metric with the OTP standards, which utilize all train operations in their calculations (as opposed to only late train operations), and it gives an average amount of delays experienced during the operations of each route. A train that is meeting its OTP standard may still experience some high levels of delay along its route, a situation that might ultimately lead to revision of the train’s schedule to remove excessive recovery time. Reporting all train delays gives Amtrak, host railroads, and FRA an opportunity to analyze comprehensively a route’s performance and to develop plans to mitigate any challenges that are revealed, thereby further improving the route’s OTP.⁹ As a result, train delays has been retained as a key element in the Final Metrics and Standards.

⁹ Beyond these objective benefits of tracking all delays, it is not necessarily true that train delays are irrelevant to individual passengers: For some passengers at least, anecdotal evidence suggests that sitting on a stopped train in the

Pure vs. scheduled run time. Comment: Multiple stakeholders objected to the use of pure run time as the basis for train delay data outside of the NEC.¹⁰ CSX argued that freight railroads are held to a higher performance standard than Amtrak, which measures itself on scheduled run time within the NEC. Several freight railroads argued that use of pure run time does not align with the public's service expectations, which are based on schedules. WSDOT stated that pure run time does not account for planned capital improvement projects, while Caltrans commented that use of pure run time oversimplifies train operations on congested corridors. BNSF stated that OTP measures are only relevant if they are compared to Amtrak's public timetable. Both State agencies and freight railroads recommended basing this metric on scheduled run time. **Response:** Again, reporting all train delays gives Amtrak, host railroads, and FRA a better opportunity to identify areas of frequent delays on routes, to further improve route reliability. On the NEC, which at this time is a unique high-speed intercity passenger rail operation, the levels of allowable train delays have been significantly lowered to account for Amtrak's use of scheduled run-time. (Total delay allowances off the NEC amount to 1,225 minutes per 10,000 train-miles; on the NEC, there is a total allowance of only 260 minutes for Acela and 470 minutes for all other services.)

Adjustments for out-of-slot trains and track work. Comment: Metro-North and Caltrans, respectively, argued that train delay data should be adjusted for out-of-slot trains and for planned track work. **Response:** The standard for train delays off the NEC has been increased to 900 minutes per 10,000 train-miles (from the original 700 minutes) in the final Metrics and Standards, which will help host railroads absorb delays they incur as a result of receiving late Amtrak trains. Additionally, delay-minute standards may be temporarily adjusted to account for major track maintenance and construction projects that have been planned by host railroads (see Annex 1 for conditions and other details).

Source of delay data. Comment: Both State agencies and freight host railroads questioned the source of data on delays. In particular, they criticized the use of Amtrak's conductor delay reports as the primary data source for assessing delays due to concerns with the accuracy of those reports. The AAR and BNSF recommended that the freight railroads' delay data also be considered when analyzing delays. The AAR and CSX stated that a more automated source of delay data is needed. **Response:** While we understand these concerns, the source of delay data for the Metrics and Standards is based on the valuable, consistent, comparable information it provides. While some individual host railroads have stated that they produce their own train delay data, no uniform database for minutes of delay across the Amtrak system exists that can replace Amtrak's conductor delay reports. However, individual host railroads can use their own data, when practicable following reporting of the delay, to help resolve discrepancies with Amtrak and help identify the incidents that may have contributed to delays. The FRA agrees that more automated sources of delay data would be beneficial; as noted above, Amtrak has said it will examine integrating more automated OTP measurement mechanisms into future IT implementation efforts (e.g., GPS tracking).

middle of a cornfield is not only frustrating but also cause for anxiety, as it implies that the train might be late at the passenger's destination. Passengers cannot be expected to know the intricacies of train scheduling, dispatching, and recovery time.

¹⁰ In simplified terms, "pure" run time means that between any two points (say, A and B), Amtrak and the freight railroad will have agreed on how long it should take an Amtrak train to make the run in the absence of any delaying factors. This "pure" run time, plus an allowance ("recovery time" or "pad") for delays, yields the scheduled running time between A and B. Outside the NEC, all delays that cause a train to exceed its "pure" run time are registered as delays, even if the train makes the run between A and B within the scheduled running time.

Source of delay standard. Comment: Questions arose regarding the regression analysis methodology used to establish the various standards for measuring train delays (as described in the Proposed Metrics and Standards). Both CSX and Caltrans stated that regression analyses and resulting performance standards related to delay data should be implemented on a route-by-route basis instead of collectively to account for different characteristics among Amtrak's routes.

Response: A separate delay standard for each route is not practicable; for example, such a standard would need to be altered each time a route or its schedule is changed. Still, the FRA recognizes that different characteristics exist among Amtrak's routes; to account for such variations, 200 minutes have been added to the off-NEC host-responsible train delay standard of 700 delay-minutes per 10,000 train-miles that was originally proposed. Annex 3 describes the derivation of the delay allowances used in the Final Metrics and Standards.

Delay categories. Comment: State agencies and host railroads commented that the off-NEC train delay categories are too broad, making it difficult to identify incidents which may have contributed to delays. Both CSX and Metro-North recommended that proposed groupings of delay categories be broken out to provide more detail. Multiple freight railroads indicated that the proposed categories wrongly suggest that many delays are dispatching-related. BNSF further stated that some delays may actually improve Amtrak's overall trip performance, which is not reflected in the proposed Metrics and Standards format. **Response:** The inclusion of a train delay allowance in the Metrics and Standards (rather than a zero-tolerance standard) recognizes that a subset of train delays may arise in the normal course of operations, as part of a good-faith effort by all parties to expedite the passage of passenger trains over a complex railway network, or to improve the infrastructure used in passenger service. In terms of the level of detail that will be provided on the source of train delays, these will be provided as metrics for informational purposes only.

Measurement of delays. Comment: Metro-North requested an explanation as to whether delay minutes on the NEC will be reported on a per 10,000 train-miles basis. **Response:** To clarify, train delays on the NEC will be reported on a per 10,000 train-mile basis, which is the same format used to report delays off the NEC. This text was inadvertently left out of the table in the draft.

Comment: NS argued that Delays per 10,000 Train-Miles is an inappropriate measure since no route operates such a distance. NS also commented that the proposed train delay measure does not indicate the frequency and severity of late trains. Furthermore, it recommended removing the entire performance measure from the Metrics and Standards.

Response: Clearly, even the longest Amtrak routes are significantly shorter than 10,000 miles. However, reporting delays on a uniform per train-mile basis is important since there is no consistent route length in the Amtrak system. Amtrak's regularly scheduled services all operate well over 10,000 train-miles each month. With respect to the proposed deletion of the delay standard, PRIIA Section 207 explicitly requires that the FRA and Amtrak jointly develop "metrics and minimum standards for . . . on-time performance and minutes of delay [emphasis added]." Furthermore, although train delay does not indicate the frequency or the severity of late trains, it can provide a starting point for research into the reasons for poor OTP. This initial indicator may be valuable to Amtrak, the host railroads, and any sponsoring State(s) as they seek to raise service quality levels on specific routes.

d. Additional OTP measures proposed

Several recommendations were submitted proposing additional OTP measures.

OTP for other services. Comment: Maryland Transit recommended including data on commuter and freight train OTP on reports pertaining to the NEC. **Response:** While data on commuter and freight OTP might shed further light on operational issues and challenges on the NEC, such data falls outside the scope of these Metrics and Standards. (Section 207 of PRIIA specifically states that the Metrics and Standards are for measuring the performance of intercity passenger train operations.)

Host railroad metric. Comment: The AAR proposed including a new host railroad metric that would measure performance on the host railroads' own lines based on factors that they can control. **Response:** The AAR did not explain how its proposed host railroad metric would be developed or calculated; therefore, this proposal was not sufficiently elaborated for evaluation as part of the docket review.

Measures of the severity of lateness. Comment: The AAR and CSX proposed including a performance measure calculated based on increments of late train arrivals, e.g., the percentage of trains arriving within 30, 60, and 90 minutes of schedule, in order to enable investigations to be focused on trains that are relatively more late. **Response:** The severity of late train arrivals is a component of the Effective Speed measure, of which the total train run time (scheduled time plus endpoint terminal lateness) makes up the denominator. Accordingly, there is no pressing need in the Metrics and Standards for an analysis of train arrivals by lateness increment. Nevertheless, for specific purposes—for example, the development of performance improvement plans for the worst-performing long-distance routes under Section 210 of PRIIA—such a distribution may prove highly informative and beneficial.

D. Other Service Quality Measures

1. Summary of the Proposal and of the Final Metrics and Standards

In the Other Service Quality area, most metrics and standards are derived from Amtrak's Customer Satisfaction Index (CSI). The topics cover the full range of the passenger experience on and off the train. Of these, most require a "very satisfied" rating from 80 percent of passengers in 2010, and 90 percent in 2014; the only divergences from this standard is for overall service in 2010 (82 percent). As the measures for the "overall station experience" and the "overall sleeping car experience" are not currently included in the CSI, their implementation continues to be deferred.

Two other metrics, not based on the CSI, fall within this category: Equipment-caused service interruptions per 10,000 train-miles, and the presentation of Amtrak passenger comment data by subject matter and major route grouping. No standards would attach to these items, which would be included in the quarterly Metrics and Standards report for information only.

2. Comments and Responses

a. Additions to the Customer Satisfaction Index (CSI) in the Proposed Metrics and Standards

Comment: NARP expressed support for including CSI metrics for passengers' station and sleeping car experiences. **Response:** While sufficient CSI data to create standards for stations and sleeping cars currently do not exist, the FRA will work with Amtrak on incorporating these topics into the CSI and developing metrics and standards for them.

b. Other proposed topics

Comment: An individual of unknown affiliation commented that food service should be available on all trains over one hour in duration, that clean restrooms should be standard on all trains, and that safe boarding/detraining should be standard at all stations. The FRA inferred that the respondent was recommending these items for inclusion as performance standards.

Response: The suggested metric on food availability is too prescriptive, in view of the wide-array of operational characteristics that exist across Amtrak's routes, to be incorporated into the Metrics and Standards. In addition, the suggested standard for safe boarding/detraining is outside the scope of the PRIIA Section 207 mandate, particularly as safety issues fall under Division A of Public Law 110-432, the Rail Safety Improvement Act of 2008, of which Section 404 mandates a study of methods to improve or correct passenger station platform gaps "to minimize the safety risks associated with such gaps for railroad passengers and employees." Also, clean restrooms are already considered in the Metrics and Standards as an aspect of the "On-Board Cleanliness" measure.

c. Sources of Other Service Quality Standards

Comment: WSDOT asked about the source of the Other Service Quality standards and whether comparable foreign data were used to assist in setting these standards. **Response:** While acknowledging the potential insights that data from foreign countries and other modes might provide, the FRA and Amtrak regard the CSI as the most practical and readily available source for metrics and standards in the area of Other Service Quality factors.

d. Objectivity of Data Sources

Comment: The TWU noted that the Other Service Quality measures are largely tied to subjective customer response data that are strongly correlated with OTP. The TWU encouraged the use of more objective and credible data sources in establishing standards and stated that the Metrics and Standards should not be implemented until the Other Service Quality data sources are strengthened. **Response:** FRA and Amtrak acknowledged in the Proposed Metrics and Standards that the CSI has some limitations—for instance, the correlation of responses in all areas with on-time performance. Still, as mentioned above, the FRA and Amtrak believe that the CSI provides a practical foundation for the Other Service Quality standards in compliance with the PRIIA. Moreover, the PRIIA's stringent deadlines did not allow for, nor did the PRIIA authorize or fund, extensive research into methods for setting and reporting on Other Service Quality criteria and standards; nor did the PRIIA provide for any new survey instruments or inspection mechanisms, which would likely have been necessary to implement any research recommendations.

e. Level of Other Service Quality Standards

Comment: Several parties submitted comments regarding the appropriate level at which the Other Service Quality standards should be set. NARP, WSDOT, and Caltrans indicated that the Other Service Quality goals were too high, while WisDOT stated they were too low. WSDOT noted that many stations used by Amtrak are not in fact owned by Amtrak, and that standards prescribing station improvements will be a burden for the (often local) station owners to implement. WSDOT recommended the removal of the metric on On-Board Food Service satisfaction due to the inconsistent nature of responses, while TWU requested more information on the Equipment-Caused Service Interruptions measure to better assess its appropriateness.

Response: The FRA believes that the Other Service Quality standards are appropriate. These standards were based on the historical trends of the CSI data, which demonstrate a pattern

of annual improvement. With regard to stations, the proposed metric is Percent of Passengers “Very Satisfied” with the overall station experience. The FRA and Amtrak have not yet proposed a standard for this metric, for which data do not yet exist. However, assessing passenger reactions to the station experience is worthwhile—regardless of the availability of funding for any investments that would improve that experience, and irrespective of the stations’ ownership. With regard to on-board food service, despite discrepancies in how respondents rate Amtrak’s food service, this metric is valuable as a basic indicator of how well Amtrak’s investment in food service aligns with customer needs and expectations. Finally, regarding Equipment-Caused Service Interruptions, this metric is intended to offer some insight into the reliability and soundness of the fleet as experienced by passengers. While details are yet to be fully worked out, the Proposed Metrics and Standards provided a definition of service interruption as well as a brief description of the mechanics to be used in calculating this metric. Also, to reiterate, this metric would be calculated on a route-by-route basis, not for the system as a whole; and no standard is being proposed for this metric.

E. Public Benefits, Including Service Availability and Connectivity

The original proposal contained a fourth category of metrics, “service availability/connectivity,” that would measure the degree to which long-distance passengers are transferring among routes and the availability of train service to communities lacking other public transport options—topics mandated by Congress in PRIIA Section 207. In recent months, the implementation of a new Federal policy toward intercity passenger rail—as exemplified by the HSIPR program and its strategic plan and interim guidance—has focused the Nation’s attention on the full spectrum of public benefits inherent in the rail mode. Accordingly, the scope of the former “service availability/connectivity” category has been expanded to address “public benefits” generally. The measures of “connectivity” and “availability of other modes” will remain intact, as originally proposed, as part of “Public Benefits”; in addition, an analysis will be undertaken of opportunities for incorporating energy-saving and environmental measures into the Metrics and Standards. Proposals emanating from this analysis of Public Benefits will, of course, be made available for public comment.

With regard to the service availability/connectivity category of the original proposal, the only comment received was from NARP. **Comment:** NARP stated that intermediate stations currently receiving late night service should receive daytime service through increased frequencies rather than by adjusting schedules. NARP also recommended that language be modified to leave open the possibility of future additions to service. **Response:** The reduction in passenger rail service over the past half-century has left many long-distance routes with one daily train each way—a situation inevitably leaving many communities with poorly-timed service in one or both directions. Thus, NARP’s comment treats a serious and difficult issue. Still, scheduling issues, including whether or not to increase train frequencies on a particular route, are a business decision outside the scope of these Metrics and Standards—and indeed, are referred to in a separate section of PRIIA (Section 208).

METRICS AND STANDARDS FOR INTERCITY PASSENGER RAIL SERVICE

In accordance with Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), the Federal Railroad Administration (FRA) and Amtrak are jointly issuing the following Metrics and Standards for intercity passenger rail service. All Metrics and Standards will be measured and applied on a quarterly basis, except where otherwise noted.

<u>Metric/ Standard Category</u>	<u>Metric/Standard Subcategory</u>	<u>Standard Applies By</u>	<u>Statutory Requirement</u>	<u>Added Measure</u>	<u>Standard; Comments</u>
Financial	Percent of Short-Term Avoidable Operating Cost ¹¹ Covered by Passenger-Related Revenue (exclude capital charges), both with and without State subsidy included in revenue	route	✓		Continuous year-over-year improvement on a moving eight-quarter average basis. Dollar-denominated metrics (surpluses/losses per passenger-mile) will be reported in constant dollars of the reporting year (based on the OMB GDP Chain Deflator).
	Percent of Fully Allocated Operating Cost ¹² Covered by Passenger-Related Revenue (exclude capital charges), both with and without State subsidy included in revenue	route	✓		
	Long-term avoidable operating loss ¹³ per PM (exclude capital charges), both with and without State subsidy included in revenue	route		✓	
	Adjusted (Loss) ¹⁴ per passenger-mile, both with and without State subsidy included in revenue	system		✓	
	Passenger-Miles per Train-Mile	route	✓		

¹¹ “Short-Term Avoidable Operating Costs” are those costs that would cease to exist one year after a specific route ceases to operate.

¹² “Fully-Allocated Costs” of a route are the total costs of operating the route, including all types of production costs (direct materials, direct labor, and fixed and variable overhead) and also a share of marketing, administrative, financing, and other central corporate expenses.

¹³ The “long-term avoidable operating loss” of a route is the improvement in Amtrak’s bottom line that would accrue five years after, and solely due to, the elimination of a given route.

¹⁴ The definition of Adjusted (Loss) is: Net Loss of Amtrak’s Operating Business Lines, adjusted to eliminate the effects of Depreciation, Other Post-Employment Benefits (OPEB’s), project costs covered by capital funding, and net interest expense.

<u>Metric/ Standard Category</u>	<u>Metric/Standard Subcategory</u>	<u>Standard Applies By</u>	<u>Statutory Requirement</u>	<u>Added Measure</u>	<u>Standard; Comments</u>
On-Time Performance	On-Time Performance (OTP). This congressionally-mandated metric/standard will consist of two tests (Nos. 1 and 2) starting in FY 2010, and three tests (Nos. 1, 2, and 3) beginning in FY 2012. All tests applicable in a given quarter must be met.	Route ¹⁵	✓		
	Test No. 1: Change in “Effective Speed” —which is defined as a train’s mileage, divided by the sum of (a) the scheduled end-to-end running time plus (b) the average endpoint terminal lateness.				Effective speed for each rolling four-quarter period must be equal to or better than the average effective speed during FY 2008.
	Test No. 2: Endpoint OTP ¹⁶				In FY 2010, Endpoint OTP must be at least 80% for all routes except Acela (90%) and other Northeast Corridor (NEC) corridor routes (85%). ¹⁷ By FY 2014, Endpoint OTP must be at least 95% for Acela, 90% for all other NEC and non-NEC corridor routes, ¹⁸ and 85% for long-distance routes. If public Amtrak schedules are adjusted for major maintenance and construction projects (see Annex 1), Endpoint OTP will be calculated against the adjusted schedule.

¹⁵ Each route comprises two or more trains (at least one in each direction). The Internet version of the quarterly Metrics and Standards report will contain a link to train-by-train information that will allow all stakeholders to characterize performance at the train level and facilitate compliance with all relevant sections of PRIIA.

¹⁶ A train is considered “late” if it arrives at its endpoint terminal more than 10 minutes after its scheduled arrival time for trips up to 250 miles; 15 minutes for trips 251-350 miles; 20 minutes for trips 351-450 miles; 25 minutes for trips 451-550 miles; and 30 minutes for trips of 551 or more miles. These tolerances are based on former ICC rules. The exception is that all Acela trips, regardless of run length, are considered late if they arrive at their endpoint terminal more than 10 minutes after their scheduled arrival time.

¹⁷ For purposes of the Change in Effective Speed, Endpoint OTP, and All-Stations OTP metrics and standards, “other NEC corridor trains” are all Northeast Regional and Keystone service trains, including the Northeast Regional trains operating between Washington and points in Virginia.

¹⁸ “Non-NEC corridor trains” refers to trains in all Amtrak services other than the Northeast Corridor trains (Acela, Northeast Regional, and Keystone), and other than the long-distance trains (Auto Train, California Zephyr, Capitol Limited, Cardinal, City of New Orleans, Coast Starlight, Crescent, Empire Builder, Lake Shore Limited, Palmetto, Silver Meteor, Silver Star, Southwest Chief, Sunset Limited, and Texas Eagle.)

<u>Metric/ Standard Category</u>	<u>Metric/Standard Subcategory</u>	<u>Standard Applies By</u>	<u>Statutory Requirement</u>	<u>Added Measure</u>	<u>Standard; Comments</u>
	<u>Test No. 3 (Effective as of FY 2012): All-Stations OTP</u>—which is defined as the percentage of train times (departure time from origin station and arrival time at all other stations) at all of a train’s stations that take place within 15 minutes (10 minutes for Acela)¹⁹ of the time in the public schedule.				Effective FY 2012, All-Stations OTP must be at least 80% for all routes except Acela (90%) and other NEC corridor routes (85%). By FY 2014, All-Stations OTP must be at least 95% for Acela, 90% for all other NEC and non-NEC corridor routes, and 85% for long-distance routes. Results for this metric will be published beginning with the first report under Section 207, even though the test is not in effect until FY 2012. If public Amtrak schedules are adjusted for major maintenance and construction projects (see Annex 1), All-Stations OTP will be calculated against the adjusted schedule.
Train Delays	Train Delays.²⁰ This Congressionally-mandated metric/standard will consist of two groups of tests—”off” and “on” the Northeast Corridor (NEC)²¹: See Annex 1 for special provisions with respect to train delay due to major planned maintenance and construction projects.		✓		Annex 3 describes the rationale for the standards adopted in the Train Delay category.
	Train Delays—Off NEC				
	Amtrak-Responsible ²² Delays per 10,000 Train-Miles	Route ¹⁵			Delays must be not more than 325 minutes per 10,000 Train-Miles.

¹⁹ The 15-minute tolerance for All-Stations OTP is based on 49 U.S.C. Section 24101(c)(4).

²⁰ As calculated by Amtrak according to its existing procedures and definitions.

²¹ For this purpose, the NEC is defined as the entire main line between Boston, New York, and Washington, except for the portion owned by Metro-North between New Rochelle and New Haven. Also included in the NEC definition are the Keystone line between Philadelphia and Harrisburg and the Springfield line between New Haven, Hartford, and Springfield. Metro-North, on its New Rochelle-New Haven segment, is the host railroad.

²² “Amtrak-responsible” refers to delays coded on Amtrak Conductor Delay Reports as Passenger-Related (ADA, HLD), Car Failure (CAR), Cab Car Failure (CCR), Connections (CON), Engine Failure (ENG), Injuries (INJ), Late Inbound Train (ITI), Service (SVS), System (SYS), or Other Amtrak-Responsible (OTH).

<u>Metric/ Standard Category</u>	<u>Metric/Standard Subcategory</u>	<u>Standard Applies By</u>	<u>Statutory Requirement</u>	<u>Added Measure</u>	<u>Standard; Comments</u>
	Host-Responsible ²³ Delays per 10,000 Train-Miles	Route¹⁵ and host			Delays must be not more than 900 minutes per 10,000 Train-Miles. Major reported causes of delay will also be shown for information (with no standard attached to them). The 900-minute standard is intended to absorb routine/seasonal maintenance, track work, and other routine construction projects. On a case-by-case basis, an additional delay allowance above this standard may also be applied to account for major maintenance and construction projects. See Annex 1 for further details.
	Train Delays— On NEC: Total Delays ²⁴ per 10,000 Train-Miles	Route¹⁵ and host			Delays must be not more than 265 minutes per 10,000 Train-Miles for Acela, and 475 minutes per 10,000 Train-Miles for all other services on the NEC. Reported causes of delay will also be shown for information (with no standard attached to them). The 265- and 475-minute standards are intended to absorb routine/seasonal maintenance, track work, and other routine construction projects. On a case-by-case basis, an additional delay allowance above this standard may also be applied to account for major maintenance and construction projects. See Annex 1 for further details.

²³ “Host-responsible” refers to delays coded on Amtrak Conductor Delay Reports as Freight Train Interference (FTI), Slow Orders (DSR), Signals (DCS), Routing (RTE), Maintenance of Way (DMW), Commuter Train Interference (CTI), Passenger Train Interference (PTI), Debris Strikes (DBS), Catenary or Wayside Power System Failure (DET, used in electrified territory only), or Detours (DTR).

²⁴ “Total delays” for purposes of the NEC delay standard is all delays except 3rd Party delays.

<u>Metric/ Standard Category</u>	<u>Metric/Standard Subcategory</u>	<u>Standard Applies By</u>	<u>Statutory Requirement</u>	<u>Added Measure</u>	<u>Standard; Comments</u>
Other Service Quality	The following metrics and standards are based on Amtrak's Customer Satisfaction Index:				
	Percent of Passengers "Very Satisfied" ²⁵ with Overall Service	route	✓		82 percent in 2010; 90 percent by 2014
	Percent of Passengers "Very Satisfied" with Amtrak personnel	route	✓		80 percent in 2010; 90 percent by 2014
	Percent of Passengers "Very Satisfied" with Information Given	route	✓		
	Percent of Passengers "Very Satisfied" with On-Board Comfort	route	✓		
	Percent of Passengers "Very Satisfied" with On-Board Cleanliness	route	✓		
	Percent of Passengers "Very Satisfied" with On-Board Food Service	route	✓		
	<i>Future:</i> Percent of Passengers "Very Satisfied" with the overall station experience	route	✓		Future metric and standard; standard to be determined
	<i>Future:</i> Percent of Passengers "Very Satisfied" with the overall sleeping car experience	route	✓		Future metric and standard; standard to be determined
	The following measures are for information only and are based on sources other than the Customer Satisfaction Index.				
	Equipment-caused service interruptions per 10,000 train-miles	route	✓		Metric only. This is an initial metric, intended to reflect objectively the quality of mechanical maintenance as perceived by the passenger. No standard is proposed.
	Presentation of Amtrak passenger comment data by subject matter and major route grouping (NEC, other corridors, long-distance)	type of route		✓	Information only. No standard proposed; presented as supplementary information.

²⁵ "Very Satisfied" with the service quality is defined as a score in the top three steps on a scale of eleven evaluation ratings that respondents can ascribe to each facet of the service. For a given service factor, "80 percent" means that 80 percent of respondents rated Amtrak in the top three of the eleven steps of the scale.

<u>Metric/ Standard Category</u>	<u>Metric/Standard Subcategory</u>	<u>Standard Applies By</u>	<u>Statutory Requirement</u>	<u>Added Measure</u>	<u>Standard; Comments</u>
Public Benefits	Connectivity measure: Percent of passengers connecting to/from other routes. To be updated annually.	long-distance route	✓		Metric only. No standard possible; improvement could require network changes
	Availability of other modes: Percent of passenger-trips to/from underserved communities. ²⁶ To be updated annually.	route, system	✓		Metric only. No standard possible; improvement could require network changes
	Energy-Saving and Environmental Measures. This is a new grouping of one or more measures under “Public Benefits.” A forthcoming analysis will identify various methodologies for incorporating environmental benefits and energy savings into these Metrics and Standards at a later date. Any proposals in this regard will be made available for public comment.				

²⁶ “Underserved communities” would be defined for this purpose as those more than 25 miles from a place with 50,000 or more inhabitants. This definition, which assumes that places with a population of 50,000 or more (and their environs within a radius of 25 miles) are not “underserved,” is preliminary and subject to change as research progresses.

List of Annexes

Annex 1: Additional Delay Allowance for Major Maintenance and Construction Projects

Annex 2: Collaboration Anticipated in Achieving Metrics and Standards

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Annex 1: Additional Delay Allowance for Major Maintenance and Construction Projects

- To facilitate advance planning for major maintenance and construction projects and thereby minimize customer impact of such projects, Amtrak and individual host railroads may agree that during a specific quarter, a specific train will incur more Host- or Amtrak-responsible delay than usual due to a major maintenance and construction project.
- The Section 207 delay standards (e.g., 900 minutes of host-responsible delay per 10,000 train-miles off-NEC) are intended to absorb routine track work, signal, and related maintenance (including seasonal work), and other routine or small projects. As such the process described herein applies only to major maintenance and construction projects. “Major maintenance and construction projects” are typically characterized by:
 - Sufficient scale and scope that they cannot be absorbed by normal recovery time and delay standards. “Sufficient scale and scope” are typically indicated by a combination of at least three of the following:
 - System gang rather than Division gang
 - Host is changing freight schedules
 - Project duration at least 4 days
 - Affects at least half of Amtrak trains in the affected Amtrak service
 - Planned sufficiently in advance to allow at least 4 weeks advance notice to Amtrak (e.g., to allow schedules to be adjusted and passengers to be notified as appropriate)
 - Duration of the work is limited in both time and geography (the project has dedicated resources, a timeline, and a conclusion; it is not ongoing maintenance on a route all season long)
- FRA’s quarterly report will indicate any major maintenance and construction allowance agreed upon by Amtrak and the host for that quarter.
 - Amtrak will keep records of any major maintenance and construction allowances, and will provide this information to FRA quarterly for inclusion in the report
 - Delay minutes will continue to be recorded and reported normally
- Where a major maintenance and construction allowance has been agreed upon by Amtrak and a host, the delay standard is considered to be met if either of the following is true:
 1. Delays are within the applicable standard (e.g., 900 minutes of host-responsible delay per 10,000 train-miles off NEC; 325 minutes of Amtrak-responsible delay per 10,000 train-miles off NEC), or
 2. Delays are within the applicable standard plus applicable major maintenance and construction allowance
- Where public Amtrak schedules are adjusted in response to major maintenance and construction, All-Stations OTP and Endpoint OTP will be reported against the adjusted schedules. Therefore, the OTP standards will not be adjusted for major maintenance and construction.

Due to the increased impact to customers when major maintenance and construction plans are changed close to the actual date of the work, unless otherwise agreed by Amtrak and the host, major maintenance and construction allowances shall apply only if the work is done in accordance with the plan (e.g., agreed-upon dates, schedule changes, etc.) originally agreed to by Amtrak and the host.

Annex 2: Collaboration Anticipated in Achieving Metrics and Standards

Good-faith collaboration between Amtrak and host railroads, as well as State and other stakeholders as appropriate, will be needed to ensure that the implementation of the above Section 207 standards is a success. Subject to the parties' statutory rights, examples of such collaborative efforts may include:

- Review of passenger and freight schedules, in particular to ensure that Amtrak schedule Recovery Time is appropriately allocated to support the All-Stations OTP standard. Amtrak and hosts may also explore temporarily lengthening Amtrak schedules vs. today during periods with seasonal operating variations, such as major maintenance and construction projects,²⁷ and potentially shortening Amtrak schedules vs. today where appropriate. The preferences of, and of course the contractual obligations of Amtrak and the host railroads toward State stakeholders will be fully taken into account in any such exploratory talks. Where available, joint host-Amtrak simulation modeling may be used as a source of information in evaluating schedules and recovery time assumptions, within the context of the Performance Improvement Program process.
- Collaborating to establish new analytical and reporting processes based on the Section 207 Standards. For example, for hosts that today measure themselves internally based on the compensation (incentive/penalty) provisions of their operating agreements with Amtrak, Amtrak and FRA anticipate that host internal management reports will need to be revised to monitor compliance with Section 207 Standards. Amtrak and hosts can work collaboratively to design new reporting processes.
- Potential automation of station arrival and departure time recording. Amtrak is currently working on these data enhancements.
- Expansion of Performance Improvement Programs as an opportunity to focus in more detail on potential operating, maintenance, and capacity improvements on individual routes, including incorporating the above processes as appropriate. Performance Improvement Programs may be used to analyze traffic patterns and to validate freight and passenger train operating plans to ensure they are designed to allow passenger trains to achieve the Section 207 Standards.

The above is not intended to affect, add to, or detract from the responsibilities of any party under the Section 207 Metrics and Standards.

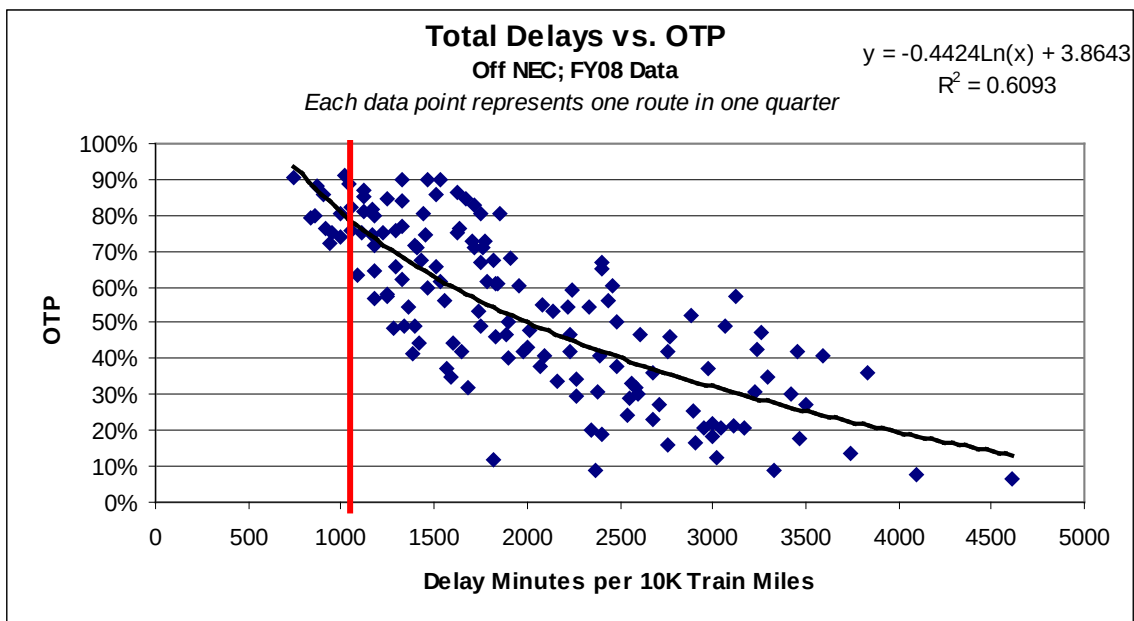
²⁷ Variations for major maintenance and construction projects will be subject to the process outlined in Annex 1.

Annex 3: Explanation of Train Delay Analysis

Regressions were run to determine the relationship between percent on time and delay minutes per 10,000 train-miles. Separate studies were undertaken for Northeast Corridor (NEC) and off-Northeast Corridor routes, in order to account for the difference in how delays are measured in the Northeast Corridor as well as the desire to set tighter standards for Northeast Corridor operations than for host railroad operations.

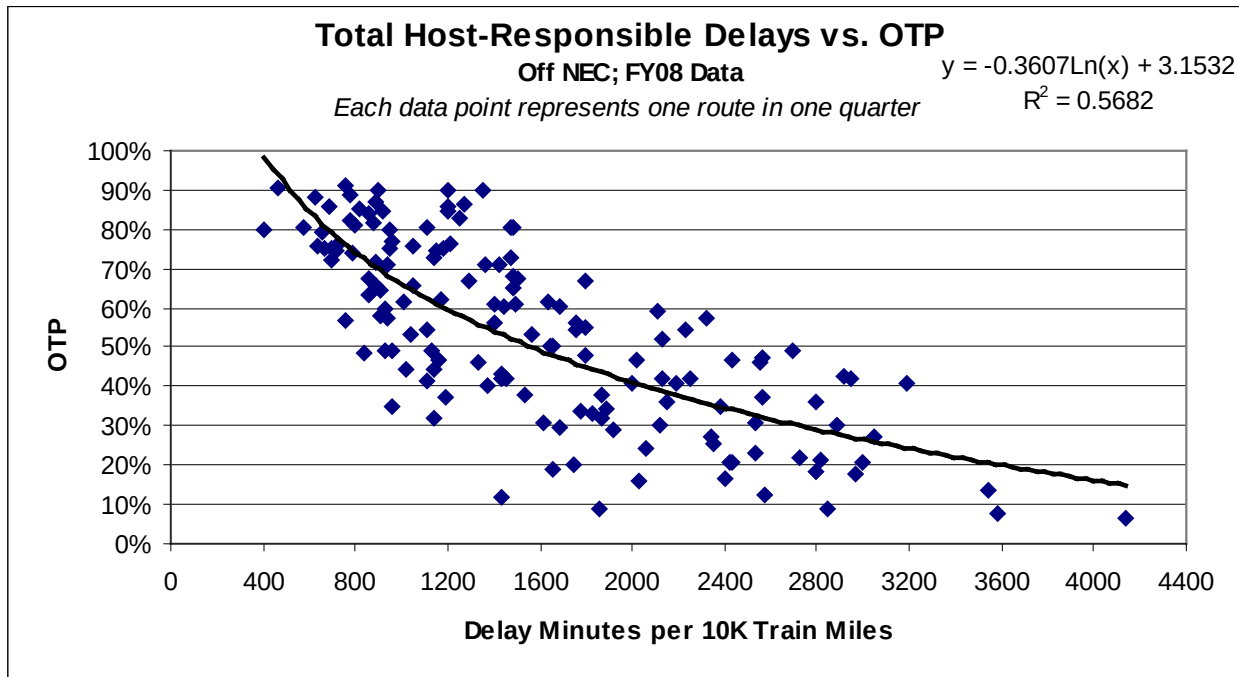
Off the Northeast Corridor, it was determined that 1,030 minutes of delay per 10,000 train miles correlates with an 80 percent endpoint on time arrival rate (see Figure A-1). After rounding up to 1,050 minutes, this delay must be apportioned between Host, Amtrak, and 3rd Party responsible causes.

Figure A-1: Total Delays off the NEC Corridor vs. Percent On Time



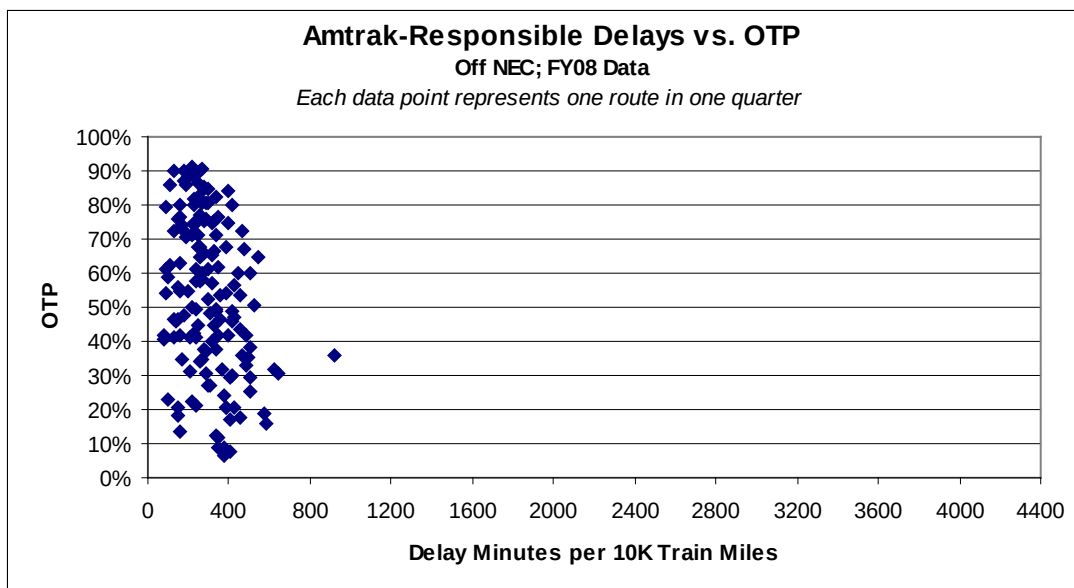
Regressions were then run to determine the relationship between host-responsible delays and OTP. This analysis found that 690 minutes of host-responsible delay per 10,000 train miles correlates with 80% OTP (Figure A-2). This number was rounded up to generate the originally-proposed standard of 700 minutes per 10,000 train miles.

Figure A-2: Total Host Responsible Delays off the NEC vs. Percent On Time



As illustrated in Figure A-3, Amtrak-responsible delays off the Northeast Corridor are not a large enough portion of total delays to independently drive OTP up or down. Therefore, the non-Host delays (1,050 – 700 = 350 mins) were apportioned between Amtrak and 3rd Party responsibility based on historical experience. During the study period of Amtrak’s FY 2008, Amtrak delays represented 70% of combined Amtrak and 3rd-Party (i.e., non-Host) delay minutes. The standard for Amtrak-responsible delays therefore was originally proposed as 70% of 350 minutes = 245 minutes, rounded up to 250 minutes per 10,000 train miles.

Figure A-3: Amtrak Responsible Delays off the NEC vs. Percent On Time



The final delay standards for Host- and Amtrak-responsible delays have been adjusted to 900 minutes and 325 minutes, respectively, per 10,000 train miles. This standard represents a 30 percent increase in allowable delays but is within the regression range that correlates to OTP. This adjustment is intended to:

- Ensure that the delay standards are sufficient to absorb any seasonal variations and/or routine maintenance or construction projects where the Major Maintenance and Construction adjustments outlined in Annex 1 have not been granted
- Allow Amtrak and hosts additional flexibility to collaborate in how to achieve the OTP standards, which must be met regardless of whether or not the delay standards also are met in a particular situation.

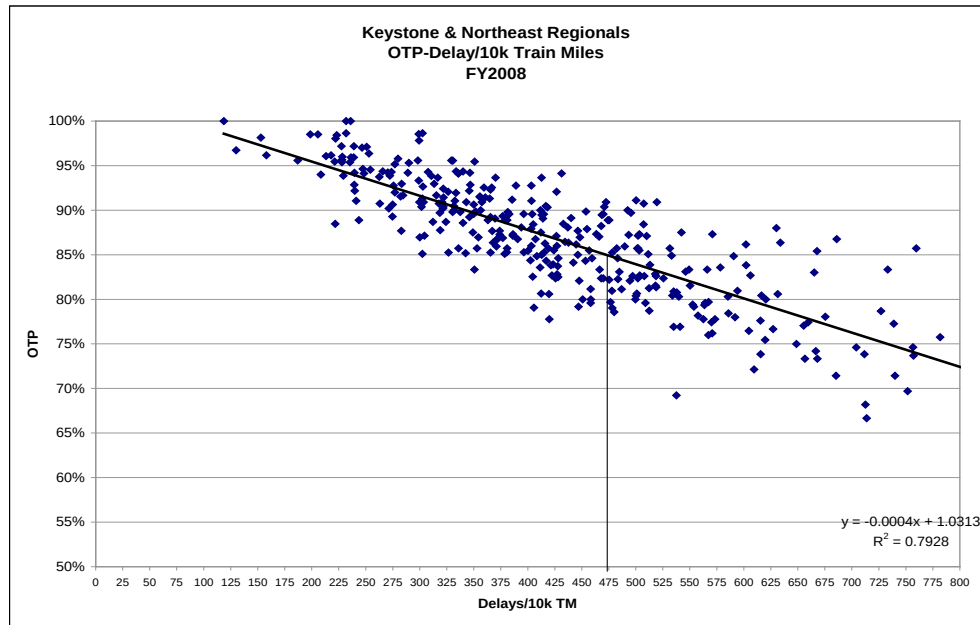
Similar regression studies were undertaken to determine the correlation between endpoint on-time performance and minutes of delay on the Northeast Corridor²⁸. Two separate studies were completed, one for Acela Express service using a 90% endpoint arrival rate and one for Northeast Regional/Keystone services using an 85% endpoint arrival rate.

An existing Acela Express mathematical regression model was applied using daily FY08 data to determine the minutes of delay threshold that correlates to 90% endpoint on time performance. It was determined that 285 minutes of delay per 10,000 train miles was the mid-point of the high-low delay minutes range that correlates with a 90% endpoint on time arrival rate. Delays per 10,000 train miles were then apportioned across the delay categories based on minutes of delay incurred by each category in FY08.

The Keystone & Northeast Regionals On Time Performance (OTP)-Delay study used daily performance and delay data from FY08. The study evaluated the relationship between OTP and delays. OTP was defined as the share of trains that arrived at endpoint within their endpoint tolerance for a particular day and delays were defined as total delay minutes incurred normalized to 10,000 miles operated. The OTP and delay data were plotted and the relationship (shape, slope, intercept, R^2) calculated. The total delay target of 470 minutes of delay per 10,000 train miles was derived by finding the total delays incurred on days when endpoint arrival performance was 85% or better. It was determined that 470 minutes of delay per 10,000 train miles was the mid-point of the high-low delay minutes range that correlates with an 85% endpoint on time arrival rate (Figure A- 4). Delays per 10,000 train miles were then apportioned across the delay categories based on minutes of delay incurred by each category in FY08.

²⁸ Off-Northeast Corridor Host railroad delay standards apply to Metro North Railroad.

**Figure A- 4: Total Delays on the NEC vs. Percent On Time
for Northeast Regional and Keystone Services**



Similar to off-Northeast Corridor delays, the final delay standards for on-NEC delays where Amtrak is Host and is responsible for all delays except third party delays has been adjusted to 265 minutes of delay per 10,000 train miles for Acela Express and 475 minutes of delay for all other services. These standards represent total delays not including third party delays and represent an adjustment in allowable delays that is within the regression range that correlates to OTP. The adjustment of the standards is intended to ensure that the delay standards are sufficient to absorb any seasonal variations and/or routine maintenance or construction projects where the Major Maintenance and Construction adjustments outlined in Annex 1 have not been used.

Annex 4: Lists of Parties Submitting Written Comments

Listing by Type of Respondent

<u>State Departments of Transportation</u>
California Department of Transportation, Division of Rail (Caltrans)
Maryland Transit Administration (MTA)
Virginia Department of Rail and Public Transportation (VDOT)
Washington State Department of Transportation (WSDOT)
Wisconsin Department of Transportation, Railroads and Harbors Section (WisDOT)
<u>State Intercity and Commuter Passenger Rail Agencies</u>
Capitol Corridor Joint Powers Authority (CCJPA)
Metro-North Commuter Railroad Company (MNR)
Southern California Regional Rail Authority (SCRRA)
<u>Freight Host Railroads</u>
Burlington Northern Santa Fe Railway (BNSF)
CSX Corporation (CSX)
Norfolk Southern Corporation (NS)
<u>Railroad-Related Organizations</u>
Association of American Railroads (AAR)
Midwest High Speed Rail Association (MHSRA)
National Association of Railroad Passengers (NARP)
<u>Labor Unions</u>
Transport Workers Union of American, Railroad Division (TWU)
<u>Unaffiliated Individuals</u>
Anne Marie Desiderio
<u>Federal Agencies</u>
Surface Transportation Board (STB)

Alphabetical Listing of Respondents

Anne Marie Desiderio
Association of American Railroads (AAR)
Burlington Northern Santa Fe Railway (BNSF)
California Department of Transportation, Division of Rail (Caltrans)
Capitol Corridor Joint Powers Authority (CCJPA)
CSX Corporation (CSX)
Maryland Transit Administration (MTA)
Metro-North Commuter Railroad Company (MNR)
Midwest High Speed Rail Association (MHSRA)
National Association of Railroad Passengers (NARP)
Norfolk Southern Corporation (NS)
Southern California Regional Rail Authority (SCRRA)

Surface Transportation Board (STB)
Transport Workers Union of America, Railroad Division (TWU)
Virginia Department of Rail and Public Transportation (VDOT)
Washington State Department of Transportation (WSDOT)
Wisconsin Department of Transportation, Railroads and Harbors Section (WisDOT)

EXHIBIT 02

Host Railroad Report Card & FAQ

Host Railroad Performance Report Card (January thru December 2017)

Definitions	
Delays Below*	Grade
600	A
900	A-
1000	B+
1100	B
1200	B-
1250	C+
1300	C
1350	C-
1400	D+
1450	D
1500	D-
Above 1500	F

(* Minutes of host-responsible delay per 10,000 train miles)



Canadian Pacific



BNSF



Union Pacific



CSX



Norfolk
Southern



Canadian
National

The above grades indicate aggregate host-responsible delays averaged across all routes on each host. They do not necessarily reflect the hosts' performance on every individual route.



1) What is a “host railroad”?

Most of Amtrak’s network is on tracks owned, maintained, and dispatched by highly-profitable freight railroads, known as “host” railroads where Amtrak uses their tracks. Most of the trains on these rail lines are the freight railroads’ own freight trains. Because the freight railroads make all dispatching decisions about which trains have priority in using the rail line, the freight railroads have a tremendous amount of influence over Amtrak’s operations on their lines.

Prior to Amtrak’s creation in 1971, the privately-owned railroads had a common carrier obligation to operate passenger trains themselves – an obligation that dated back to when the railroads were built in the 1800s. Because the railroads were losing money on their passenger trains, Congress created Amtrak and relieved the private railroads of their obligation to operate passenger trains. A very important part of the deal was that Amtrak would still have access to the railroads’ lines in order to operate passenger trains. Every year Amtrak pays host railroads \$142 million for using their tracks and other resources needed to operate Amtrak trains.

2) What distinguishes hosts with good Amtrak performance?

Hosts typically achieve good Amtrak performance through a combination of:

- a) Commitment to providing quality service for Amtrak’s passengers,
- b) An active partnership with Amtrak, where both sides work cooperatively and the hosts respect Federal law which protects the rights of our nation’s passengers, and
- c) A well-disciplined operation that benefits both Amtrak and freight customers alike.

3) What does “Delays per 10,000 train miles” mean?

It is a measure of how much delay each host railroad causes to Amtrak trains. The measure is normalized by train mile so that routes of different lengths, and hosts with different amounts of Amtrak service, can be compared to each other.

Specifically, it is the number of minutes of host-responsible delay, divided by the number of Amtrak train miles operated over that host, times 10,000.

4) What does a poor grade represent?

Put in perspective, an “F” host forces Amtrak trains on a particular route to wait one hour and 40 minutes on average for freight trains, and forces many Amtrak trains on this route to wait as long as 3 hours and 12 minutes. As a comparison, suppose you were on a flight and your plane had to circle the destination airport for one hour and 40 minutes while cargo flights were given priority to use the runway. Amtrak passengers typically experience those types of daily delays on poorly graded host railroads owned and operated by large freight companies.

5) How much control do hosts have over the problem?

Host railroads make all dispatching decisions regarding which trains are allowed to go first and which trains must wait. Federal law requires Amtrak passenger trains to receive preference over freight transportation, but the largest cause of delay to Amtrak trains on host railroads is Freight Train Interference, typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate first. Host railroads often choose to force Amtrak trains with hundreds of passengers on them to stop and wait in favor of their trains carrying coal, garbage, crude oil, empty freight cars, or any freight that the host chooses to prioritize. Sometimes a host railroad will make Amtrak passengers follow the

same slow freight train for 50 to 100 miles, or may even make Amtrak passengers wait while individual freight cars are switched into or out of industrial facilities.

Decisions by freight companies to prioritize their trains over passengers often occur when freight trains are operating late, short on crews, etc. Undisciplined freight companies may operate freight trains many hours ahead of or behind schedule, or with no schedule at all. So a poor grade may also indicate that the host is doing an ineffective job of running their freight operations, which causes Amtrak passengers to suffer.

6) Why are hosts allowed to do this?

Actually, the freight companies are forbidden to do this. By Federal law, with only very few exceptions Amtrak passenger trains must be given preference over freight trains in using any rail line. Unfortunately, only the Department of Justice can enforce this law, and it has brought only one enforcement action against a freight company in Amtrak's history, and that was nearly 40 years ago! As a result, freight railroads suffer no significant consequences for prioritizing their freight over our country's rail passengers.

7) If a train is always late then why don't you just change the schedule?

Amtrak schedules are agreed to with freight railroads and already include substantial amounts of padding, known as recovery time, to allow trains to be on time even when there are delays. Amtrak has sometimes tried lengthening schedules, but this approach is usually ineffective at improving performance on freight railroads because some freight railroads use this additional schedule time for their own trains, resulting in even more delays to Amtrak. Longer schedules also increase Amtrak's crew and equipment costs and are less convenient for passengers. With a longer schedule, 100% of passengers experience a longer trip, even those passengers who would have been on time under a shorter schedule.

The most effective way to improve performance is to prevent trains from being delayed in the first place. If freight companies respected Federal law, and provided preference to Amtrak trains, passengers would be on time and schedules would rarely be an issue.

8) Is there any incentive for freight railroads to deliver Amtrak trains on time?

Amtrak offers financial incentives to host railroads for improved performance, however these incentives have proven to be ineffective on some hosts. Those freight companies usually choose prioritizing their trains, which delays Amtrak's passengers.

9) Do trains "speed" to make up time? Does improving OTP therefore compromise safety?

Amtrak's highest priority is ensuring the safety of our passengers, our crews, and the communities we serve. Improving OTP will never compromise safety. Train crews do not speed to "make up" time. Locomotive engineers are subject to rigorous speed limit enforcement, which includes event recorders on all locomotives.

Canadian Pacific: A

- Hosts portions of the following Amtrak routes:
 - Hiawatha (Chicago-Milwaukee)
 - Empire Builder (Chicago-Minneapolis-North Dakota-Montana-Seattle/Portland)
 - Adirondack (New York-Albany-Plattsburgh-Montreal)
 - Ethan Allen (New York-Albany-Saratoga-Rutland VT)
- Sample Route Performance – Hiawatha Service

In 2017, 97% of passengers on the Hiawatha arrived at their destinations on time. And 90% of trips experience no freight train interference at all.

BNSF: B+

- Hosts portions of the following Amtrak routes:
 - California Zephyr (Chicago-Burlington-Omaha-Denver)
 - Carl Sandburg / Illinois Zephyr (Chicago-Quincy, IL)
 - Cascades (Vancouver, BC-Seattle-Portland)
 - Coast Starlight (Seattle-Portland)
 - Empire Builder (Minneapolis-Fargo-Whitefish-Sandpoint-Spokane-Seattle/Portland)
 - Heartland Flyer (Oklahoma City-Ft. Worth)
 - Pacific Surfliner (Los Angeles-Fullerton)
 - San Joaquins (Port Chicago-Bakersfield)
 - Southwest Chief (Chicago-Fort Madison-Topeka-La Junta-Flagstaff-Albuquerque-Los Angeles)
 - Sunset Limited (New Orleans-Lake Charles, LA)
 - Texas Eagle (Temple-Ft. Worth)
- Sample Route Performance – Carl Sandberg/Illinois Zephyr Service

In 2017, approximately 90% of passengers on the Carl Sandberg/Illinois Zephyr service arrived at their destinations on time with less than 4 minutes of delay by BNSF freight trains on average.

UP: B-

- Hosts portions of the following Amtrak routes:

- California Zephyr (Denver-Salt Lake City-Reno-Sacramento-Emeryville)
- Capitol Corridor (San Jose-Sacramento)
- Cascades (Portland-Eugene)
- Coast Starlight (Portland-Moorpark)
- Lincoln Service (Joliet-East St. Louis)
- Missouri River Runner (St. Louis-Kansas City)
- Pacific Surfliner (San Luis Obispo-Moorpark)
- San Joaquins (Oakland/Sacramento-Stockton)
- Sunset Limited (Los Angeles-Tucson-Deming-San Antonio-Iowa Jct.)
- Texas Eagle (Joliet- Dallas, Temple-San Antonio)

- Sample Route Performance – Coast Starlight Service

In 2017, over 239,000 passengers (57%) arrived late at their destinations on the Coast Starlight service. On an average trip on this route, passengers experience 4 separate instances of delay caused by UP freight trains accounting for 48 minutes of delay on average.

CSX: C

- Hosts portions of the following Amtrak routes:

- Auto Train (Lorton-Selma-Charleston-Savannah-Deland)
- Capitol Limited (Washington-Harpers Ferry-Cumberland-Pittsburgh)
- Cardinal (Dyer, IN-Cincinnati-Maysville-Huntington-Clifton Forge)
- Carolinian (Washington-Richmond-Selma)
- Hoosier State (Dyer, IN-Indianapolis)
- Lake Shore Ltd (Hoffmans, NY-Erie-Cleveland)
- Maple Leaf (Hoffmans, NY-Niagara Falls)
- New York - Niagara Falls (Hoffmans, NY-Niagara Falls)
- Palmetto (Washington-Richmond-Selma-Charleston-Savannah)
- Pere Marquette (Grand Rapids-Porter, IN)
- Richmond/Newport News/Norfolk (Washington-Richmond/Newport News/Petersburg)
- Silver Meteor (Washington-Richmond-Selma-Charleston-Savannah-Deland, Poincianna-South End Dyer)
- Silver Star (Washington-Richmond-Selma-Columbia-Savannah-Deland, Poincianna-South End Dyer)

- Sample Route Performance – Cardinal Service

In 2017, 50% of passengers traveling on the Cardinal service on CSX arrived late at their destinations by an average of 1 hour and 27 minutes. On 85% of trips, the Cardinal's approximately 350 passengers are delayed by CSX freight trains. Often times CSX makes Amtrak passengers wait in sidings while it prioritizes its own freight trains.

Norfolk Southern: F

- Hosts portions of the following Amtrak routes:
 - Pennsylvanian (Harrisburg-Pittsburgh)
 - Michigan (Porter-Chicago)
 - Lynchburg (Washington-Lynchburg)
 - Piedmont (Raleigh-Charlotte)
 - Norfolk (Petersburg-Norfolk)
 - Crescent (Washington-Charlottesville-Charlotte-Greenville-Atlanta-Birmingham-Meridian-New Orleans)
 - Carolinian (Selma-Charlotte)
 - Cardinal (Alexandria-Orange)
 - Capitol Limited (Pittsburgh-Cleveland-Elkhart-Chicago)
 - Silver Star (Selma-Raleigh)
 - Lake Shore Limited (Cleveland-Elkhart-Chicago)

- Sample Route Performance – Crescent Service

In 2017, over 173,000 passengers (67%) arrived late at their destinations while traveling on the Crescent. The typical Amtrak train, carrying approximately 350 passengers, is delayed over 1 hour and 40 minutes due to Norfolk Southern's (NS) freight trains and many Amtrak trains on this route are forced to wait as long as 3 hours and 12 minutes. Amtrak trains full of passengers are often routed into side tracks while they wait for NS freight trains using the main track.

CN: F

- Hosts portions of the following Amtrak routes:

- Adirondack (Montreal-Rouses Point)
- Blue Water (Port Huron-Battle Creek)
- City of New Orleans (Chicago-Fulton-Memphis-Jackson-New Orleans)
- Illini / Saluki (Chicago-Carbondale)
- Lincoln Service (Chicago-Joliet)
- Texas Eagle (Chicago-Joliet)
- Wolverine (Baron-Gord (Battle Creek), W. Detroit-Pontiac)

- Sample Route Performance – Illini/Saluki Service

In 2017, over 200,000 passengers (84%) arrived late at their destinations on the Illini/Saluki service. Amtrak trains were delayed by CN freight trains on nearly 90% of trips on this service, many being made to stop in sidings to wait for CN freight trains, or follow them for many miles at slow speeds. Additionally, Amtrak trains were delayed by an average of 26 minutes on a daily basis due to problems with CN maintained infrastructure.

What distinguishes hosts with good Amtrak performance?

Hosts typically achieve good Amtrak performance through a combination of:

- Commitment to providing quality service for Amtrak's passengers,
- An active partnership with Amtrak, where both sides work cooperatively and the hosts respect Federal law which protects the rights of our nation's passengers, and
- A well-disciplined operation that benefits both Amtrak and freight customers alike.

EXHIBIT 03

Amtrak Host Railroad Report Card 2018

Who delays passengers?

The Host Railroad Report Card grades each of the six Class I freight host railroads based on delays caused to Amtrak trains over the last 12 months.

1	Canadian Pacific	A
2	BNSF	B
3	Union Pacific	B-
4	CSX	B-
5	Canadian National	D-
6	Norfolk Southern	F

Average grade for all host railroads: **C**

Grades reflect the passenger experience

A	Most passengers are on-time
B	Passengers on some routes are late
C	Many passengers are very late
D	Most passengers are very late
F	Majority of passengers are severely late

Amtrak Route Grades 2018

How often are trains on-time at each station within 15 minutes of schedule?

State-Supported Trains	Route	Class I Freight Host Railroads	Percentage of trains on-time within 15 minutes	
<i>Pass = 80% on-time</i>	Hiawatha	CP	96%	PASS
<i>17 of 28 routes fail to achieve 80% standard</i>	Keystone	(other hosts)	91%	
	Capitol Corridor	UP	89%	
	New York - Albany	(other hosts)	89%	
	Carl Sandburg / Illinois Zephyr	BNSF	88%	
	Ethan Allen Express	CP	87%	
	Pere Marquette	CSX, NS	84%	
	Missouri River Runner	UP	83%	
	Springfield Shuttles	(other hosts)	82%	
	Downeaster	(other hosts)	81%	
	Hoosier State	CSX	80%	
	Pacific Surfliner	BNSF, UP	78%	FAIL
	Lincoln Service	CN, UP	76%	
	Blue Water	NS, CN	75%	
	Roanoke	NS	75%	
	Piedmont	NS	74%	
	Richmond / Newport News / Norfolk	CSX, NS	74%	
	San Joaquins	BNSF, UP	73%	
	Pennsylvanian	NS	71%	
	Adirondack	CN, CP	70%	
	New York - Niagara Falls	CSX	70%	
	Vermont	(other hosts)	67%	
	Cascades	BNSF, UP	64%	
	Maple Leaf	CSX	64%	
	Wolverine	NS, CN	60%	
	Heartland Flyer	BNSF	58%	
	Carolinian	CSX, NS	51%	
	Illini / Saluki	CN	37%	

Long Distance Trains

<i>Pass = 70% on-time</i>	Auto Train	CSX	72%	PASS
<i>14 of 15 routes fail to achieve 70% standard</i>	Palmetto	CSX	59%	FAIL
	Coast Starlight	BNSF, UP	55%	
	Cardinal	NS, CSX	53%	
	City of New Orleans	CN	51%	
	California Zephyr	BNSF, UP	48%	
	Silver Meteor	CSX	47%	
	Empire Builder	BNSF, CP	44%	
	Southwest Chief	BNSF	43%	
	Lake Shore Limited	CSX, NS	41%	
	Texas Eagle	BNSF, UP, CN	37%	
	Capitol Limited	NS, CSX	36%	
	Silver Star	CSX, NS	36%	
	Crescent	NS	29%	
	Sunset Limited	BNSF, UP	26%	

Why are Amtrak trains delayed by freight trains?

Frequently Asked Questions on Amtrak and Host Railroad Performance

1. What is a “host railroad”?

Most of Amtrak’s network consists of tracks owned, maintained, and dispatched by highly profitable freight railroads, known as “host” railroads where Amtrak uses their tracks. Most of the trains on these rail lines are the freight railroads’ own freight trains. Because the freight railroads make all dispatching decisions about which trains have priority, freight railroads have a tremendous amount of influence over Amtrak’s operations on their lines. Every year, Amtrak pays host railroads millions of dollars for use of their tracks and other resources needed to operate Amtrak trains.

2. Why doesn’t Amtrak own all of its rail lines?

Amtrak owns only 3% of the 21,400 route-miles traveled by Amtrak trains, primarily on the Northeast Corridor. The rest are mostly owned by freight railroads. Prior to Amtrak’s creation in 1971, railroads provided both freight and passenger services. However, because the railroads were losing money on their passenger trains, Congress created Amtrak to relieve the private railroads of their obligation to operate passenger trains while retaining an efficient and economical way to transport large numbers of people in areas all across the country. In return for relieving freight railroads of this obligation, there were two very important conditions:

- a. Amtrak would retain access to the railroads’ lines in order to operate passenger trains; and*
- b. Amtrak trains would receive priority over freight trains.*

3. What distinguishes host railroads with good Amtrak performance?

Host railroads typically achieve good Amtrak performance – meaning Amtrak trains consistently operate with limited delay over their rail lines – through a combination of the following:

- *A commitment to providing quality service for Amtrak’s passengers;*
- *An active partnership with Amtrak, where both sides work collaboratively and the host respects Federal law which protects the rights of our nation’s passengers; and*
- *A well-disciplined operation, which benefits both Amtrak and freight customers alike.*

4. How does Amtrak evaluate host performance?

Amtrak evaluates host performance based on “host responsible delay minutes delay per 10,000 train-miles,” which measures how much delay each host railroad causes to Amtrak trains. The measure is normalized by the number of miles traveled by each train (a “train-mile”) so that routes of different lengths, and hosts with different levels of Amtrak service, can be compared to each other.

5. What does a poor grade represent?

Put in perspective, a host receiving an “F” typically forces each Amtrak train on a particular route to wait more than an hour per trip on average for freight trains alone, and often forces many Amtrak trains to wait for 3 hours or more. This is an unreasonable inconvenience to our nation’s passengers. Imagine you were on a flight and your plane had to circle the destination airport for hours while cargo flights were given priority to use the runway!

6. How much control do hosts have over the problem?

Host railroads are in control: they make all dispatching decisions regarding which trains are allowed to go first and which trains must wait. Federal law requires Amtrak passenger trains to receive preference over freight transportation, but the largest cause of delay to Amtrak trains on host railroads is “Freight Train Interference,” typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate first.

Host railroads often delay Amtrak trains, carrying hundreds of passengers, in favor of their trains carrying coal, garbage, crude oil, empty freight cars, or any other freight that the host prioritizes over Amtrak passengers. Sometimes a host railroad will make Amtrak passengers follow the same freight train – moving at a much slower speed than a passenger train – for 50 to 100 miles, or may even make Amtrak passengers wait while individual freight cars are switched into or out of industrial facilities.

7. Why are hosts allowed to prioritize freight over passenger?

Actually, the freight companies are forbidden from doing that. By Federal law, with only very few exceptions, Amtrak passenger trains must be given preference over freight trains on any rail line. Unfortunately, only the Department of Justice can enforce this law, and it has brought only one enforcement action against a freight company in Amtrak’s history, and that was 40 years ago! As a result, freight railroads suffer no significant consequences for prioritizing their freight over our rail passengers.

8. If a train is always late, then why not just change the schedule?

Amtrak schedules are negotiated with freight railroads and already include substantial amounts of padding, known as “recovery time,” to allow trains to be on time even when there are delays. Amtrak has sometimes tried lengthening schedules, but this approach is usually ineffective at improving performance on freight railroads because some freight railroads use this additional time in the schedule to continue to prioritize their own trains, resulting in even more delays to Amtrak passengers. Longer schedules also increase Amtrak’s crew and equipment costs and are less convenient for passengers.

9. Is there any incentive for freight railroads to deliver Amtrak trains on time?

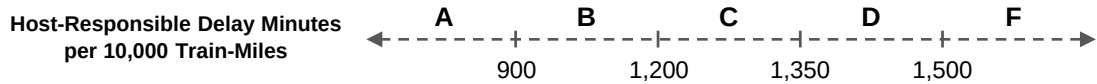
Amtrak offers financial incentives to host railroads for providing reliable performance, however these incentives have proven to be ineffective for some hosts, which continue to prioritize their trains and delay Amtrak passengers even though they could earn financial incentives for good performance.

10. Can trains “make up” lost time?

Trains cannot take a different route or travel faster to “make up” time lost due to host railroad delays. Each stretch of rail line has a specific speed limit that accounts for the characteristics of the track and the train itself, which is reflected in the schedule, and Amtrak crews never compromise safety to get to a destination on-time.

Notes

1. Amtrak measures host railroad performance based on “minutes of host-responsible delay per 10,000 train-miles,” which measures the minutes of delay caused by each host, normalized by the number of miles traveled by each train and multiplied by 10,000.
2. Grades indicate aggregate host-responsible delays across all routes on each host. Performance on specific routes can vary.
3. Grades are awarded on the following scale:



4. 900 host-responsible delay minutes per 10,000 train-miles is roughly correlated to performance that results in Amtrak trains that are 80% on-time.
5. Canadian National's Quebec operations are excluded from the report card calculations.
6. “On-time performance” (OTP) is defined as the percentage of stations at which a train arrives within 15 minutes of the time in the public schedule.
7. OTP figures are based on 2018 calendar year performance.
8. The route grade table only lists Class I freight host railroads that host more than 15 miles of the given route, using the following abbreviations:

BNSF	BNSF Railway
CN	Canadian National Railway
CP	Canadian Pacific Railway
CSX	CSX Transportation
NS	Norfolk Southern Railway
UP	Union Pacific Railroad

EXHIBIT 04

Amtrak Host Railroad Report Card 2019

Who delays passengers?

The Host Railroad Report Card grades each of the six Class I freight host railroads based on delays caused to Amtrak trains in 2019.

1	Canadian Pacific	A
2	CSX	B+
3	BNSF	B
4	Union Pacific	B-
5	Canadian National	D
6	Norfolk Southern	F

Average grade for all host railroads: **C**

Grades reflect the passenger experience

A	Most passengers are on-time
B	Passengers on some routes are late
C	Many passengers are very late
D	Most passengers are very late
F	Majority of passengers are severely late

Amtrak Route Grades 2019

How many passengers are on time?

Passing grade: 80% of customers are on time within 15 minutes

State-Supported Trains	Route	Class I Freight Host Railroads	Percentage of On-Time Customers	
19 of 27 routes fail to achieve 80% standard	Keystone	(other hosts)	93%	PASS
	Hiawatha	CP	92%	
	New York – Albany	(other hosts)	91%	
	Springfield Shuttles	(other hosts)	88%	
	Capitol Corridor	UP	87%	
	Ethan Allen Express	CP	85%	
	Downeaster	(other hosts)	82%	
	Vermonteer	(other hosts)	82%	
	Carl Sandburg / Illinois Zephyr	BNSF	77%	FAIL
	Richmond / Newport News / Norfolk	CSX, NS	76%	
	Piedmont	NS	75%	
	Adirondack	CN, CP	73%	
	Pacific Surfliner	BNSF, UP	73%	
	Lincoln Service	CN, UP	73%	
	Roanoke	NS	70%	
	Pennsylvanian	NS	70%	
	Maple Leaf	CSX	67%	
	New York – Niagara Falls	CSX	66%	
	San Joaquins	BNSF, UP	64%	
	Carolinian	CSX, NS	64%	
	Missouri River Runner	UP	63%	
	Cascades	BNSF, UP	63%	
	Pere Marquette	CSX, NS	62%	
	Heartland Flyer	BNSF	53%	
	Blue Water	NS, CN	39%	
	Illini / Saluki	CN	30%	
	Wolverine	NS, CN	27%	
Long-Distance Trains				
15 of 15 routes fail to achieve 80% standard	City of New Orleans	CN	73%	FAIL
	Palmetto	CSX	63%	
	Cardinal	NS, CSX	55%	
	Auto Train	CSX	54%	
	Coast Starlight	BNSF, UP	51%	
	Lake Shore Limited	CSX, NS	48%	
	Empire Builder	BNSF, CP	47%	
	Silver Meteor	CSX	44%	
	Silver Star	CSX, NS	34%	
	California Zephyr	BNSF, UP	33%	
	Southwest Chief	BNSF	33%	
	Capitol Limited	NS, CSX	31%	
	Crescent	NS	31%	
	Texas Eagle	BNSF, UP, CN	27%	
	Sunset Limited	BNSF, UP	21%	

Why are Amtrak trains delayed by freight trains?

Frequently Asked Questions on Amtrak and Host Railroad Performance

1. What is a “host” railroad?

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2. Why doesn’t Amtrak own all of its rail lines?

Amtrak owns only 3% of the 21,400 route-miles traveled by Amtrak trains, primarily on the Northeast Corridor. The rest are mostly owned by freight railroads. Prior to Amtrak’s creation in 1971, railroads transported both freight and passengers. However, because the railroads were losing money on their passenger trains, Congress created Amtrak to relieve the private railroads of their obligation to operate passenger trains while retaining an efficient and economical way to transport large numbers of people in areas across the country. In return for relieving freight railroads of this obligation, there were two very important conditions:

- a. Amtrak would retain access to the railroads’ lines in order to operate passenger trains; and*
- b. Amtrak trains would receive preference over freight trains.*

3. Why are Amtrak trains delayed by freight trains?

Host railroads make all dispatching decisions regarding which trains are allowed to go first and which trains must wait. Federal law requires Amtrak passenger trains to receive preference over freight transportation, but the largest cause of delay to Amtrak trains on host railroads is “Freight Train Interference,” typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate first.

Host railroads often delay Amtrak trains, carrying hundreds of passengers, in favor of their trains carrying coal, garbage, crude oil, empty freight cars, or any other freight that the host chooses to prioritize over Amtrak passengers. Sometimes a host railroad will make Amtrak passengers follow the same freight train – moving at a much slower speed than a passenger train – for 50 to 100 miles, or force Amtrak passengers to wait in a siding while a freight train that is too long to fit in any sidings on the rail line is prioritized first.

Freight trains caused 1 million minutes of delay to Amtrak passengers in 2019 – that’s equivalent to 2 years of passengers waiting for freight to go first.

4. Are freight railroads allowed to prioritize freight over people?

No! By federal law, with very few exceptions, Amtrak passenger trains must be given preference over freight trains on any rail line. Unfortunately, only the Department of Justice can enforce this law, and it has brought only one enforcement action against a freight company in Amtrak’s history – and that was over 40 years ago! As a result, freight railroads suffer no significant consequences for prioritizing their freight over you, our passenger.

For more information about Amtrak and freight railroads, please read our [white paper](#) on the subject.

5. Are there costs to all of these delays?

Freight train delays waste the valuable time of our passengers – 1 million minutes in 2019, and even more when other delays caused by host railroads are included. In addition, there are real costs incurred by Amtrak, states, and the federal government. A [recent study](#) estimated that Amtrak could realize one-time savings of \$336 million, and annual savings of \$41.9 million, if Amtrak trains were able to operate reliably. This money could be invested in providing better Amtrak service across the country. That's why we need freight railroads to follow the law and put people first.

6. Is there any incentive for freight railroads to deliver Amtrak trains on time?

Amtrak offers financial incentives to host railroads for providing reliable performance, however these incentives have proven to be ineffective for some hosts, which continue to prioritize their trains and delay Amtrak passengers even though they could earn financial incentives for good performance.

7. How does Amtrak evaluate host performance?

Amtrak evaluates host performance based on “host-responsible delay minutes per 10,000 train-miles,” which measures how much delay each host railroad causes to Amtrak trains. The measure is normalized by the number of miles traveled by each train (a “train-mile”) so that routes of different lengths, and hosts with different levels of Amtrak service, can be compared to each other.

8. What does a poor grade on the Host Railroad Report Card represent?

Put in perspective, a host receiving an “F” typically forces each Amtrak train on a particular route to wait more than an hour per trip on average for freight trains alone, and may make Amtrak passengers wait for 2 hours or more as their freight trains operate first. This is an unreasonable inconvenience to our nation's passengers. Imagine you were on a flight and your plane had to circle the destination airport for hours while cargo flights were given priority to use the runway!

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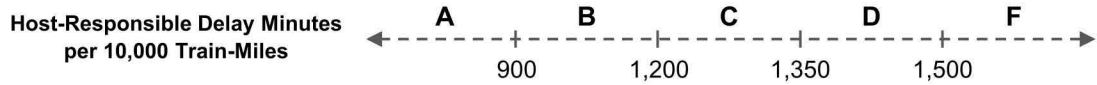
- *A commitment to providing quality service for Amtrak's passengers;*
- *An active partnership with Amtrak, where both sides work collaboratively and the host respects federal law which protects the rights of our passengers; and*
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10. If a train is always late, then why not just change the schedule?

Amtrak schedules are negotiated with freight railroads and already include substantial amounts of padding, known as “recovery time,” to allow trains to be on time even when there are delays. Amtrak has sometimes tried lengthening schedules, but this approach is usually ineffective at improving performance on freight railroads because some freight railroads use this additional time in the schedule to continue to prioritize their own trains, resulting in even more delays to Amtrak passengers. Longer schedules are less convenient for passengers and prevent Amtrak from fulfilling its mandate to offer service that is competitive with other modes of travel. They also increase Amtrak's crew and equipment costs.

Notes

1. Amtrak measures host railroad performance based on “minutes of host-responsible delay per 10,000 train-miles,” which measures the minutes of delay caused by each host, normalized by the number of miles traveled by each train and multiplied by 10,000.
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 - CN Canadian National Railway
 - CP Canadian Pacific Railway
 - CSX CSX Transportation
 - NS Norfolk Southern Railway
 - UP Union Pacific Railroad

EXHIBIT 05

Amtrak Host Railroad Report Card 2020

The results are in – which host railroads made the grade?

Host railroads are graded on the amount of delay caused to Amtrak passengers. Customers traveling over a host railroad receiving an “A” grade can generally count on being on time. The four-year GPA shows which railroads have delivered consistent service.

	Host Railroad	2020 Grade	4-year GPA
1	Canadian Pacific	A	4.0 (A)
2	BNSF	A	3.3 (B+)
3	Canadian National	B+	1.3 (D+)
4	CSX	B+	2.8 (B-)
5	Union Pacific	B-	2.7 (B-)
6	Norfolk Southern	C	0.5 (F)

End of year highlights

- ☐ **Host railroad performance generally improved from last year.** Delays began declining months *before* the effects of the pandemic were felt in the U.S.
- ☐ **Freight trains are still the #1 cause of delay to Amtrak passengers.** While the law has required railroads to provide preference to passengers over freight for nearly 50 years, freight trains caused 700,000 minutes of delay in 2020 alone – that’s more than a year of passengers waiting for freight to go first!
- ☐ **The amount of freight rail volume does not affect Amtrak delays.** By the end of 2020, rail freight volume was *higher* than in 2019, while many Amtrak passengers still arrived on time. Data analysis finds there is no correlation between the level of freight rail volume and the amount of delay to Amtrak passengers.
- ☐ **New legislation helped motivate better performance, but more must be done.** Legislation introduced in Congress last year would have allowed Amtrak to enforce our existing right to preference over freight – we are not allowed to do that today – and must be reintroduced and signed into law so that most passengers arrive on time.

Amtrak Route Grades 2020

Which routes made the grade?

Passing grade: 80% of customers arrive on time within 15 minutes of schedule

State Supported Trains	Route	Class I Freight Host Railroads	Percentage of On-Time Customers	
9 of 27 routes fail to achieve 80% standard	Keystone	(other hosts)	96%	PASS
	Hiawatha	CP	94%	
	New York – Albany	(other hosts)	94%	
	Vermont	(other hosts)	94%	
	Springfield Shuttles	(other hosts)	93%	
	Carl Sandburg / Illinois Zephyr	BNSF	91%	
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	Piedmont	NS	83%	
	Pennsylvanian	NS	82%	
	Adirondack	CN, CP	80%	
	Carolinian	CSX, NS	80%	
	Maple Leaf	CSX	77%	FAIL
	Blue Water	NS, CN	77%	
Long Distance Trains 14 of 15 routes fail to achieve 80% standard	Pere Marquette	CSX, NS	76%	
	Missouri River Runner	UP	74%	
	Heartland Flyer	BNSF	73%	
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	Silver Meteor	CSX	67%	
	Empire Builder	BNSF, CP	66%	
	Cardinal	NS, CSX	65%	
	Southwest Chief	BNSF	64%	
	California Zephyr	BNSF, UP	60%	
	Silver Star	CSX, NS	56%	
	Crescent	NS	53%	
	Capitol Limited	NS, CSX	52%	
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	Sunset Limited	BNSF, UP	33%	

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2. Why doesn’t Amtrak own all of its rail lines?

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Host railroads make all dispatching decisions regarding which trains are allowed to go first and which trains must wait. Federal law requires Amtrak passenger trains to receive preference over freight transportation, but the largest cause of delay to Amtrak trains on host railroads is “Freight Train Interference,” typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate first.

Host railroads often delay Amtrak trains, carrying hundreds of passengers, in favor of their trains carrying coal, garbage, crude oil, empty freight cars, or any other freight that the host chooses to prioritize over Amtrak passengers. Sometimes a host railroad will make Amtrak passengers follow the same freight train – moving at a much slower speed than a passenger train – for 50 to 100 miles, or force Amtrak passengers to wait in a siding while a freight train that is too long to fit in any sidings on the rail line is prioritized first.

Freight trains caused 700,000 minutes of delay to Amtrak passengers in 2020 – that’s equivalent to more than a year of passengers waiting for freight to go first.

4. Are freight railroads allowed to prioritize freight over people?

No! By federal law, with very few exceptions, Amtrak passenger trains must be given preference over freight trains on any rail line. Unfortunately, only the Department of Justice can enforce this law, and it has brought only one enforcement action against a freight company in Amtrak’s history – and that was over 40 years ago! As a result, freight railroads suffer no significant consequences for prioritizing their freight over you, our passenger. An analogy to air travel puts this reality in perspective: what if air cargo carriers were responsible for air traffic control? Planeloads of travelers would be left circling above airports while cargo jets landed first unless there were effective regulatory mechanisms in place to protect passengers.

For more information about Amtrak and freight railroads, please read our [white paper](#) on the subject.

5. How many passengers should arrive on time?

The minimum standard set by federal rule is that 80% of customers should arrive at their destination within 15 minutes of the scheduled time. On many services, our expectations should be even higher. As delays rise, it becomes harder to achieve the 80% standard, which is why Amtrak is so focused on reducing the delays we can control, and why we call on host railroads – which are responsible for two-thirds of the delays experienced by passengers – to follow the law that requires these railroads to put people first.

6. Are there costs to all of these delays?

Freight train delays waste the valuable time of our passengers – 700,000 minutes in 2020, and even more when other delays caused by host railroads are included. In addition, there are real costs incurred by Amtrak, states, and the federal government. A [recent study](#) estimated that Amtrak could realize one-time savings of \$336 million, and annual savings of \$41.9 million, if Amtrak trains were able to operate reliably. This money could be invested in providing better Amtrak service across the country.

7. If a train is always late, then why not just change the schedule?

Amtrak schedules are negotiated with freight railroads and already include substantial amounts of padding, known as “recovery time,” to allow trains to be on time even when there are delays. Amtrak has sometimes tried lengthening schedules, but this approach is usually ineffective at improving performance on freight railroads because some freight railroads use this additional time in the schedule to continue to prioritize their own trains, resulting in even more delays to Amtrak passengers. We have added hours to our schedules, only to see customers arrive even later than they did before. Longer schedules are less convenient for passengers and prevent Amtrak from fulfilling its mandate to offer service that is competitive with other modes of travel. They also increase Amtrak’s crew and equipment costs.

8. Is there any incentive for freight railroads to deliver Amtrak trains on time?

Amtrak offers financial incentives to host railroads for providing reliable performance, however these incentives have proven to be ineffective for some hosts, which continue to prioritize freight trains and delay Amtrak passengers even though they could earn financial incentives for good performance.

9. How does Amtrak evaluate host performance?

Amtrak evaluates host performance based on “host-responsible delay minutes per 10,000 train-miles,” which measures how much delay each host railroad causes to Amtrak trains. The measure is normalized by the number of miles traveled by each train (a “train-mile”) so that routes of different lengths, and hosts with different levels of Amtrak service, can be compared to each other.

10. What distinguishes host railroads with good Amtrak performance?

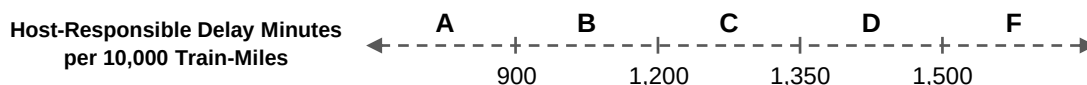
When host railroads achieve good Amtrak performance – meaning Amtrak trains consistently operate with limited delay over their rail lines – it is typically attributable to a combination of the following:

- *A commitment to providing quality service for Amtrak’s passengers,*
- *An active partnership with Amtrak, where both sides work collaboratively and the host respects federal law which protects the rights of our passengers, and*
- *A well-disciplined operation, which benefits both Amtrak and freight customers alike.*

Notes

Amtrak Host Railroad Report Card 2020

1. Amtrak measures host railroad performance based on “minutes of host-responsible delay per 10,000 train-miles,” which measures the minutes of delay caused by each host, normalized by the number of miles traveled by each train and multiplied by 10,000.
2. Grades indicate aggregate host-responsible delays across all routes on each host. Performance on specific routes can vary.
3. Grades are awarded on the following scale:



4. 900 host-responsible delay minutes per 10,000 train-miles is generally correlated to performance that results in Amtrak trains that are 80% on-time.
5. Host railroads are ranked on the Report Card based on 2020 host-responsible delay minutes per 10,000 train-miles.
6. Canadian National's Quebec operations are excluded from the report card calculations.

Amtrak Route Grades 2020

1. “On-time performance” (OTP) represents the percentage of customers that arrive at their destination station within 15 minutes of the scheduled arrival time.
2. OTP figures are based on 2020 calendar year performance.
3. The route grade table only lists Class I freight host railroads that host more than 15 miles of the given route, using the following abbreviations:

BNSF	BNSF Railway
CN	Canadian National Railway
CP	Canadian Pacific Railway
CSX	CSX Transportation
NS	Norfolk Southern Railway
UP	Union Pacific Railroad

EXHIBIT 06

Amtrak Host Railroad Report Card 2021



Our host railroad grades are based on delays to passengers – and we’re grading on a curve.

Providing Amtrak passengers preference over freight trains was part of the deal that created Amtrak and relieved freight railroads of the obligation to provide passenger services – and it’s the law. But too many freight railroads ignore the law. Imagine if air cargo carriers were responsible for air traffic control? Planeloads of travelers would be left circling above airports while cargo jets landed first unless there were effective regulatory mechanisms in place to protect passengers.

See which railroads made the grade >>

	Host Railroad	2021 Grade
1	Canadian Pacific	A
2	Canadian National	A
3	BNSF	B+
4	CSX	B
5	Union Pacific	C+
6	Norfolk Southern	D-

We want both freight and passenger rail to succeed!

America has the largest rail network in the world, and there is no reason why we cannot have both a world-class freight rail network and reliable intercity passenger rail service.

Amtrak Host Railroad Report Card 2021



The largest cause of delay to Amtrak passengers is freight train interference.

Freight Train Interference is typically caused by a freight railroad making Amtrak passengers wait so that its freight trains can operate first. **Federal law requires Amtrak to receive preference over freight** but too often that law is ignored by some freight railroads.

Freight trains caused nearly 900,000 minutes of delay to Amtrak passengers in 2021.

That's equivalent to going to the moon and back 100 times!

The Federal Railroad Administration "Metrics and Standards" rule sets a new standard: 80% of customers must arrive on time.

Miss the standard, and the Surface Transportation Board can investigate to determine the causes, and if it's because Amtrak's right to preference was violated, the freight railroad may face penalties.

See how your Amtrak route fared >>

Long Distance: 14 of 15 routes fail to meet standard

Route	Class I Host Railroad	Percentage of On-Time Customers	Meet the 80% standard?
City of New Orleans	CN	83%	Met standard
Palmetto	CSX	62%	Failed to meet standard
Crescent	NS	57%	
Texas Eagle	BNSF, UP, CN	57%	
Lake Shore Limited	CSX, NS	56%	
Cardinal	NS, CSX	55%	
Coast Starlight	BNSF, UP	54%	
Empire Builder	BNSF, CP	54%	
Silver Meteor	CSX	49%	
Auto Train	CSX	44%	
Silver Star	CSX, NS	42%	
California Zephyr	BNSF, UP	37%	
Southwest Chief	BNSF	37%	
Capitol Limited	NS, CSX	28%	
Sunset Limited	BNSF, UP	28%	

State-Supported: More than half of routes fail to meet standard

Route	Class I Host Railroad	Percentage of On-Time Customers	Meet the 80% standard?
Hiawatha	CP	95%	Met standard
Keystone	(other hosts)	93%	
Ethan Allen Express	CP	91%	
New York - Albany	(other hosts)	91%	
Carl Sandburg/Illinois Zephyr	BNSF	89%	
New Haven - Greenfield	(other hosts)	89%	
Capitol Corridor	UP	88%	
Vermont	(other hosts)	85%	
Maple Leaf	CSX	84%	
Pacific Surfliner	BNSF, UP	84%	
Roanoke	NS	81%	Failed to meet standard
San Joaquins	BNSF, UP	80%	
Lincoln Service	CN, UP	79%	
Downeaster	(other hosts)	78%	
New York - Niagara Falls	CSX	78%	
Richmond/Nwprt News/Norfolk	CSX, NS	77%	
Piedmont	NS	76%	
Pere Marquette	CSX, NS	74%	
Illini/Saluki	CN	72%	
Missouri River Runner	UP	71%	
Heartland Flyer	BNSF	69%	
Pennsylvanian	NS	68%	
Carolinian	CSX, NS	67%	
Blue Water	NS, CN	66%	
Wolverine	NS, CN	59%	
Cascades	BNSF, UP	57%	

Note: the Adirondack is excluded as it did not operate in 2021.

Why are Amtrak trains delayed by freight trains?

Frequently Asked Questions on Amtrak and Host Railroad Performance

1. What is a “host” railroad?

Most of Amtrak’s network consists of tracks owned, maintained, and dispatched by highly profitable freight railroads, known as “host” railroads where Amtrak uses their tracks. Most of the trains on these rail lines are the freight railroads’ own freight trains. Because the freight railroads make all dispatching decisions about which trains have priority, freight railroads have a tremendous amount of influence over Amtrak’s operations on their lines. Every year, Amtrak pays host railroads millions of dollars for use of their tracks and other resources.

2. Why doesn’t Amtrak own all of its rail lines?

Amtrak owns only 3% of the 21,400 route-miles traveled by Amtrak trains, primarily on the Northeast Corridor. The rest are mostly owned by freight railroads. Prior to Amtrak’s creation in 1971, railroads transported both freight and passengers. However, because the railroads were losing money on their passenger trains, Congress created Amtrak to relieve the private railroads of their obligation to operate passenger trains while retaining the efficient and economical way to transport large numbers of people in areas across the country. In return for relieving freight railroads of this obligation, there were two very important conditions:

- a. Amtrak would retain access to the railroads’ lines in order to operate passenger trains, and*
- b. Amtrak trains would receive preference over freight trains.*

3. Why are Amtrak trains delayed by freight trains?

Host railroads make all dispatching decisions regarding which trains are allowed to go first and which trains must wait. Federal law requires Amtrak passenger trains to receive preference over freight transportation, but the largest cause of delay to Amtrak trains on host railroads is “Freight Train Interference,” typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate first.

Host railroads often delay Amtrak trains, carrying hundreds of passengers, in favor of their trains carrying coal, garbage, crude oil, empty freight cars, or any other freight that the host chooses to prioritize over Amtrak passengers. Sometimes a host railroad will make Amtrak passengers follow the same freight train – moving at a much slower speed than a passenger train – for 50 to 100 miles, or force Amtrak passengers to wait in a siding while a freight train that is too long to fit in any sidings on the rail line is prioritized first.

Freight trains caused over 890,000 minutes of delay to Amtrak passengers in 2021 – that’s equivalent to almost 21 months of passengers waiting for freight to go first.

4. Are freight railroads allowed to prioritize freight over people?

No! By federal law, with very few exceptions, Amtrak passenger trains must be given preference over freight trains on any rail line. Unfortunately, only the Department of Justice can enforce this law, and it has brought only one enforcement action against a freight company in Amtrak’s history – and that was over 40 years ago! As a result, freight railroads suffer no significant consequences for prioritizing their freight over you, our passenger. An analogy to air travel puts this reality in perspective: what if air cargo carriers were responsible for air traffic control? Planeloads of travelers would be left circling above airports while cargo jets landed first unless there were effective regulatory mechanisms in place to protect passengers.

For more information about Amtrak and freight railroads, please read our [white paper](#) on the subject.

5. How many passengers should arrive on time?

The minimum standard set by federal rule is that 80% of customers should arrive at their destination within 15 minutes of the scheduled time. On many services, our expectations should be even higher. As delays rise, it becomes harder to achieve the 80% standard, which is why Amtrak is so focused on reducing the delays we can control, and why we call on host railroads – which are responsible for two-thirds of the delays experienced by passengers – to follow the law that requires these railroads to put people first.

6. Are there costs to all of these delays?

Freight train delays waste the valuable time of our passengers – 890,000 minutes in 2021, and even more when other delays caused by host railroads are included. In addition, there are real costs incurred by Amtrak, states, and the federal government. A [recent study](#) estimated that Amtrak could realize one-time savings of \$336 million, and annual savings of \$41.9 million, if Amtrak trains were able to operate reliably. This money could be invested in providing better Amtrak service across the country.

7. If a train is always late, then why not just change the schedule?

Amtrak schedules are negotiated with freight railroads and already include substantial amounts of padding, known as “recovery time,” to allow trains to be on time even when there are delays. Amtrak has sometimes tried lengthening schedules, but this approach is usually ineffective at improving performance on freight railroads because some freight railroads use this additional time in the schedule to continue to prioritize their own trains, resulting in even more delays to Amtrak passengers. We have added hours to our schedules, only to see customers arrive even later than they did before. Longer schedules are less convenient for passengers and prevent Amtrak from fulfilling its mandate to offer service that is competitive with other modes of travel. They also increase Amtrak’s crew and equipment costs.

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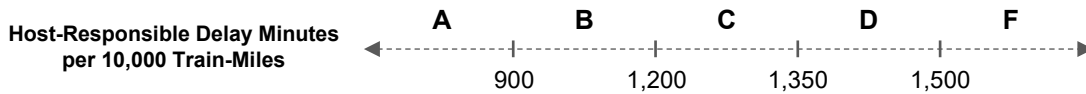
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EXHIBIT 07

REBUTTAL VERIFIED STATEMENT OF JAMES A BLAIR

EXHIBIT 7

Illini - Saluki Route Customer On-Time Performance

<u>Timeframe</u>	<u>COTP</u>
10/1/16 to 10/31/16	14.5%
11/1/16 to 11/30/16	13.6%
12/1/16 to 12/31/16	13.4%
1/1/17 to 1/31/17	19.9%
2/1/17 to 2/28/17	23.2%
3/1/17 to 3/31/17	12.1%
4/1/17 to 4/30/17	19.4%
5/1/17 to 5/31/17	15.8%
6/1/17 to 6/30/17	11.7%
7/1/17 to 7/31/17	14.2%
8/1/17 to 8/31/17	17.3%
9/1/17 to 9/30/17	17.2%
10/1/17 to 10/31/17	16.7%
11/1/17 to 11/30/17	15.4%
12/1/17 to 12/31/17	13.1%
1/1/18 to 1/31/18	10.8%
2/1/18 to 2/28/18	9.7%
3/1/18 to 3/31/18	20.4%

4/1/18 to 4/30/18	25.1%
5/1/18 to 5/31/18	29.8%
6/1/18 to 6/30/18	25.2%
7/1/18 to 7/31/18	27.9%
8/1/18 to 8/31/18	26.0%
9/1/18 to 9/30/18	34.4%
10/1/18 to 10/31/18	22.4%
11/1/18 to 11/30/18	30.7%
12/1/18 to 12/31/18	27.7%
1/1/19 to 1/31/19	27.6%
2/1/19 to 2/28/19	31.9%
3/1/19 to 3/31/19	33.4%
4/1/19 to 4/30/19	35.9%
5/1/19 to 5/31/19	17.5%
6/1/19 to 6/30/19	9.4%
7/1/19 to 7/31/19	19.8%
8/1/19 to 8/31/19	28.1%
9/1/19 to 9/30/19	31.8%
10/1/19 to 10/31/19	37.2%
11/1/19 to 11/30/19	31.7%
12/1/19 to 12/31/19	45.4%

EXHIBIT 08

[REDACTED]

EXHIBIT 09



United States Region

Michael A. Matteucci

Region Director Contracts and Administration

17641 So. Ashland Avenue
Homewood, IL 60430-1345
T 708.332.3598
F 708.332.3673

April 7, 2021

Jim Blair
Senior Director, Host Railroads
National Railroad Passenger Corporation
30th Street Station
4th Floor, 4N-163
Philadelphia, PA 19104

Dear Jim:

This letter responds to your December 18, 2020 letter to Scott Kuxmann proposing to certify various Amtrak schedules in accordance with the *Metrics and Minimum Standards for Intercity Passenger Rail Service* final rule published by FRA on November 16, 2020. It also follows up on a related exchange of letters between our CEO's regarding proposed schedule changes (Attachment 1).

As you know, the final FRA rule makes Customer on-time performance ("OTP") the sole metric for measuring Amtrak OTP. The final rule instructs and Administrator Batory has urged Amtrak and its host railroads to align schedules, as necessary, with that metric, which is consistent with the work our railroads have jointly undertaken on long-term schedules during the past 10 months. If we agree that a schedule is aligned with the Customer OTP metric, we are to certify the schedule. If we cannot agree, we have the option either of leaving the schedule uncertified or initiating a non-binding dispute resolution process.

Your letter proposes to certify the schedules of 23 of the 26 daily Amtrak trains that operate over CN's lines in the United States during normal operations. Although we do not agree with your methodology for identifying schedules ready for certification, we do agree on certification for most of the schedules for the Amtrak trains we host. Assuming there are no changes to the arrival or start times at the beginning of CN's portion of the route, CN believes the schedules for the trains on its portion of the *Wolverine*, *Blue Water*, *Lincoln*, *Texas Eagle*, and *Sunset Limited* services are ready to be certified. We can therefore certify the schedules for 5 of the 7 services and 20 of the 26 daily trains that operate over CN's lines in the United States during normal operations.

What remains are the two trains on the *City of New Orleans* service and the four trains on the *Illini/Saluki* service. We believe a key reason for our difference in view is your use of high Customer OTP in FY 2020 as an independent basis for proposed certification. As discussed below, due to Amtrak's significant reductions in operations during the present

pandemic, Amtrak's temporarily improved performance is not an adequate or appropriate basis to establish long-term schedules. It is also evident that your list is over-inclusive as it includes schedules for two trains on the *Illini/Saluki* service that have been the subject of continuing discussions between our railroads and for which Amtrak itself has acknowledged require at least 10 minutes added to the schedule (see Flynn Letter to Ruest, Oct. 16, 2020, Attachment 1).

For CN's 930-mile *City of New Orleans* service, after a reallocation of recovery time, we believe only a small amount of additional run time (1-3%) is needed. I have attached a proposal (see Attachment 2) that shows the necessary changes that would allow us to also certify the schedule for these two trains.

This leaves only the schedules for the 4 trains on the *Illini/Saluki* service. Since June 2020, our executives have met multiple times and exchanged and discussed different schedule proposals for that service. They have appropriately focused their efforts on establishing long-term, standard schedules intended to work well into the future, when the pandemic is over, and Amtrak's operations have returned to normal (including operating 4 trains and without the speed restriction CN has imposed for the safe operation of Amtrak's single level equipment over grade crossings).

Most recently Amtrak proposed adopting temporary schedules for the *Illini/Saluki* service based only on a reallocation of existing schedule time, with longer standard schedules that would automatically take effect at a later date based on an objective measure. See Flynn Letter (Attachment 1). Given the extreme temporary changes to Amtrak operations caused by the pandemic, we are willing to use that proposed framework in an effort to resolve our differences. In addition, provided that Amtrak agrees to adopt CN's proposed standard schedules (see Attachment 3) based on one of the objective criterion proposed below, we are willing to accept the temporary schedules that Amtrak proposed during the June 9 meeting (see Attachment 4). As noted above, Amtrak proposed adding 10 minutes to the long-term standard schedule for these trains (Flynn Letter, Attachment 1). However, as I will explain, additional run time is required for these trains to reliably achieve the 80% Customer OTP standard once operations return to normal.

The FRA and Administrator Batory emphasized schedule adjustments must be focused on meeting the Customer OTP standard for the long-term under normal (non-pandemic) operating conditions. The longer-term standard schedules cannot be based on present temporary conditions. Over the past year, the COVID pandemic has transformed passenger and freight operations. Amtrak suffered a 95% reduction in ridership at the height of the pandemic, causing it to slash the number of trains it operates. On CN lines, Amtrak has reduced the number of trains by half: from 24 daily trains pre-pandemic to just 10 daily trains and 4 trains that operate every-other-day. With fewer riders, there are fewer station delays, and without opposing passenger train meets, passenger train interference has disappeared, and now that the Superliner equipment is the standard consist for this service (see Flynn Letter, Attachment 1), delays due to the short shunt speed restriction have also been eliminated.

As result of these changes, performance has temporarily improved on the *Illini/Saluki* service. But temporary improved performance due to these pandemic conditions does not provide a basis for establishing a standard schedule. A standard schedule must remain achievable when ridership and train volumes return to normal. That is the task that the FRA's final rule and Administrator Batory set for us, and that is the task our railroads have undertaken.

Accordingly, in order to develop our proposed standard schedules for the *Illini/Saluki* service, CN used data for arrivals, departures, and delays from the most recent past period of normal operations (2018-2019), and we then tested our schedule proposal against operations during that period. Starting with the schedules proposed by Amtrak on June 9, which shifted some existing recovery time to PRT, we added recovery time until the schedule could reliably achieve 80% Customer OTP during this period of normal operations. The resulting schedules would add 15, 26, 26, and 40 minutes to the current run times for the four trains in this service, which is, on average, only a modest 8% increase in average run time. This increase is even more modest when the 10 minutes of added run time proposed by Amtrak is taken into account – CN’s proposed schedules would be only 5, 16, 16, and 30 minutes longer, an average increase of only 5%. See Attachment 3.

CN’s proposal, consistent with most other Amtrak services, provides for different schedules and schedule adjustments for individual trains because different trains encounter different levels and types of delay. For example, train 392, for which we have proposed an additional 40 minutes, tends to experience the highest levels of both passenger train interference and delays caused by Amtrak crews, passengers, and equipment.

With this small overall increase in schedule time, we anticipate large gains in Customer OTP. Our estimate is that Customer OTP would increase by approximately 55 percentage points, from 27% during the 2018-2019 period under the existing schedules to over 80% once the new schedules are implemented.

Importantly, the need for additional time in the schedule is not driven by delays caused by CN’s freight trains. CN analyzed Amtrak’s delay reports for the period 2018-2019 and found that delays caused by CN’s freight trains averaged only 11.4 minutes per trip during the 2018-2019 period. Even if CN could somehow eliminate *all* such delays, which would require eliminating freight trains and ceasing to provide key services to our shippers, there would still be far too little time in the schedule to reliably meet the Customer OTP standard, given other delays. In any event, eliminating all delays due to freight operations is unrealistic and infeasible. CN works hard to minimize freight train interference, but on a busy single-line, with shared freight and passenger operations, real world events are bound to result in some FTI delays. These events include such things as badly out of slot Amtrak trains, severe weather, mechanical malfunctions of freight or passenger trains, and network congestion. Indeed, Amtrak experiences FTI delays even when it dispatches and controls its own lines, such as in the Northeast Corridor.

In contrast to the relatively low levels of delay caused by CN’s freight trains, CN’s analysis showed that delays due to non-CN causes (including on the non-CN portion of the route) averaged 19.8 minutes per trip, which is 74% higher than the average delay caused by CN’s freight trains, and 42% of total delays, excluding delays attributable to the short shunt speed restriction. Delays due to interference from Amtrak’s other trains, which are inevitable where trains are scheduled to meet on single track territory, averaged a further 7.1 minutes per trip, equal to 15% of total delays.

Taken together, total delays that cannot reasonably be attributed to CN average 26.9 minutes per trip. These delays consume between 67% and 75% of the 36 to 40 total minutes of recovery (including miscellaneous) time in the current schedules. During normal operating conditions, it is impossible to meet an 80% Customer OTP standard when such a high percentage of recovery time is consumed by delays, such as these, that are beyond CN’s reasonable control.

As further evidence that our proposed standard schedules are reasonable, as we've noted previously, CN's proposed schedules for the *Illini/Saluki* service would remain shorter than almost every other Amtrak schedule of comparable length. The average run time for CN's proposed schedules are each 357 minutes, covering a 309 mile route. As shown in the table in Attachment 5, among the 14 Amtrak routes that are between 200 and 400 miles long, CN's proposed schedules would have the third smallest ratio of schedule time to distance. (The current schedule for the *Illini/Saluki* is second overall in this metric.) This strongly suggests that the total run times for the proposed schedules are not excessive, and that their transit times should be as attractive to Amtrak's passengers as other Amtrak services. The *Wolverine* service attracts customers with a 364 minute schedule over its 304 mile route between Chicago and Pontiac, and the *Cascades* service attracts customers with a 383 minute schedule over a 311 mile route between Seattle and Eugene. By comparison, the *Illini/Saluki* service would have a shorter schedule over its 309 mile route.

We believe our proposed standard schedules will benefit both Amtrak and its riders. Amtrak's Customer OTP would dramatically improve, and Amtrak's passengers will benefit from more realistic and reliable performance. The added time in the schedules would not lengthen trip times actually experienced by riders. It would simply align the schedule with Amtrak's actual operating times as experienced over many years. More generally, we believe riders will find the benefits of accurate and reliable schedules and enhanced OTP performance of the trains to greatly outweigh the modest lengthening of the schedule.

As noted above, provided that Amtrak is willing to accept CN's proposed longer-term standard schedules based on one of the objective criterion proposed below, CN would be willing to accept Amtrak's proposed temporary schedules. The additional run time necessary during normal operations is not required today, when Amtrak's operations remain severely impacted by the COVID pandemic. CN proposes that the standard schedules automatically replace the temporary schedules proposed by Amtrak if and when Amtrak resumes operating 4 trains in the *Illini/Saluki* service. Alternatively, if Amtrak prefers, CN is willing to use actual Customer OTP as the sole basis for transitioning to standard schedules. Under that option, the transition to a standard schedule for a train in the *Illini/Saluki* service would only occur if on or after January 1, 2022, Customer OTP for that train falls below 85% for any calendar quarter.

Each of these proposed criterion is clear, objective, and easy to implement. Whichever Amtrak chooses, it will ensure that the standard schedule will not be implemented before it is necessary, and if the criterion chosen is not met, the "temporary" schedules would remain in place.

Our proposal to adopt both these permanent and temporary schedules is also predicated and conditioned on the absence of any delays due to the application of a short shunt slow order. As you know, Amtrak's recent use of the Superliner equipment has significantly increased the recent OTP on this service. In order that we may agree to schedules with no added time to compensate for such a slow order, Amtrak would need to agree to continue running the Superliner equipment it is currently running, at least until we have a functioning shunt enhancer or other solution to resolve the short shunt safety issue. We were encouraged in this regard by Mr. Flynn's statement that Amtrak's Superliner equipment is now "the standard consist for this service."

We hope you will review our compromise proposal with an open mind, as we believe the proposed schedules will serve the interests of all stakeholders. It reflects a sincere effort and desire by CN to resolve our long-standing schedule issues with Amtrak on this lone service, and

to incorporate and improve upon Amtrak's own proposal for temporary and permanent schedules.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael Matteucci", with a stylized, flowing script.

Michael Matteucci

Attachments

Attachment 1



www.cn.ca

J.J. Ruest
President and
Chief Executive Officer

935 de La Gauchetière Street West
16th Floor
Montreal, Quebec H3B 2M9
Canada
T 514-399-6734

Jean-Jacques Ruest
Président-
directeur général

935, rue de La Gauchetière Ouest
Montréal (Québec) H3B 2M9
16^e étage
Canada
T 514 399-6734

October 16, 2020

Mr. William J. Flynn
President and Chief Executive Officer
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, D.C. 20001

Dear Mr. Flynn:

Thank you very much for your letter of September 24, 2020, regarding Amtrak's plan for a future return to regular service. I hope this letter finds you and your family healthy. These are indeed challenging times and I appreciate your steadfast and bold leadership to keep employees and passengers safe during the pandemic. Safety is a core value at CN and it drives every decision we make.

CN is proud to host Amtrak long distance services, such as the *City of New Orleans*, and state-supported services, such as the *Blue Water*, *Wolverine*, and *Illini/Saluki*. When Amtrak plans in the future to transition from its reduced service to regular service, CN will work with Amtrak to reinstate regular service. I have asked Derek Taylor, our Vice President of the Eastern Region, to be available to your team if operations questions or concerns arise.

Thank you for offering your assistance on issues that may require your attention. In fact, there is such an issue. I would very much appreciate your help in addressing important schedule changes required for Amtrak's state-supported *Illini/Saluki* service.

As you know, CN was eager to work with Amtrak to develop revised schedules in anticipation of the Federal Railroad Administration's pending rulemaking to establish a new metric for measuring the on-time performance of Amtrak's trains. Further, we were pleased that as part of those discussions, CN and Amtrak have reached agreement on new schedules for the *Blue Water* and *Wolverine* services. Unfortunately, we have not been as successful in addressing necessary schedule changes for Amtrak's *Illini/Saluki* service.

Despite CN's strong performance as host, Amtrak passengers on the *Illini/Saluki* service often arrive late to their destination stations because its published schedules are outdated and unrealistic. Amtrak schedules for this service do not account for all delays, including delays outside of CN's control such as delays caused by Amtrak and third-parties. Changing Amtrak's schedules is necessary to make them realistically achievable. Additional schedule time is required for the *Illini/Saluki* service given operational realities, including delays attributable to Amtrak such as two Amtrak trains meeting one another, and infrastructure limitations of CN's mostly-single track network. It is important to understand that the majority of delays on this service are attributed to Amtrak's own crews, trains, passengers, and third parties for this service, and not interference due to CN's freight trains, which accounts for just 17% of delay.

Mr. William J. Flynn
October 16, 2020
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For this service, a modest lengthening of the *Illini/Saluki* schedule is required and could significantly improve Amtrak on-time performance, without the need for Amtrak funding of additional network capacity.

CN has proposed a modest lengthening in total run time (an average of 27 minutes added per train) that should dramatically increase on-time performance under FRA's proposed metric at the stations used by the great majority of Amtrak's passengers. Unfortunately, to date, Amtrak has not accepted that proposal. I ask that you reach out to your team and encourage them to reconsider CN's proposed schedule adjustments so that *Illini/Saluki* trains can reliably achieve high on time performance.

CN is dedicated to providing Amtrak's trains with the highest priority of all trains that operate on CN's network in the United States. As you know, CN regularly delays its freight trains carrying cargo for the nation's economy in order to minimize delays to Amtrak passengers. In 2019, CN's dispatchers delayed CN's freight trains for Amtrak passenger trains an average of more than 35 times per day. As a result, direct delays to CN trains due to Amtrak in 2019 totaled approximately 19.9 hours of delay per day, which is over 8 times more delay than the delays reported by Amtrak due to CN's trains.

Thank you again for your letter. We look forward to working together toward a successful future.

Sincerely,



Jean-Jacques Ruest
President and Chief Executive Officer

NATIONAL RAILROAD PASSENGER CORPORATION

1 Massachusetts Avenue, NW, Washington, DC 20001
Tel 202.906.3963 Fax 202.906.2850

William J. Flynn
President and Chief Executive Officer



November 3, 2020

Mr. Jean-Jacques Ruest
President and Chief Executive Officer
Canadian National Railway Company
Rue de la Gauchetière Ouest
Montreal, Quebec H3B 2M9 Canada

Re: Illini/Saluki Schedule Proposals

Dear J.J.:

Thank you for your letter of October 16 and for your commitment to Amtrak service. We appreciate your support and wish you, your family, and the entire CN team well through this continuing health crisis.

During our conversation in April, we agreed that the safe operation of the *Illini/Saluki* is of the utmost importance to both Amtrak and CN. We appreciate the continued cooperation of our companies, together with the Illinois Department of Transportation, Federal Railroad Administration, and others, to identify and evaluate potential solutions to mitigate the risk of loss of shunt incidents, including the establishment of a new test track to analyze the viability of electrical and mechanical shunt enhancement devices.

I know our teams remain in close communication and focused on expeditiously progressing these efforts. CN also previously suggested that Amtrak operate double-level Superliner equipment on the *Illini/Saluki*. In October, Superliner equipment became the standard consist for the service.

Regarding the *Illini/Saluki* schedule, it is important to recognize that the *majority of customers are arriving at their destination on time today*. Even while still operating with single-level trains which are subject to the speed restrictions, customer on-time performance (OTP) reached 80 percent in August. Nevertheless, we made the following proposal as a compromise: (1) redistribute recovery time now to better align the schedules with the proposed customer OTP metric, which we expect would immediately increase customer OTP to 90 percent or more, and (2) lengthen the schedule by ten minutes in the future based on an objective metric agreed upon in advance.

Redistributing some of the 36 to 40 minutes of recovery time in each schedule, especially when combined with the 12 minutes saved by the use of Superliner equipment, would result in an immediate and measurable improvement in customer OTP. The addition of ten minutes to the schedule in the future, based on an objective metric that Amtrak's representatives invited CN to propose earlier this summer, should ensure these improvements can be sustained when circumstances change.

Mr. Jean-Jacques Ruest

November 3, 2020

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CN's suggestion to add as much as 52 minutes to the schedule would not only substantially increase the costs borne by the State of Illinois and likely decimate customer demand, but also create inefficiencies for CN's own operation as Amtrak trains arrive early at stations and wait to depart on schedule.

Therefore, we ask you to reconsider our compromise proposal, which we believe is supported by the data and addresses both CN's and Amtrak's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Flynn", with a long, sweeping horizontal line extending to the right.

William J. Flynn

President & Chief Executive Officer

cc: Stephen Gardner
Dennis Newman
Scot Naparstek

Attachment 2

Current Schedule Skeleton - City of New Orleans/Train 58

RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust	Dwell Minutes	Arrive	Depart	Station
AMT	0.0	T,E,F,A,I,W,G						1:45 PM	New Orleans, LA CT
CNIC	3.7		10				1:55 PM	1:55 PM	XSU - Southport Jct
CNIC	53.3		47			3	2:42 PM	2:45 PM	Hammond, LA
CNIC	105.4		45			2	3:30 PM	3:32 PM	F McComb, MS
CNIC	129.2		22			2	3:54 PM	3:56 PM	F Brookhaven, MS
CNIC	149.8		19			2	4:15 PM	4:17 PM	F Hazlehurst, MS
CNIC	183.3	e	42	18	11	16	5:28 PM	5:44 PM	Jackson, MS
CNIC	227.7		54	2		2	6:40 PM	6:42 PM	F Yazoo City, MS
CNIC	280.2	t	48	2		5	7:32 PM	7:37 PM	Greenwood, MS
CNIC	336.5		52			2	8:29 PM	8:31 PM	F Marks, MS
CNIC	405.4	E,e	76	28	5	20	10:20 PM	10:40 PM	Memphis, TN
CNIC	491.6		98	2		2	12:20 AM	12:22 AM	F Newbern-Dyersburg, TN
CNIC	527.4		37	3		2	1:02 AM	1:04 AM	F Fulton, KY
CNIC	624.9	T,E	104	23		5	3:11 AM	3:16 AM	Carbondale, IL
CNIC	680.6		52			2	4:08 AM	4:10 AM	F Centralia, IL
CNIC	733.8		45	1		1	4:56 AM	4:57 AM	F Elfringham, IL
CNIC	780.6		23	1		2	5:21 AM	5:23 AM	F Mattoon, IL (Charleston)
CNIC	805.2		37	5		5	6:05 AM	6:10 AM	Champaign-Urbana, IL
CNIC	877.1		59	2		2	7:11 AM	7:13 AM	F Kankakee, IL
CNIC	909.5		27	1		3	7:41 AM	7:44 AM	Homewood, IL
AMT	931.6		30	39	15		9:08 AM	9:08 AM	XCS - Clark St.
CT	932.3		16				9:24 AM	9:24 AM	X9R - Roosevelt Rd.
AMT	933.8	t,e	7		-16		9:15 AM		Chicago, IL CT
				Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
				NOL-XSU	19	0	0	0	19
				XSU-MEM	405	50	16	54	525
				MEM-XCS	512	77	15	24	628
				XCS-CHI	23	0	-16	0	7
				XSU-XCS	917	127	31	78	1153
				NOL-CHI	950	127	15	78	1170

Proposed Schedule Skeleton - City of New Orleans/Train 58

RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust	Dwell Minutes	Arrive	Depart	Station
AMT	0.0	T,E,F,A,I,W,G						1:45 PM	New Orleans, LA CT
CNIC	3.7		11				1:56 PM	1:56 PM	XSU - Southport Jct
CNIC	53.3		51	5	5	3	2:57 PM	3:00 PM	Hammond, LA
CNIC	105.4		45			2	3:47 PM	3:49 PM	F McComb, MS
CNIC	129.2		21	5		2	4:15 PM	4:17 PM	F Brookhaven, MS
CNIC	149.8		18	3	2	2	4:40 PM	4:42 PM	F Hazlehurst, MS
CNIC	183.3	e	33	5	10	16	5:30 PM	5:46 PM	Jackson, MS
CNIC	227.7		52	2		2	6:40 PM	6:42 PM	F Yazoo City, MS
CNIC	280.2	t	49	2	2	5	7:35 PM	7:40 PM	Greenwood, MS
CNIC	336.5		53			2	8:33 PM	8:35 PM	F Marks, MS
CNIC	405.4	E,e	79	30	2	20	10:26 PM	10:46 PM	Memphis, TN
CNIC	491.6		107	2		2	12:35 AM	12:37 AM	F Newbern-Dyersburg, TN
CNIC	527.4		34	8	2	2	1:21 AM	1:23 AM	F Fulton, KY
CNIC	624.9	T,E	109	18		5	3:30 AM	3:35 AM	Carbondale, IL
CNIC	680.6		52		2	2	4:29 AM	4:31 AM	F Centralia, IL
CNIC	733.8		45	0		1	5:25 AM	5:26 AM	F Elfringham, IL
CNIC	780.6		25	0	2	2	5:58 AM	6:00 AM	F Mattoon, IL (Charleston)
CNIC	805.2		41	5		5	6:46 AM	6:51 AM	Champaign-Urbana, IL
CNIC	877.1		62	4	2	2	8:00 AM	8:02 AM	F Kankakee, IL
CNIC	909.5		29	10		3	8:41 AM	8:44 AM	Homewood, IL
AMT	931.6		30	17			9:31 AM	9:31 AM	XCS - Clark St.
CT	932.3		28				9:59 AM	9:59 AM	X9R - Roosevelt Rd.
AMT	933.8	t,e	2		-16		9:45 AM		Chicago, IL CT
				Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
				NOL-XSU	11	0	0	0	11
				XSU-MEM	401	52	23	54	530
				MEM-XCS	538	75	8	24	645
				XCS-CHI	30	0	-16	0	14
				XSU-XCS	939	127	31	78	1175
				NOL-CHI	960	127	15	78	1200

Difference

	Recovery Minutes	Misc. Adjust	Dwell Minutes	Arrive	Depart	Station
1	0	0	0	1	0	New Orleans, LA CT
4	5	5	0	15	15	XSU - Southport Jct
0	0	2	0	17	17	Hammond, LA
-1	5	0	0	21	21	F McComb, MS
-1	3	2	0	25	25	F Brookhaven, MS
-9	-13	-1	0	2	2	F Hazlehurst, MS
-2	0	0	0	0	0	Jackson, MS
1	0	2	0	3	3	F Yazoo City, MS
1	0	0	0	4	4	Greenwood, MS
3	2	-3	0	6	6	F Marks, MS
9	0	0	0	15	15	Memphis, TN
-3	5	2	0	19	19	F Newbern-Dyersburg, TN
5	-5	0	0	19	19	F Fulton, KY
0	0	2	0	21	21	Carbondale, IL
4	4	0	0	29	29	F Centralia, IL
2	4	2	0	37	37	F Elfringham, IL
4	0	0	0	41	41	F Mattoon, IL (Charleston)
3	3	2	0	49	49	Champaign-Urbana, IL
2	9	0	0	60	60	F Kankakee, IL
0	-22	-15	0	23	23	Homewood, IL
12	0	0	0	35	35	XCS - Clark St.
-5	0	0	0	36	36	X9R - Roosevelt Rd
					0	Chicago, IL CT
	Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	Percent Change
NOL-XSU	1	0	0	0	1	10.0%
XSU-MEM	-4	2	7	0	6	1.0%
MEM-XCS	26	-2	-7	0	17	2.7%
XCS-CHI	7	0	0	0	7	100.0%
XSU-XCS	22	0	0	0	22	1.9%
NOL-CHI	30	0	0	0	30	2.6%

Current Schedule Skeleton - City of New Orleans/Train 59

RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0	L,F,A,I,W,G,M						8:05 PM	Chicago, IL
CT	0.7		2				8:07 PM	8:07 PM	XSR-Roosevelt Rd.
CNIC	2.2		15				8:22 PM	8:22 PM	XCS - Clark St
CNIC	24.3		28	1		3	8:51 PM	8:54 PM	Homewood, IL
CNIC	56.7		27			2	9:21 PM	9:23 PM	F Kankakee, IL
CNIC	128.6		63	3		5	10:29 PM	10:34 PM	Champaign-Urbana, IL
CNIC	173.2		37			2	11:11 PM	11:13 PM	F Mattoon, IL
CNIC	200.0		23			1	11:36 PM	11:37 PM	F Effingham, IL
CNIC	253.2		44	2		2	12:23 AM	12:25 AM	F Centralia, IL
CNIC	308.9	T,E	51	5		5	1:21 AM	1:26 AM	Carbondale, IL
CNIC	406.4	E,e,M	102	4		2	3:12 AM	3:14 AM	F Fulton, KY
CNIC	442.2		38	2		2	3:54 AM	3:56 AM	F Newbern-Dyersburg, TN
CNIC	528.4		95	56		13	6:27 AM	6:40 AM	Memphis, TN
CNIC	587.3		74		5	2	7:59 AM	8:01 AM	F Marks, MS
CNIC	653.6		51	3		5	8:55 AM	9:00 AM	Greenwood, MS
CNIC	706.1		47	2		2	9:49 AM	9:51 AM	F Yazoo City, MS
CNIC	750.5	a	53	18	9	9	11:11 AM	11:20 AM	Jackson, MS
CNIC	784.0		32	1		2	11:53 AM	11:55 AM	F Hazlehurst, MS
CNIC	804.6		18	1		2	12:14 PM	12:16 PM	F Brookhaven, MS
CNIC	828.4		20	2		2	12:38 PM	12:40 PM	F McComb, MS
CNIC	880.5		42	3		3	1:25 PM	1:28 PM	Hammond, LA
CNIC	930.1		50	48	22		3:28 PM	3:28 PM	XSU - Southport Jct
AMT	933.8		26		-7		3:47 PM		New Orleans, LA
				Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
CHI-XCS				17	0	0	0	17	
XCS-MEM				508	73	0	37	618	
MEM-XSU				387	78	36	27	528	
XSU-NOL				26	0	-7	0	19	
XCS-XSU				895	151	36	64	1146	
NOL-CHI				938	151	29	64	1162	

Proposed Schedule Skeleton - City of New Orleans/Train 59

RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0	L,F,A,I,W,G,M						8:05 PM	Chicago, IL
CT	0.7		2				8:07 PM	8:07 PM	XSR-Roosevelt Rd.
CNIC	2.2		12				8:19 PM	8:19 PM	XCS - Clark St
CNIC	24.3		30	5		3	8:54 PM	8:57 PM	Homewood, IL
CNIC	56.7		29	2		2	9:28 PM	9:30 PM	F Kankakee, IL
CNIC	128.6		62	12	3	5	10:47 PM	10:52 PM	Champaign-Urbana, IL
CNIC	173.2		41	2		2	11:35 PM	11:37 PM	F Mattoon, IL
CNIC	200.0		25	5		1	12:07 AM	12:08 AM	F Effingham, IL
CNIC	253.2		50			2	12:58 AM	1:00 AM	F Centralia, IL
CNIC	308.9	T,E	53	6	2	5	2:01 AM	2:06 AM	Carbondale, IL
CNIC	406.4	E,e,M	109	7		2	4:02 AM	4:04 AM	F Fulton, KY
CNIC	442.2		34	10	3	2	4:51 AM	4:53 AM	F Newbern-Dyersburg, TN
CNIC	528.4		107	16		13	6:56 AM	7:09 AM	Memphis, TN
CNIC	587.3		75	5	5	2	8:38 AM	8:40 AM	F Marks, MS
CNIC	653.6		54	10	6	5	9:50 AM	9:55 AM	Greenwood, MS
CNIC	706.1		50	5		2	10:50 AM	10:52 AM	F Yazoo City, MS
CNIC	750.5	a	53	15	5	9	12:05 PM	12:14 PM	Jackson, MS
CNIC	784.0		33	1		2	12:48 PM	12:50 PM	F Hazlehurst, MS
CNIC	804.6		19	1	5	2	1:15 PM	1:17 PM	F Brookhaven, MS
CNIC	828.4		22	2		2	1:41 PM	1:43 PM	F McComb, MS
CNIC	880.5		45	7		3	2:35 PM	2:38 PM	Hammond, LA
CNIC	930.1		51	40	7		4:16 PM	4:16 PM	XSU - Southport Jct
AMT	933.8		18		-7		4:27 PM		New Orleans, LA
				Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
CHI-XCS				14	0	0	0	14	
XCS-MEM				540	65	8	37	650	
MEM-XSU				406	86	28	27	547	
XSU-NOL				18	0	-7	0	11	
XCS-XSU				946	151	36	64	1197	
NOL-CHI				978	151	29	64	1222	

Difference

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
0	0	0	0	0	0	0 Chicago, IL
-3	0	0	0	-3	0	0 XSR-Roosevelt Rd.
2	4	0	0	3	3	3 XCS - Clark St
2	2	0	0	7	7	3 Homewood, IL
-1	9	3	0	18	18	7 F Kankakee, IL
4	2	0	0	24	24	18 Champaign-Urbana, IL
2	5	0	0	31	31	24 F Mattoon, IL
6	-2	0	0	35	35	31 F Effingham, IL
2	1	2	0	40	40	35 F Centralia, IL
7	3	0	0	50	50	40 Carbondale, IL
-4	8	3	0	57	57	50 F Fulton, KY
12	-40	0	0	29	29	57 F Newbern-Dyersburg, TN
5	5	0	0	39	39	29 Memphis, TN
3	7	6	0	55	55	39 F Marks, MS
3	3	0	0	61	61	55 Greenwood, MS
0	-3	-4	0	54	54	61 F Yazoo City, MS
1	0	0	0	55	55	54 Jackson, MS
1	0	5	0	61	61	55 F Hazlehurst, MS
2	0	0	0	63	63	61 F Brookhaven, MS
3	4	0	0	70	70	63 F McComb, MS
1	-8	-15	0	48	48	70 Hammond, LA
-8	0	0	0	46	46	48 XSU - Southport Jct
				Total Pure Run	Total Recovery Minutes	Total Misc. Adj.
CHI-XCS				-3	0	0
XCS-MEM				32	-8	8
MEM-XSU				19	8	-8
XSU-NOL				-8	0	0
XCS-XSU				51	0	0
NOL-CHI				40	0	0
				Total Dwell	Total Schedule Time	Percent Change
CHI-XCS				-3	-3	-17.6%
XCS-MEM				32	32	5.2%
MEM-XSU				19	19	3.6%
XSU-NOL				-8	-8	-42.1%
XCS-XSU				51	51	4.5%
NOL-CHI				40	40	3.4%

Attachment 3

Illini/Saluki Train 390

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						7:30 AM	Carbondale, IL CT
CNIC	20.3	19	0		1	7:49 AM	7:50 AM	Du Quoin, IL
CNIC	55.7	31	0		1	8:21 AM	8:22 AM	Centralia, IL
CNIC	108.9	48	0		1	9:10 AM	9:11 AM	Effingham, IL
CNIC	135.7	26	0		1	9:37 AM	9:38 AM	Mattoon, IL (Charleston)
CNIC		31		0		10:09 AM	10:09 AM	XTI - <i>Tolono</i>
CNIC	180.3	8	3		3	10:20 AM	10:23 AM	Champaign-Urbana, IL
CNIC	194.3	14	2		1	10:39 AM	10:40 AM	Rantoul, IL
CNIC	227.0	28	2		1	11:10 AM	11:11 AM	Gilman, IL
CNIC	252.2	22	7		1	11:40 AM	11:41 AM	Kankakee, IL
CNIC	284.6	28	0		2	12:09 PM	12:11 PM	Homewood, IL
AMT	306.7	27	7			12:45 PM	12:45 PM	XCS - <i>16th Street</i>
AMT	308.9	15	0	0		1:00 PM		Chicago, IL CT
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		297	21	0	12	330		

Proposed Standard Schedules

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						7:30 AM	Carbondale, IL CT
CNIC	20.3	19	0		1	7:49 AM	7:50 AM	Du Quoin, IL
CNIC	55.7	31	0		1	8:21 AM	8:22 AM	Centralia, IL
CNIC	108.9	48	0		1	9:10 AM	9:11 AM	Effingham, IL
CNIC	135.7	26	4		1	9:41 AM	9:42 AM	Mattoon, IL (Charleston)
CNIC		31				10:13 AM	10:13 AM	XTI - <i>Tolono</i>
CNIC	180.3	8	10		3	10:31 AM	10:34 AM	Champaign-Urbana, IL
CNIC	194.3	14	0		1	10:48 AM	10:49 AM	Rantoul, IL
CNIC	227.0	28	0		1	11:17 AM	11:18 AM	Gilman, IL
CNIC	252.2	22	5		1	11:45 AM	11:46 AM	Kankakee, IL
CNIC	284.6	28	6		2	12:20 PM	12:22 PM	Homewood, IL
AMT	306.7	27	22			1:11 PM	1:11 PM	XCS - <i>16th Street</i>
AMT	308.9	15	0			1:26 PM		Chicago, IL CT
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		297	47	0	12	356		

Difference between temporary and standard schedules

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
0	0	0	0	0	0	0 Carbondale, IL CT
0	0	0	0	0	0	0 Du Quoin, IL
0	0	0	0	0	0	0 Centralia, IL
0	0	0	0	0	0	0 Effingham, IL
0	4	0	0	4	4	4 Mattoon, IL (Charleston)
0	0	0	0	0	4	4 XTI - <i>Tolono</i>
0	7	0	0	11	11	11 Champaign-Urbana, IL
0	-2	0	0	9	9	9 Rantoul, IL
0	-2	0	0	7	7	7 Gilman, IL
0	-2	0	0	5	5	5 Kankakee, IL
0	6	0	0	11	11	11 Homewood, IL
0	15	0	0	26	26	26 XCS - <i>16th Street</i>
0	0	0	0	26	26	0 Chicago, IL CT
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
0	26	0	0	26		

Illini/Saluki Train 391

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						8:15 AM	Chicago, IL
CNIC	2.2	11				8:26 AM	8:26 AM	XCS - 16th Street
CNIC	24.3	27	0		2	8:53 AM	8:55 AM	Homewood, IL
CNIC	56.7	28	5		1	9:28 AM	9:29 AM	Kankakee, IL
CNIC	81.9	22	3		1	9:54 AM	9:55 AM	Gilman, IL
CNIC	114.6	28	0		1	10:23 AM	10:24 AM	Rantoul, IL
CNIC	128.6	13	15		3	10:52 AM	10:55 AM	Champaign-Urbana, IL
CNIC		10		0		11:05 AM	11:05 AM	XTI - Tolono
CNIC	173.2	29	0		1	11:34 AM	11:35 AM	Mattoon, IL
CNIC	200.0	26	0		1	12:01 PM	12:02 PM	Effingham, IL
CNIC	253.2	48	0		1	12:50 PM	12:51 PM	Centralia, IL
CNIC	288.6	32	0		1	1:23 PM	1:24 PM	Du Quoin, IL
CNIC	308.9	18	3	0		1:45 PM		Carbondale, IL
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		292	26	0	12	330		

Proposed Standard Schedules

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						8:15 AM	Chicago, IL
CNIC	2.2	15				8:30 AM	8:30 AM	XCS - 16th Street
CNIC	24.3	27	0		2	8:57 AM	8:59 AM	Homewood, IL
CNIC	56.7	28	5		1	9:32 AM	9:33 AM	Kankakee, IL
CNIC	81.9	22	0		1	9:55 AM	9:56 AM	Gilman, IL
CNIC	114.6	28	2		1	10:26 AM	10:27 AM	Rantoul, IL
CNIC	128.6	14	20		3	11:01 AM	11:04 AM	Champaign-Urbana, IL
CNIC		8				11:12 AM	11:12 AM	XTI - Tolono
CNIC	173.2	31	8		1	11:51 AM	11:52 AM	Mattoon, IL
CNIC	200.0	26	5		1	12:23 PM	12:24 PM	Effingham, IL
CNIC	253.2	48	0		1	1:12 PM	1:13 PM	Centralia, IL
CNIC	288.6	31	0		1	1:44 PM	1:45 PM	Du Quoin, IL
CNIC	308.9	19	7			2:11 PM		Carbondale, IL
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		297	47	0	12	356		

Difference between temporary and standard schedules

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
					0	Chicago, IL
4	0	0	0	4		XCS - 16th Street
0	0	0	0	4		Homewood, IL
0	0	0	0	4		Kankakee, IL
0	-3	0	0	1		Gilman, IL
0	2	0	0	3		Rantoul, IL
1	5	0	0	9		Champaign-Urbana, IL
-2	0	0	0	7		XTI - Tolono
2	8	0	0	17		Mattoon, IL
0	5	0	0	22		Effingham, IL
0	0	0	0	22		Centralia, IL
-1	0	0	0	21		Du Quoin, IL
1	4	0	0	26		Carbondale, IL
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time
		5	21	0	0	26

Illini/Saluki Train 392

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						4:15 PM	Carbondale, IL CT
CNIC	20.3	19	0		1	4:34 PM	4:35 PM	Du Quoin, IL
CNIC	55.7	31	0		1	5:06 PM	5:07 PM	Centralia, IL
CNIC	108.9	48	0		1	5:55 PM	5:56 PM	Effingham, IL
CNIC	135.7	26	0		1	6:22 PM	6:23 PM	Mattoon, IL (Charleston)
CNIC		31		0		6:54 PM	6:54 PM	XTI - Tolono
CNIC	180.3	8	6		3	7:08 PM	7:11 PM	Champaign-Urbana, IL
CNIC	194.3	14	0		1	7:25 PM	7:26 PM	Rantoul, IL
CNIC	227.0	28	0		1	7:54 PM	7:55 PM	Gilman, IL
CNIC	252.2	22	0		1	8:17 PM	8:18 PM	Kankakee, IL
CNIC	284.6	28	15		2	9:01 PM	9:03 PM	Homewood, IL
AMT	306.7	27	0			9:30 PM	9:30 PM	XCS - 16th Street
AMT	308.9	15	0	0		9:45 PM		Chicago, IL CT
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			297	21	0	12	330	

Proposed Standard Schedules

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						4:15 PM	Carbondale, IL CT
CNIC	20.3	19	0		1	4:34 PM	4:35 PM	Du Quoin, IL
CNIC	55.7	31	4		1	5:10 PM	5:11 PM	Centralia, IL
CNIC	108.9	48	0		1	5:59 PM	6:00 PM	Effingham, IL
CNIC	135.7	26	0		1	6:26 PM	6:27 PM	Mattoon, IL (Charleston)
CNIC		31				6:58 PM	6:58 PM	XTI - Tolono
CNIC	180.3	8	10		3	7:16 PM	7:19 PM	Champaign-Urbana, IL
CNIC	194.3	14	0		1	7:33 PM	7:34 PM	Rantoul, IL
CNIC	227.0	28	10		1	8:12 PM	8:13 PM	Gilman, IL
CNIC	252.2	22	0		1	8:35 PM	8:36 PM	Kankakee, IL
CNIC	284.6	28	10		2	9:14 PM	9:16 PM	Homewood, IL
AMT	306.7	27	27			10:10 PM	10:10 PM	XCS - 16th Street
AMT	308.9	15	0			10:25 PM		Chicago, IL CT
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			297	61	0	12	370	

Difference between temporary and standard schedules

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
0	0	0	0	0	0	Carbondale, IL CT
0	4	0	0	4	4	Du Quoin, IL
0	0	0	0	4	4	Centralia, IL
0	0	0	0	4	4	Effingham, IL
0	0	0	0	4	4	Mattoon, IL (Charleston)
0	0	0	0	4	4	XTI - Tolono
0	4	0	0	8	8	Champaign-Urbana, IL
0	0	0	0	8	8	Rantoul, IL
0	10	0	0	18	18	Gilman, IL
0	0	0	0	18	18	Kankakee, IL
0	-5	0	0	13	13	Homewood, IL
0	27	0	0	40	40	XCS - 16th Street
0	0	0	0	40	40	Chicago, IL CT
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
0	40	0	0	40		

Illini/Saluki Train 393

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						4:05 PM	Chicago, IL
CNIC	2.2	11				4:16 PM	4:16 PM	XCS - 16th Street
CNIC	24.3	27	0		2	4:43 PM	4:45 PM	Homewood, IL
CNIC	56.7	28	5		1	5:18 PM	5:19 PM	Kankakee, IL
CNIC	81.9	22	3		1	5:44 PM	5:45 PM	Gilman, IL
CNIC	114.6	28	0		1	6:13 PM	6:14 PM	Rantoul, IL
CNIC	128.6	13	15		3	6:42 PM	6:45 PM	Champaign-Urbana, IL
CNIC		10		0		6:55 PM	6:55 PM	XTI - Tolono
CNIC	173.2	29	0		1	7:24 PM	7:25 PM	Mattoon, IL
CNIC	200.0	26	0		1	7:51 PM	7:52 PM	Effingham, IL
CNIC	253.2	48	0		1	8:40 PM	8:41 PM	Centralia, IL
CNIC	288.6	32	0		1	9:13 PM	9:14 PM	Du Quoin, IL
CNIC	308.9	18	3	0		9:35 PM		Carbondale, IL
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			292	26	0	12	330	

Proposed Standard Schedules

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						4:05 PM	Chicago, IL
CNIC	2.2	15				4:20 PM	4:20 PM	XCS - 16th Street
CNIC	24.3	27	0		2	4:47 PM	4:49 PM	Homewood, IL
CNIC	56.7	28	5		1	5:22 PM	5:23 PM	Kankakee, IL
CNIC	81.9	22	0		1	5:45 PM	5:46 PM	Gilman, IL
CNIC	114.6	28	2		1	6:16 PM	6:17 PM	Rantoul, IL
CNIC	128.6	14	15		3	6:46 PM	6:49 PM	Champaign-Urbana, IL
CNIC		8				6:57 PM	6:57 PM	XTI - Tolono
CNIC	173.2	31	10		1	7:38 PM	7:39 PM	Mattoon, IL
CNIC	200.0	26	0		1	8:05 PM	8:06 PM	Effingham, IL
CNIC	253.2	48	0		1	8:54 PM	8:55 PM	Centralia, IL
CNIC	288.6	31	4		1	9:30 PM	9:31 PM	Du Quoin, IL
CNIC	308.9	19	0			9:50 PM		Carbondale, IL
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			297	36	0	12	345	

Difference between temporary and standard schedules

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
						0 Chicago, IL
4	0	0	0	4		4 XCS - 16th Street
0	0	0	0	4		4 Homewood, IL
0	0	0	0	4		4 Kankakee, IL
0	-3	0	0	1		1 Gilman, IL
0	2	0	0	3		3 Rantoul, IL
1	0	0	0	4		4 Champaign-Urbana, IL
-2	0	0	0	2		2 XTI - Tolono
2	10	0	0	14		14 Mattoon, IL
0	0	0	0	14		14 Effingham, IL
0	0	0	0	14		14 Centralia, IL
-1	4	0	0	17		17 Du Quoin, IL
1	-3	0	0	15		0 Carbondale, IL
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
5	10	0	0	15		

Attachment 4

Illini/Saluki Train 390

Current Schedule

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						7:30 AM	Carbondale, IL CT
CNIC	20.3	20	0		1	7:50 AM	7:51 AM	Du Quoin, IL
CNIC	55.7	31	0		1	8:22 AM	8:23 AM	Centralia, IL
CNIC	108.9	43	0		1	9:06 AM	9:07 AM	Effingham, IL
CNIC	135.7	23	0		1	9:30 AM	9:31 AM	Mattoon, IL (Charleston)
CNIC		27		5		10:03 AM	10:03 AM	XTI - Tolono
CNIC	180.3	8	0		3	10:11 AM	10:14 AM	Champaign-Urbana, IL
CNIC	194.3	12	0		1	10:26 AM	10:27 AM	Rantoul, IL
CNIC	227.0	25	0		1	10:52 AM	10:53 AM	Gilman, IL
CNIC	252.2	21	0		1	11:14 AM	11:15 AM	Kankakee, IL
CNIC	284.6	27	0		2	11:42 AM	11:44 AM	Homewood, IL
AMT	306.7	28	26			12:38 PM	12:38 PM	XCS - 16th Street
AMT	308.9	17	0	5		1:00 PM		Chicago, IL CT
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		282	26	10	12	330		

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						7:30 AM	Carbondale, IL CT
CNIC	20.3	19	0		1	7:49 AM	7:50 AM	Du Quoin, IL
CNIC	55.7	31	0		1	8:21 AM	8:22 AM	Centralia, IL
CNIC	108.9	48	0		1	9:10 AM	9:11 AM	Effingham, IL
CNIC	135.7	26	0		1	9:37 AM	9:38 AM	Mattoon, IL (Charleston)
CNIC		31		0		10:09 AM	10:09 AM	XTI - Tolono
CNIC	180.3	8	3		3	10:20 AM	10:23 AM	Champaign-Urbana, IL
CNIC	194.3	14	2		1	10:39 AM	10:40 AM	Rantoul, IL
CNIC	227.0	28	2		1	11:10 AM	11:11 AM	Gilman, IL
CNIC	252.2	22	7		1	11:40 AM	11:41 AM	Kankakee, IL
CNIC	284.6	28	0		2	12:09 PM	12:11 PM	Homewood, IL
AMT	306.7	27	7			12:45 PM	12:45 PM	XCS - 16th Street
AMT	308.9	15	0	0		1:00 PM		Chicago, IL CT
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		297	21	0	12	330		

Difference between current and temporary proposal

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
					0	Carbondale, IL CT
-1	0	0	0	-1	-1	Du Quoin, IL
0	0	0	0	-1	-1	Centralia, IL
5	0	0	0	4	4	Effingham, IL
3	0	0	0	7	7	Mattoon, IL (Charleston)
4	0	-5	0	6	6	XTI - Tolono
0	3	0	0	9	9	Champaign-Urbana, IL
2	2	0	0	13	13	Rantoul, IL
3	2	0	0	18	18	Gilman, IL
1	7	0	0	26	26	Kankakee, IL
1	0	0	0	27	27	Homewood, IL
-1	-19	0	0	7	7	XCS - 16th Street
-2	0	-5	0	0	0	Chicago, IL CT
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
15	-5	-10	0	0		

Illini/Saluki Train 391

Current Schedule

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						8:15 AM	Chicago, IL
CNIC	2.2	13				8:28 AM	8:28 AM	XCS - 16th Street
CNIC	24.3	26	0		2	8:54 AM	8:56 AM	Homewood, IL
CNIC	56.7	25	0		1	9:21 AM	9:22 AM	Kankakee, IL
CNIC	81.9	21	0		1	9:43 AM	9:44 AM	Gilman, IL
CNIC	114.6	25	0		1	10:09 AM	10:10 AM	Rantoul, IL
CNIC	128.6	12	0		3	10:22 AM	10:25 AM	Champaign-Urbana, IL
CNIC		10		5		10:40 AM	10:40 AM	XTI - Tolono
CNIC	173.2	24	0		1	11:04 AM	11:05 AM	Mattoon, IL
CNIC	200.0	23	0		1	11:28 AM	11:29 AM	Effingham, IL
CNIC	253.2	46	0		1	12:15 PM	12:16 PM	Centralia, IL
CNIC	288.6	32	0		1	12:48 PM	12:49 PM	Du Quoin, IL
CNIC	308.9	21	26	9		1:45 PM		Carbondale, IL
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			278	26	14	12	330	

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						8:15 AM	Chicago, IL
CNIC	2.2	11				8:26 AM	8:26 AM	XCS - 16th Street
CNIC	24.3	27	0		2	8:53 AM	8:55 AM	Homewood, IL
CNIC	56.7	28	5		1	9:28 AM	9:29 AM	Kankakee, IL
CNIC	81.9	22	3		1	9:54 AM	9:55 AM	Gilman, IL
CNIC	114.6	28	0		1	10:23 AM	10:24 AM	Rantoul, IL
CNIC	128.6	13	15		3	10:52 AM	10:55 AM	Champaign-Urbana, IL
CNIC		10		0		11:05 AM	11:05 AM	XTI - Tolono
CNIC	173.2	29	0		1	11:34 AM	11:35 AM	Mattoon, IL
CNIC	200.0	26	0		1	12:01 PM	12:02 PM	Effingham, IL
CNIC	253.2	48	0		1	12:50 PM	12:51 PM	Centralia, IL
CNIC	288.6	32	0		1	1:23 PM	1:24 PM	Du Quoin, IL
CNIC	308.9	18	3	0		1:45 PM		Carbondale, IL
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			292	26	0	12	330	

Difference between current and temporary proposal

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
						0 Chicago, IL
-2	0	0	0	-2		-2 XCS - 16th Street
1	0	0	0	-1		-1 Homewood, IL
3	5	0	0	7		7 Kankakee, IL
1	3	0	0	11		11 Gilman, IL
3	0	0	0	14		14 Rantoul, IL
1	15	0	0	30		30 Champaign-Urbana, IL
0	0	-5	0	25		25 XTI - Tolono
5	0	0	0	30		30 Mattoon, IL
3	0	0	0	33		33 Effingham, IL
2	0	0	0	35		35 Centralia, IL
0	0	0	0	35		35 Du Quoin, IL
-3	-23	-9	0	0		0 Carbondale, IL
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
14	0	-14	0	0		

Illini/Saluki Train 392

Current Schedule

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						4:15 PM	Carbondale, IL CT
CNIC	20.3	20	0		1	4:35 PM	4:36 PM	Du Quoin, IL
CNIC	55.7	31	0		1	5:07 PM	5:08 PM	Centralia, IL
CNIC	108.9	43	0		1	5:51 PM	5:52 PM	Effingham, IL
CNIC	135.7	23	0		1	6:15 PM	6:16 PM	Mattoon, IL (Charleston)
CNIC		27		5		6:48 PM	6:48 PM	XTI - Tolono
CNIC	180.3	8	0		3	6:56 PM	6:59 PM	Champaign-Urbana, IL
CNIC	194.3	12	0		1	7:11 PM	7:12 PM	Rantoul, IL
CNIC	227.0	25	0		1	7:37 PM	7:38 PM	Gilman, IL
CNIC	252.2	21	0		1	7:59 PM	8:00 PM	Kankakee, IL
CNIC	284.6	27	0		2	8:27 PM	8:29 PM	Homewood, IL
AMT	306.7	28	26			9:23 PM	9:23 PM	XCS - 16th Street
AMT	308.9	17	0	5		9:45 PM		Chicago, IL CT
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		282	26	10	12	330		

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
CNIC	0.0						4:15 PM	Carbondale, IL CT
CNIC	20.3	19	0		1	4:34 PM	4:35 PM	Du Quoin, IL
CNIC	55.7	31	0		1	5:06 PM	5:07 PM	Centralia, IL
CNIC	108.9	48	0		1	5:55 PM	5:56 PM	Effingham, IL
CNIC	135.7	26	0		1	6:22 PM	6:23 PM	Mattoon, IL (Charleston)
CNIC		31		0		6:54 PM	6:54 PM	XTI - Tolono
CNIC	180.3	8	6		3	7:08 PM	7:11 PM	Champaign-Urbana, IL
CNIC	194.3	14	0		1	7:25 PM	7:26 PM	Rantoul, IL
CNIC	227.0	28	0		1	7:54 PM	7:55 PM	Gilman, IL
CNIC	252.2	22	0		1	8:17 PM	8:18 PM	Kankakee, IL
CNIC	284.6	28	15		2	9:01 PM	9:03 PM	Homewood, IL
AMT	306.7	27	0			9:30 PM	9:30 PM	XCS - 16th Street
AMT	308.9	15	0	0		9:45 PM		Chicago, IL CT
		Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
		297	21	0	12	330		

Difference between current and temporary proposal

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
					0	Carbondale, IL CT
-1	0	0	0	-1	-1	Du Quoin, IL
0	0	0	0	-1	-1	Centralia, IL
5	0	0	0	4	4	Effingham, IL
3	0	0	0	7	7	Mattoon, IL (Charleston)
4	0	-5	0	6	6	XTI - Tolono
0	6	0	0	12	12	Champaign-Urbana, IL
2	0	0	0	14	14	Rantoul, IL
3	0	0	0	17	17	Gilman, IL
1	0	0	0	18	18	Kankakee, IL
1	15	0	0	34	34	Homewood, IL
-1	-26	0	0	7	7	XCS - 16th Street
-2	0	-5	0	0	0	Chicago, IL CT
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
15	-5	-10	0	0		

Illini/Saluki Train 393

Current Schedule

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						4:05 PM	Chicago, IL
CNIC	2.2	13				4:18 PM	4:18 PM	XCS - 16th Street
CNIC	24.3	26	0		2	4:44 PM	4:46 PM	Homewood, IL
CNIC	56.7	25	0		1	5:11 PM	5:12 PM	Kankakee, IL
CNIC	81.9	21	0		1	5:33 PM	5:34 PM	Gilman, IL
CNIC	114.6	25	0		1	5:59 PM	6:00 PM	Rantoul, IL
CNIC	128.6	12	0		3	6:12 PM	6:15 PM	Champaign-Urbana, IL
CNIC		10		5		6:30 PM	6:30 PM	XTI - Tolono
CNIC	173.2	24	0		1	6:54 PM	6:55 PM	Mattoon, IL
CNIC	200.0	23	0		1	7:18 PM	7:19 PM	Effingham, IL
CNIC	253.2	46	0		1	8:05 PM	8:06 PM	Centralia, IL
CNIC	288.6	32	0		1	8:38 PM	8:39 PM	Du Quoin, IL
CNIC	308.9	21	26	9		9:35 PM		Carbondale, IL
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			278	26	14	12	330	

Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

RR	Mileage	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
AMT	0.0						4:05 PM	Chicago, IL
CNIC	2.2	11				4:16 PM	4:16 PM	XCS - 16th Street
CNIC	24.3	27	0		2	4:43 PM	4:45 PM	Homewood, IL
CNIC	56.7	28	5		1	5:18 PM	5:19 PM	Kankakee, IL
CNIC	81.9	22	3		1	5:44 PM	5:45 PM	Gilman, IL
CNIC	114.6	28	0		1	6:13 PM	6:14 PM	Rantoul, IL
CNIC	128.6	13	15		3	6:42 PM	6:45 PM	Champaign-Urbana, IL
CNIC		10		0		6:55 PM	6:55 PM	XTI - Tolono
CNIC	173.2	29	0		1	7:24 PM	7:25 PM	Mattoon, IL
CNIC	200.0	26	0		1	7:51 PM	7:52 PM	Effingham, IL
CNIC	253.2	48	0		1	8:40 PM	8:41 PM	Centralia, IL
CNIC	288.6	32	0		1	9:13 PM	9:14 PM	Du Quoin, IL
CNIC	308.9	18	3	0		9:35 PM		Carbondale, IL
			Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time	
			292	26	0	12	330	

Difference between current and temporary proposal

PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
						0 Chicago, IL
-2	0	0	0	-2		-2 XCS - 16th Street
1	0	0	0	-1		-1 Homewood, IL
3	5	0	0	7		7 Kankakee, IL
1	3	0	0	11		11 Gilman, IL
3	0	0	0	14		14 Rantoul, IL
1	15	0	0	30		30 Champaign-Urbana, IL
0	0	-5	0	25		25 XTI - Tolono
5	0	0	0	30		30 Mattoon, IL
3	0	0	0	33		33 Effingham, IL
2	0	0	0	35		35 Centralia, IL
0	0	0	0	35		35 Du Quoin, IL
-3	-23	-9	0	0		0 Carbondale, IL
Total Pure Run	Total Recovery Minutes	Total Misc. Adj.	Total Dwell	Total Schedule Time		
14	0	-14	0	0		

Attachment 5

Comparison of Schedule Times for Routes Between 200-400 miles

Service*	Endpoints	Distance (miles)	Average Schedule Time (mins)**	Ratio of Schedule Time to Distance
Illinois Zephyr	Chicago – Quincy	258	262	1.01
Illini/Saluki (current)	Chicago – Carbondale	309	330	1.07
San Joaquin	Bakersfield - Sacramento	282	318	1.13
Illini/Saluki (CN proposal)	Chicago – Carbondale	309	357	1.15
Lincoln	Chicago - St. Louis	284	333	1.17
Heartland Flyer	Oklahoma City - Fort Worth	206	242	1.17
San Joaquin	Bakersfield – Oakland	315	371	1.18
Wolverine	Chicago – Pontiac	304	364	1.20
MO River Runner	St. Louis - Kansas City	283	340	1.20
Blue Water	Chicago - Port Huron	319	388	1.22
Cascades	Seattle – Eugene	311	383	1.23
Ethan Allen	Rutland, VT - New York City	241	337	1.40
Adirondack	Rouses Point - New York City	332	473	1.42
Pacific Surfliner	San Diego - San Luis Obispo	350	521	1.49
Pacific Surfliner	San Diego – Goleta	240	378	1.58
Average (excluding Illini/Saluki)		287	362	1.26

Source: Amtrak's June 2018 System Timetable.

* Each service is comprised of individual trains, each with its own schedule.

** Most services have trains with varying schedule times, requiring the use of an average.

EXHIBIT 10



May 7, 2021

Mr. Michael Matteucci
Regional Director Contracts and Administration
17641 South Ashland Avenue
Homewood, IL 60430-1345

Dear Mike:

This letter responds to your April 7, 2021 letter proposing to add run time to the City of New Orleans and Illini/Saluki schedules, in order to certify these schedules in accordance with the *Metrics and Minimum Standards for Intercity Passenger Rail Service* final rule published by FRA on November 16, 2020 (Final Rule).

Amtrak's recommendation to certify an individual schedule is, consistent with the Final Rule, predicated on the schedule's alignment with the customer OTP metric. With regards to the City of New Orleans, the service has consistently operated at or above 80% customer OTP since September 2019, demonstrating that the schedule is aligned to the customer OTP metric, and its performance repeatedly exceeds the minimum standard. As you recall, time was added to the City of New Orleans schedule just a few years ago. Adding even more time as CN has suggested, would result in unnecessary delay for Amtrak passengers. Amtrak continues to believe the current schedule should be certified, and we again invite CN to do so.

With regards to the Illini/Saluki, in attachment 5 of your letter, you provided a table showing the ratio of scheduled time to distance for several Amtrak routes that are 200-400 miles long. Understandably, each of these routes has unique characteristics that limit the effectiveness of such a comparison. A better and more accurate measure of a route's comparative performance capabilities can be found by comparing the ratio of recovery time or "schedule pad" (Recovery Time) to the agreed-upon Pure Running Time (PRT). In appendix A, we have recreated your table, adding PRT, Recovery Time, dwell time and the percentage of Recovery Time to PRT. Analyzing these same routes on that basis shows that the existing Illini/Saluki schedules have a higher percentage than all but two services. CN's proposed addition of recovery time would create a schedule with a Recovery Time to PRT ratio far higher than any of the other routes listed. We therefore maintain that the current schedules have sufficient total recovery time, but as we have repeatedly recommended, some of this time should be reallocated away from the endpoint to better align the schedule with the customer OTP metric.

Over the past several years, Amtrak and CN representatives have met on numerous occasions to discuss these schedules, without resolution. Amtrak has proposed to reallocate some of the existing recovery time on southbound Illini/Saluki trains (trains #391 and #393) to Champaign, IL. This step would better align these schedules with the customer OTP metric and significantly increase the percentage of

Mr. Michael Matteucci
May 7, 2021
Page 2

passengers that arrive on-time. We again invite CN's agreement to this schedule proposal, which I have attached to this letter.

The Illini/Saluki service has performed well since April 2020, surpassing the 80% customer OTP metric in seven out of the past twelve months. While we believe there is an excellent opportunity to better align the southbound Illini/Saluki schedules with the customer OTP metric and improve the level of service to our customers, based on this recent performance, Amtrak would agree to certify the schedules as they currently exist, if CN is also willing to do so.

Sincerely,



Jim Blair
Sr. Director, Host Railroads
Amtrak

cc: Dennis Newman Amtrak
 Yoel Weiss Amtrak

Appendix A

Comparison of Recovery Time to Pure Running Time for Routes Between 200 – 400 Miles

Service*	Endpoints	Distance (miles)	Average Schedule Time (mins)**	Ratio of Schedule Time to Distance	Pure Running Time (PRT)	Recovery Time / Misc Time	Dwell Time	% of Recovery Time to PRT
Illinois Zephyr	Chicago – Quincy	258	262	1.01	226	26	11	11%
Illini/Saluki (current)	Chicago – Carbondale	309	330	1.07	280	38	12	14%
San Joaquin	Bakersfield - Sacramento	282	318	1.13	266	42	24	16%
Illini/Saluki (CN proposal)	Chicago – Carbondale	309	357	1.15	283	62	12	22%
Lincoln	Chicago - St. Louis	284	333	1.17	335	33	14	10%
Heartland Flyer	Oklahoma City - Fort Worth	206	242	1.17	208	24	10	12%
San Joaquin	Bakersfield – Oakland	315	371	1.18	301	43	35	14%
Wolverine	Chicago – Pontiac	304	364	1.20	305	36	24	12%
MO River Runner	St. Louis - Kansas City	283	340	1.20	300	28	13	9%
Blue Water	Chicago - Port Huron	319	388	1.22	316	44	28	14%
Cascades	Seattle – Eugene	311	383	1.23	315	32	34	10%
Ethan Allen	Rutland, VT - New York City	241	337	1.40	268	31	31	12%
Adirondack	Rouses Point - New York City	332	473	1.42	476	41	126	9%
Pacific Surfliner	San Diego - San Luis Obispo	350	521	1.49	407	56	57	14%
Pacific Surfliner	San Diego – Goleta	240	378	1.58	278	46	56	16%
Average (excluding Illini/Saluki)		287	362	1.26				

Source: Amtrak's June 2018 System Timetable.

* Each service is comprised of individual trains, each with its own schedule.

** Most services have trains with varying schedule times, requiring the use of an average.

Safuki Train 391			Proposed Schedule Skeleton - Safuki Train 391 (Daily)									
Effective 1/12/15 Daily	Days of Operation	Effective Daily	RR AMT	Mileage 0.0	Services Le,FA,WJ	Run Time	Recovery Minutes	Misc. Adjust	Dwell Minutes	Arrive	Depart	Station
8:15 AM	Dp Chicago, IL	CT	8:15 AM	CNC	24.3	27	0		2	8:26 AM	8:15 AM	Chicago, IL
8:55 AM	Dp Homewood, IL	19	8:55 AM	CNC	56.7	28	5		1	8:53 AM	8:55 AM	Homewood, IL
9:22 AM	Dp Kankakee, IL		9:29 AM	CNC	81.9	22	3		1	9:28 AM	9:29 AM	Kankakee, IL
9:44 AM	Dp Gilman, IL		9:55 AM	CNC	114.6	28	0		1	9:54 AM	9:55 AM	Gilman, IL
10:10 AM	Dp Rantoul, IL		10:24 AM	CNC	128.6	13	15		3	10:23 AM	10:24 AM	Rantoul, IL
10:25 AM	Dp Champaign-Urbana, IL		10:55 AM	CNC		10		0		10:52 AM	10:55 AM	Champaign-Urbana, IL
11:05 AM	Dp Mattoon, IL		11:35 AM	CNC	173.2	29	0		1	11:05 AM	11:05 AM	XTI - Tolono
11:29 AM	Dp Effingham, IL		12:02 PM	CNC	200.0	26	0		1	11:34 AM	11:35 AM	Mattoon, IL
12:16 PM	Dp Centralia, IL		12:51 PM	CNC	253.2	48	0		1	12:01 PM	12:02 PM	Effingham, IL
12:49 PM	Dp Du Quoin, IL		1:24 PM	CNC	288.6	32	0		1	12:50 PM	12:51 PM	Centralia, IL
1:45 PM	Ar Carbondale, IL	CT	1:45 PM	CNC	308.9	18	3	0		1:23 PM	1:24 PM	Du Quoin, IL
										1:45 PM		Carbondale, IL
						Total Run Time	Total Recovery Minutes	Total Misc. Adj	Total Dwell Minutes	Total Schedule Time		
						292	26	0	12	330		

Existing Skeleton

13		
26	0	
25	0	
21	0	
25	0	
12	0	
10		5
24	0	
23	0	
46	0	
32	0	
21	26	9
Total Pure Run	Total Recovery Minutes	Total Misc. Adj
278	26	14

Illini Train 393			Proposed Schedule Skeleton - Illini Train 393 (Daily)									
Effective 1/12/15 Daily	Days of Operation	Effective Daily	RR AMT	Mileage 0.0	Services T,E,F,A,WJ	Run Time	Recovery Minutes	Misc. Adjust	Dwell Minutes	Arrive	Depart	Station
4:05 PM	Dp Chicago, IL	CT	4:05 PM	CNC	24.3	27	0		2	4:16 PM	4:05 PM	Chicago, IL
4:46 PM	Dp Homewood, IL	19	4:45 PM	CNC	56.7	28	0		1	4:16 PM	4:16 PM	XCS - 16th Street
5:12 PM	Dp Kankakee, IL		5:14 PM	CNC	81.9	22	0		1	4:43 PM	4:45 PM	Homewood, IL
5:34 PM	Dp Gilman, IL		5:37 PM	CNC	114.6	28	0		1	5:13 PM	5:14 PM	Kankakee, IL
6:00 PM	Dp Rantoul, IL		6:06 PM	CNC	128.6	13	15		3	5:36 PM	5:37 PM	Gilman, IL
6:15 PM	Dp Champaign-Urbana, IL		6:37 PM	CNC		10		0		6:05 PM	6:06 PM	Rantoul, IL
6:55 PM	Dp Mattoon, IL		7:25 PM	CNC	173.2	29	8		1	6:34 PM	6:37 PM	Champaign-Urbana, IL
7:19 PM	Dp Effingham, IL		7:52 PM	CNC	200.0	26	0		1	6:47 PM	6:47 PM	XTI - Tolono
8:06 PM	Dp Centralia, IL		8:41 PM	CNC	253.2	48	0		1	7:24 PM	7:25 PM	Mattoon, IL
8:39 PM	Dp Du Quoin, IL		9:14 PM	CNC	288.6	32	0		1	7:51 PM	7:52 PM	Effingham, IL
9:35 PM	Ar Carbondale, IL	CT	9:35 PM	CNC	308.9	18	3	0		8:40 PM	8:41 PM	Centralia, IL
										9:13 PM	9:14 PM	Du Quoin, IL
										9:35 PM		Carbondale, IL
						Total Run Time	Total Recovery Minutes	Total Misc. Adj	Total Dwell Minutes	Total Schedule Time		
						292	26	0	12	330		

Existing Skeleton

13		
26	0	
25	0	
21	0	
25	0	
12	0	
10		5
24	0	
23	0	
46	0	
32	0	
21	26	9
Total Pure Run	Total Recovery Minutes	Total Misc. Adj
278	26	14

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

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

**REBUTTAL VERIFIED STATEMENT OF YOEL WEISS
ON BEHALF OF NATIONAL RAILROAD PASSENGER CORP.**

1. I submit this Rebuttal Verified Statement in support of the rebuttal submission of the National Railroad Passenger Corporation (“Amtrak”) in this matter.

2. This Rebuttal Verified Statement will address:

- a. CN’s delay code change requests and delays caused by Freight Train Interference;
- b. The representativeness of the data Amtrak analyzed for the Disputed Routes; and
- c. The representativeness of the data analyzed by Amtrak to determine that 924 minutes of HRD per 10,000 train miles is associated with 80% Customer On-Time Performance.

3. I previously provided my qualifications and background in my Verified Statement dated May 27, 2022, submitted in support of Amtrak’s opening submission.

I. CN’s Delay Change Code Requests and Delays Caused by Freight Train Interference

A. Delay Code Change Requests

4. As explained in my previous Verified Statement, I currently review CN’s weekly delay code change requests. Amtrak’s on-board conductors record the cause of a particular delay impacting an Amtrak train through the use of various delay codes. On a weekly basis, CN submits delay code change requests for delays it believes were miscoded or not coded with the appropriate

amount of delay time. (Weiss VS, ¶ 11).

5. Before the Final Rule’s Train Delays Metric became effective at the end of 2021 (which includes tracking disputed delays),¹ CN rarely challenged Amtrak’s delay codes.² For example, in the quarter immediately preceding the one in which the new Metrics and Standards became effective (July 2021 to September 2021)—following the delay code change process—CN was assigned 28,143 minutes of Host-Responsible Delay (“HRD”) of which it disputed 655 minutes (2.3% of its total HRD minutes).

6. However, during the first quarter when the new Metrics and Standards became effective (October 2021 to December 2021)—following the delay code change process—CN was assigned 30,944 minutes of HRD of which it disputed 10,328 minutes (33.4% of its total HRD minutes).

7. During the same quarter, Amtrak conductors assigned 704,105 minutes of HRD *to all other Host Railroads combined*. And, all other Host Railroads *combined* disputed only 12,316 of those delay minutes (1.7% of the total HRD minutes).

8. For context, CN hosted approximately 355,924 route miles for Amtrak during this same quarter. All other Host Railroads combined hosted 6,071,935 route miles.³ In other words,

¹ See 85 Fed. Reg. at 72982 (“The train delays metric includes the reporting of disputed delays where Amtrak and the host railroad are unable to agree on a delay category pursuant to the existing process for delay attribution in the Amtrak-host railroad operating agreement.”)

² The main exception to this statement relates to CN’s challenges to “DCS” coding on the Illini/Saluki service. These disputes centered on Amtrak trains slowing down at grade crossings due to the “short shunt” issue which is no longer applicable since Amtrak switched to Superliner equipment that is not subject to the CN speed restrictions.

³ This does not include route miles where Amtrak, Long Island Railroad or Metro North “host” Amtrak passenger service.

despite accounting for only 5.5% of all of Amtrak's hosted route miles, CN challenged a disproportionate number of the HRDs assigned to it.

9. It is my understanding that CN has proposed retaining the concept of contract on-time performance (KOTP) and proposes to use HRD codes as "an initial screen for delays potentially attributable to CN." (CN Reply Br., p. 17). However, CN also proposes retaining relief items from the previous Operating Agreement *and* adding new additional relief items. (*Id.* at p. 18; see also CN Opening Br., Part I(D)(2)(e)). Given that CN significantly increased its challenges to delay coding following the implementation of the new Metrics and Standards, it is likely that if the Board retains the KOTP system *and* imposes the additional relief items CN proposes, that CN will again increase the frequency with which it challenges conductor coding.

B. Delays Caused by Freight Train Interference

10. CN argues in its reply submission, that freight train interference ("FTI")—a Host Responsible Delay—"is typically a small subset of all delays, *and often a small subset even of HRD.*" (CN Reply Br. p. 40) (emphasis added). The only support CN cites for this proposition is a conclusory paragraph in the Reply Verified Statement of Messrs. Matteucci and Kuxmann dated July 26, 2022 ("Matteucci/Kuxmann RVS"). (See *id.*, at n. 130; see also Matteucci/Kuxmann RVS, ¶ 33). The actual delay data gathered by Amtrak in the normal course of business, however, contradicts these conclusory statements.

11. As explained in my previous Verified Statement, HRDs account for *67-70% of the total delays an Amtrak train encounters* on its Host Railroads' systems. (Weiss VS, ¶ 81). And, FTI is the most common delay code used by Amtrak conductors when coding HRDs. Meaning, FTI is the most common HRD that Amtrak trains encounter.

12. In my previous Verified Statement, I discussed delay data recorded by Amtrak in

the normal course of business from April 2019 through March 2022 that was analyzed for each train operating on the City of New Orleans and the Illini/Saluki services (collectively, the “Disputed Routes”).^{4,5} That delay data illustrates the magnitude with which Amtrak trains encountered FTI delays on CN’s system for those routes.

13. From April 2019 to March 2022, Amtrak trains operating on its City of New Orleans route experienced 138,360 minutes of total HRD on CN. Of that, 50,640 minutes (or 36.6%) were coded as FTI. On Amtrak’s Illini/Saluki route, during that period Amtrak trains experienced 101,525 minutes of total HRD on CN.⁶ Of that, 21,958 minutes (or 21.6%) were coded as FTI. In short, the delay data shows that FTI delays are not “a small subset” of HRDs.

14. CN also argues that a majority of delays coded as FTI are not actually “within its control.” To support this claim, CN repeatedly points to delays at interlockings controlled by railroads other than CN (*i.e.*, “foreign interlockings”). As explained in the Rebuttal Verified Statement of James Blair of Amtrak (¶¶ 5, 9), CN bears responsibility for these delays to Amtrak

⁴ It is my understanding that CN has complained that Amtrak has not provided CN and the Board with my “work papers” related to my previous analyses. It is unclear what CN is referring to; I have no “work papers.” I used delay data contained in Amtrak’s delay database. CN has access to Amtrak’s database and can run reports from it if it chooses. The COTP data used in my analyses is also included in the monthly Host Railroad Reports, which Amtrak sends to its Host Railroads (including CN) and publishes on its website.

⁵ CN challenges Amtrak’s analysis of the Disputed Routes because it referred to two different timeframes in the relevant discussion. The timeframes were used for different analyses. When analyzing schedules through LASER, Amtrak used data from a single twelve-month period (April 2021 through March 2022). This is Amtrak’s normal practice when using LASER. The point of LASER analysis is to find optimized schedules, which, includes determining where Recovery Time is best allocated. The historical analysis of the Disputed Routes (April 2019 through March 2022), on the other hand, was done simply to illustrate two things. First, to demonstrate that 80% COTP has been achievable on the Disputed Routes *even with non-optimized schedules*. Second, to demonstrate the correlation between COTP and HRDs.

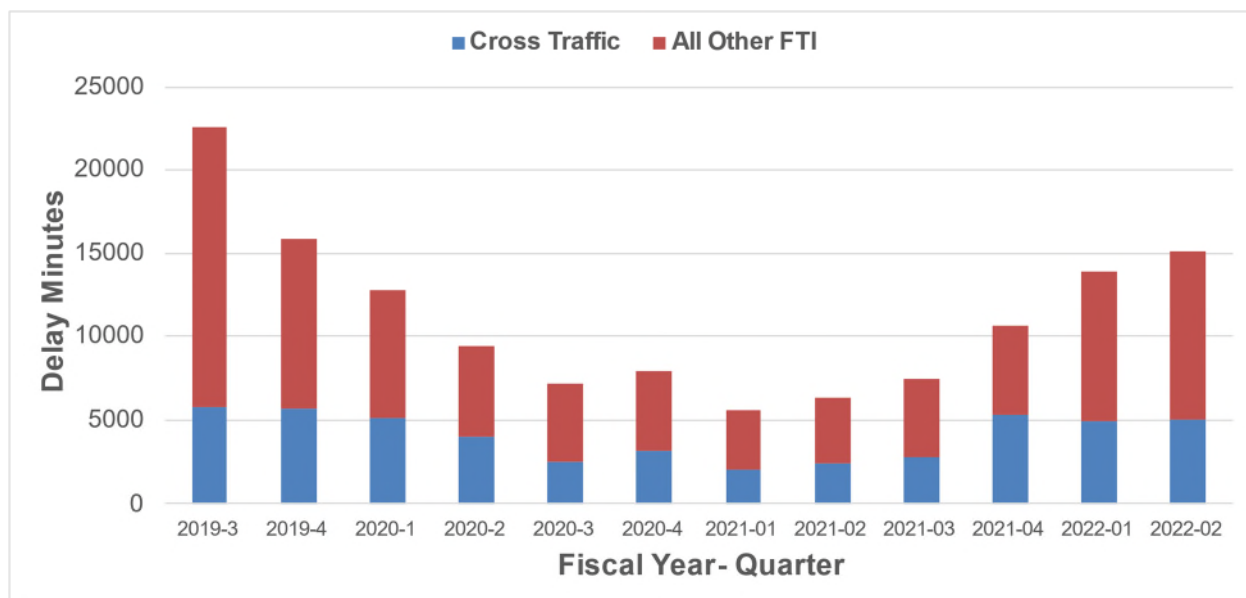
⁶ Note, Trains 391 and 392 did not operate for seventeen months of the relevant period.

trains when en route to foreign interlockings.

15. Through my personal involvement in the delay code change request process, I have become familiar with certain arguments that CN routinely makes when challenging conductor delay coding. Under the terms of the Parties' existing Operating Agreement, CN argues with great frequency that it is entitled to relief when an Amtrak train is delayed at a foreign interlocking.

16. In its reply submission, however, CN materially overstates the frequency with which this type of delay actually occurs. Amtrak analyzed all delay data from July 2019 through May 2022 for all of the Amtrak trains operating on CN's system as follows. Amtrak removed all non-FTI delays, leaving *only* delays coded by Amtrak conductors in the normal course of business as FTI. Amtrak then reviewed the section of Amtrak's delay data in which conductors may enter detailed commentary related to the delay. In particular, Amtrak reviewed that commentary to identify FTI delays involving cross-traffic. This allowed Amtrak to compare the number of delays involving cross-traffic to the total number of delays related to FTI. Note, delays involving cross-traffic include delays at crossings and interlockings that are both *outside* CN's control and *within* CN's control.

17. The following chart depicts the results of the foregoing analysis:



18. As the chart illustrates, cross-traffic delays do not represent the majority of FTI delay events. In fact, during the relevant period, Amtrak coded over 134,838 minutes of delay as FTI. Of that, 48,941 minutes of delay (or 36.3%) contained a conductor comment referencing cross-traffic; 85,897 minutes (or 63.7%) did not.⁷

19. In sum, cross-traffic was referenced in 36.3% of FTI delays. But, because cross-traffic delays *includes interlockings and crossings within CN's control*, the number of FTI delays involving foreign interlockings is lower.

20. Therefore, CN's assertion in its reply submission that delays at foreign interlockings are "a major proportion of the delays recorded by Amtrak," (see CN Reply Br., p. 29), is contrary to the data that Amtrak records in the normal course of business.

II. The Data Amtrak Analyzed for the Disputed Routes is Representative

21. In my prior Verified Statement, I explained why Amtrak's schedule proposals for

⁷ Again, this delay data comes from Amtrak's delay database to which CN has access.

the Disputed Routes provided CN with a meaningful opportunity to achieve 80% COTP.

22. In its reply submission, CN argues that the period of time that Amtrak analyzed was not representative of the Disputed Routes' historical performance because of "reduced passenger (and freight) traffic" which resulted in "fewer trains" and "fewer meets." (See CN Reply Br., p. 51).⁸ CN's argument continues that, in light of the reduced traffic, it is "hardly surprising that . . . COTP of the trains that continued to operate increased." (Id.)

23. Preliminarily, CN's criticism, which purports to rely on lower FTI, passenger train interference ("PTI") and commuter train interference ("CTI") delays to Amtrak trains—all of which are HRD codes—concedes that there is a correlation between HRDs and COTP. This is not surprising and, as outlined in my prior Verified Statement, train performance for the Disputed Routes confirms there is a correlation between COTP and HRD. (See Weiss VS, ¶¶ 63-65 (Train 390); ¶¶ 68-70 (Train 392); ¶¶ 72-74 (Train 393); and ¶¶ 77-79 (Train 58)).

24. Furthermore, the data Amtrak collected from April 2019 through March 2022 is representative of operations on CN's system. It is not "skewed"—as CN contends—by "fewer trains" operating on CN's system during the Covid-19 Pandemic. (CN Reply Br., p. 51). Data collected by Amtrak concerning CN freight operations and Amtrak's passenger operations during the pandemic belies CN's assertion.

25. Amtrak collected publicly available data about CN's freight traffic on CN's system going back to October 2016 (the first month Amtrak began calculating COTP of its passenger

⁸ As discussed above, delays caused by freight trains are coded as FTI. Delays caused by meets with other passenger trains are coded as PTI (for passenger train interference). And, delays caused by meets with commuter trains are coded as CTI (for commuter train interference). FTI, CTI and PTI are all HRDs.

trains).⁹

26. In CN's publicly available reports, CN provides its "carload"¹⁰ data on a weekly basis. Because COTP (and HRDs) are calculated monthly, Amtrak converted CN's weekly carload data to data for each month. To do so, Amtrak added all weeks that fell entirely in a single month to get one subtotal ("Subtotal A"). For weeks that straddled two separate months, Amtrak divided the weekly total by seven and then multiplied that number by the appropriate number of days within each month. This resulted in another subtotal ("Subtotal B").¹¹ The carload figure for a given month is the result of adding together Subtotal A and Subtotal B.

27. Amtrak then collected HRD data from its delay database. As mentioned above, CN has access to Amtrak's delay data and can run reports from it. Amtrak collected HRD data from October 2016 through March 2022, including identifying the total minutes of HRD per month per 10,000 train miles and the specific number of minutes associated with PTI and CTI.

28. Amtrak also collected COTP data beginning in October 2016 through March 2022 for the Disputed Routes. Amtrak makes its COTP results publicly available in its Host Railroad Reports (which are also sent directly to each host, including CN). Amtrak began including COTP statistics in its Host Railroad Reports in January 2018. Amtrak also reports COTP data to FRA.

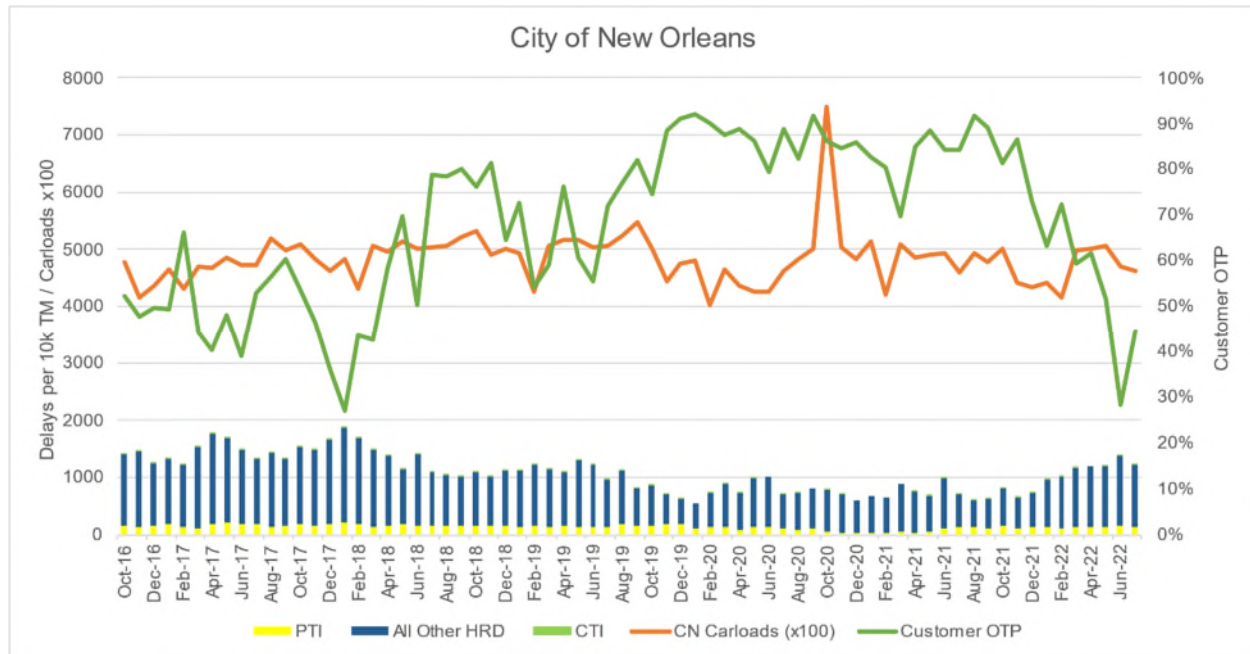
⁹ The specific report used was "CN - Cars summary by AAR Grouping" which is available at: www.cn.ca/en/investors/key-weekly-metrics/

¹⁰ "Carload" means the amount of cargo that fits in a freight rail car.

¹¹ For example, if a week ran from January 29 through February 4 and that week had 140,000 carloads, Amtrak divided 140,000 by 7 to get an average of 20,000 carloads per day during that week and then multiplied by 3 to get 60,000 carloads for January and multiplied by 4 to get 80,000 carloads for February.

FRA then publishes that data on its website.¹²

29. The following is a graph illustrating the foregoing data Amtrak analyzed for the City of New Orleans service:



30. The historical data for the City of New Orleans service is particularly telling. First, CN's freight volume has remained relatively constant for that last six years. PTI and CTI also remain largely consistent (despite the overall level of HRD changing). The one exception for PTI and CTI is a limited period starting in approximately November 2020 (and ending in approximately March 2021) when PTI and CTI were largely non-existent.¹³

31. Of note, beginning in approximately February 2018, CN's HRDs began to decrease and COTP began to increase significantly. Because freight volume, CTI and PTI remained largely constant (in fact, freight volume increased from its February 2018 relative low point), the decrease

¹² See <https://railroads.dot.gov/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and-performance-reports>

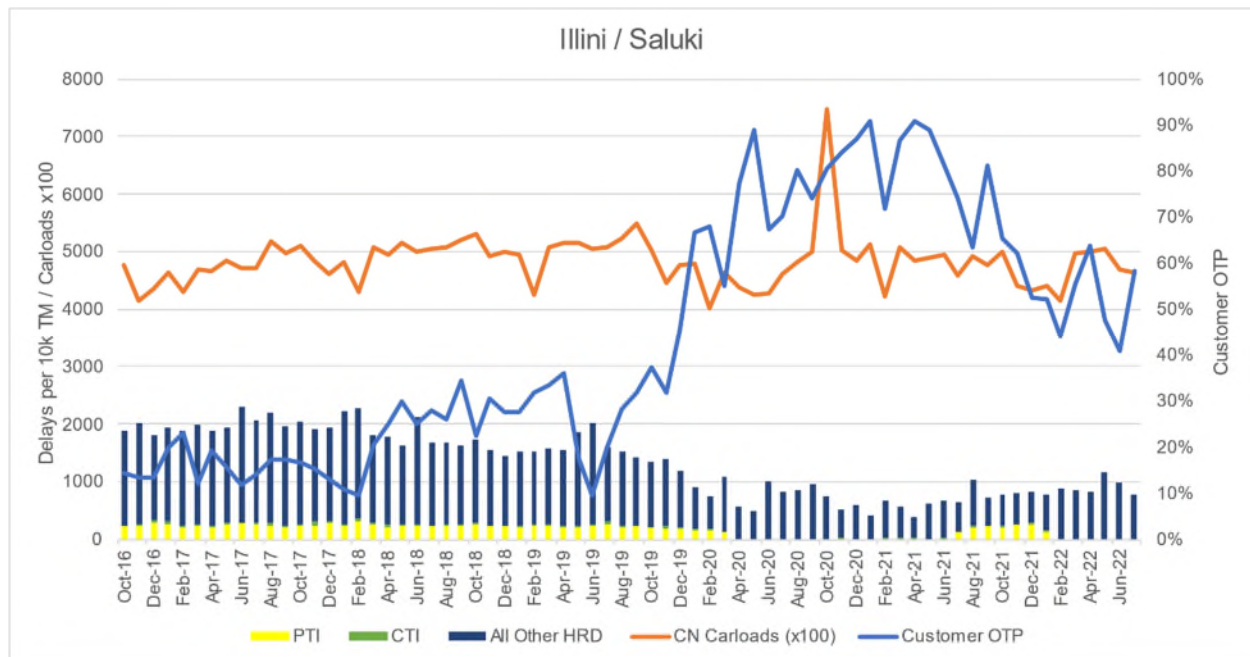
¹³ PTI and CTI were reduced due to the Covid-19 Pandemic.

in HRDs clearly relate to some other change, for example, changes made by CN in dispatching procedures.

32. Moreover, the City of New Orleans service continued to perform well, with relatively high COTP until the end of 2021 when HRDs began to rise again. At that point, COTP began to decline.

33. CN, therefore, is incorrect in asserting that any increase or decrease in COTP and HRDs on the City of New Orleans route—including during the Covid-19 Pandemic—is related to changes in freight volume, CTI and PTI because the levels for all three were similar to that in 2018 (in fact, freight volume was falling from October 2021 through February 2022).

34. The following is a graph of the data Amtrak analyzed for the Illini/Saluki service:



35. Similarly, for the Illini/Saluki service, freight volume, PTI and CTI remained relatively constant during the relevant period, with the exception of April 2020 through June 2021,

(when CTI and PTI were largely eliminated)¹⁴ and again from February 2022 through July 2022. As the chart demonstrates, in July 2019, CN began decreasing HRDs and COTP began increasing. While COTP peaked during the period of time during which PTI and CTI were non-existent, the decline in HRDs generally was greater than the monthly-average CTI and PTI delays Amtrak trains typically encountered. In other words, the reduction of HRDs other than CTI and PTI was the driving cause in the increase of COTP for the route; the reduction of CTI and PTI is not a significant cause in the increase in COTP.¹⁵

36. For example, as mentioned above, Amtrak coded delays caused by CN imposed speed restrictions at grade crossings as “DCS,” which is an HRD code. (*See supra*, ¶ 5, n. 2). However, in September 2020, Amtrak began using its Superliner equipment, which is not subject to those speed restrictions. (*Id.*). From October 2016 to September 2020, Amtrak trains averaged approximately 744 minutes of DCS delay per 10,000 train miles. But, since it started using its Superliner equipment, Amtrak trains average only 95 minutes of DCS delay per 10,000 train miles. In other words, DCS delays have decreased on average by 649 minutes (or 87.23%) per 10,000 train miles. When Amtrak was operating its passenger service at normal levels, Amtrak trains experienced, on average, 226 minutes of PTI delay per 10,000 train miles and 28 minutes of CTI delay per 10,000 train miles. Therefore, even if CTI and PTI were completely eliminated, the average reduction of DCS delays accounts for 71.87% of the *total average decrease* across these HRD delay types.¹⁶

¹⁴ Again, PTI and CTI were reduced due to the Covid-19 Pandemic.

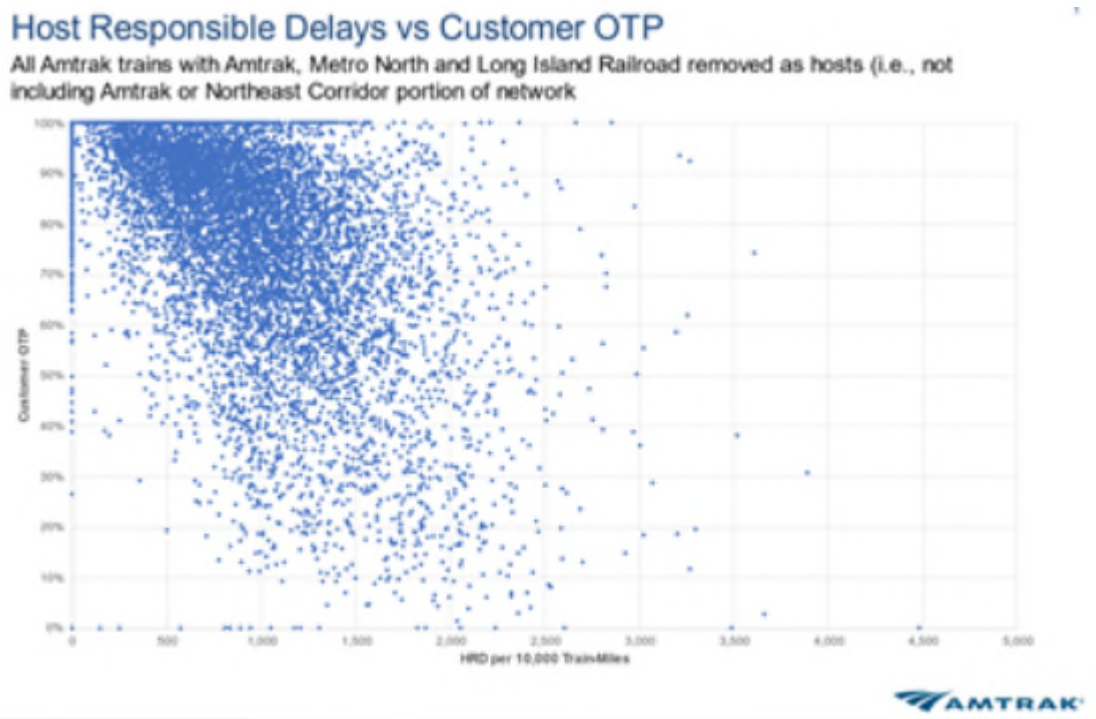
¹⁵ In the event CN criticizes Amtrak’s use of freight volume generally as not being an indicator of the actual freight traffic on the Disputed Routes, CN has not provided route specific freight traffic data that would allow Amtrak to perform a more detailed analysis.

¹⁶ $(649 / (649 + 226 + 28)) * 100 = 71.87$

III. The Data Amtrak Analyzed to Associate 80% Customer On-Time Performance with 900 Minutes of HRD Per 10,000 Train Miles is Representative.

37. In my Verified Statement, in identifying an association between 80% COTP and 900 HRDs per 10,000 train miles, I explained that Amtrak reviewed historical data for every Amtrak train operating on the systems of its Host Railroads (including CN) from April 2019 through March 2022. Specifically, Amtrak analyzed monthly COTP and HRD data, on a train-by-train basis, for 8,361 Amtrak trains.¹⁷ (Weiss VS, ¶¶ 82-86).

38. That analysis confirmed the relationship between HRDs and COTP. Below is a graph that illustrates the relationship:



39. Similar to CN's argument about the Disputed Routes, CN claims that Amtrak's

¹⁷ Amtrak hosts a majority of the Northeast Corridor, as well as portions of the Michigan and Blue Water routes. Amtrak excluded from the analysis its HRDs for a train operating, in whole or in part, over a portion of track that it hosts. Amtrak also excluded HRDs for Long Island Railroad and Metro-North Railroad for portions of track that they host.

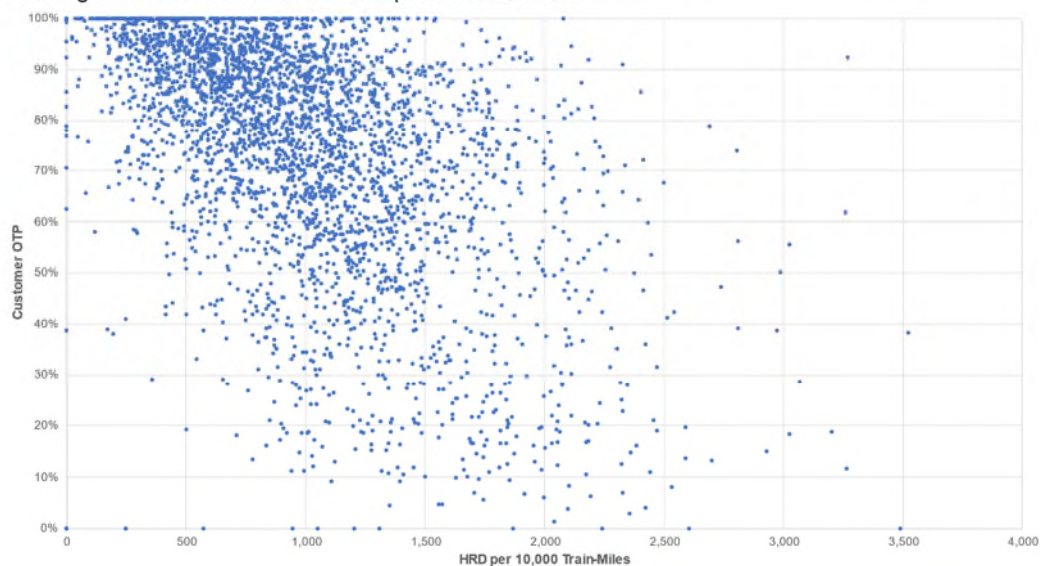
analysis is “not representative” of typical train performance due to the Covid-19 Pandemic. The discussion above in ¶¶ 21 to 36 demonstrates that the timeframe analyzed is representative of the overall performance of trains on CN’s system. Upon review of CN’s allegations in its reply submission, Amtrak: (a) re-analyzed HRD and COTP data from April 2019 through March 2022; and (b) expanded its analysis to include HRD and COTP data from October 2016 through March 2019.

40. First, when re-analyzing the HRD and COTP data from April 2019 through March 2022, Amtrak broke the data up into pre-Covid-19 data and post-Covid-19 data (using March 2020 as the demarcation line). 3,415 trains fell into the “pre-Covid-19” category and 4,946 trains fell into the “post-Covid-19” category.

41. The following graphs depict the data broken up on that basis:

Host Responsible Delays vs Customer OTP

All Amtrak trains with Amtrak, Metro North and Long Island Railroad removed as hosts (i.e., not including Amtrak or Northeast Corridor portion of network)

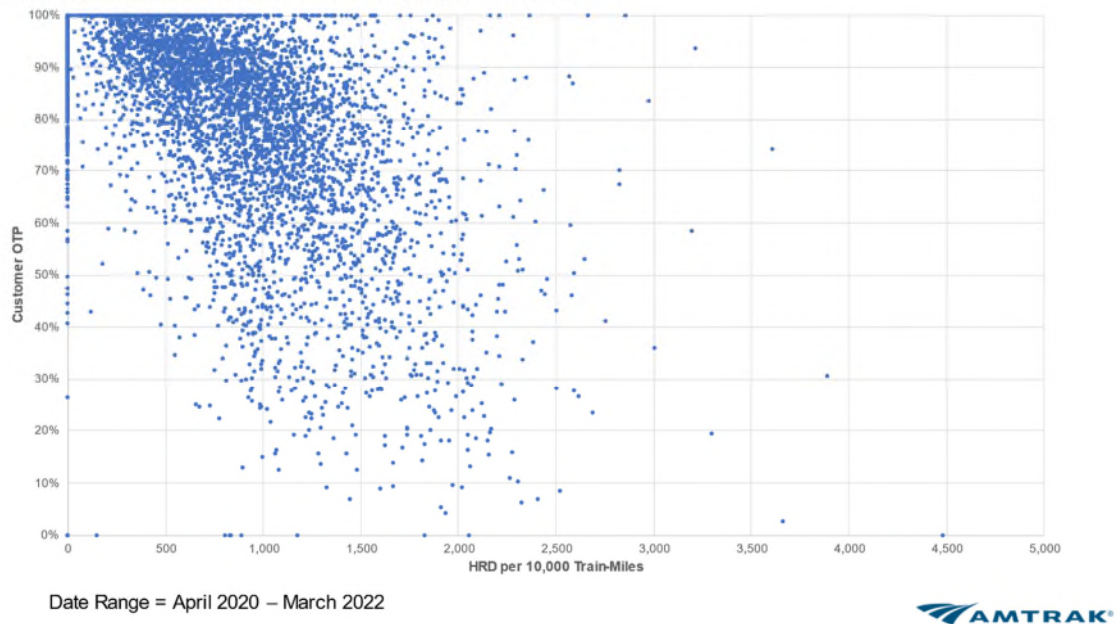


Date Range = April 2019 – March 2020



Host Responsible Delays vs Customer OTP

All Amtrak trains with Amtrak, Metro North and Long Island Railroad removed as hosts (i.e., not including Amtrak or Northeast Corridor portion of network)



42. The top left corner of both graphs depict trains achieving 100% COTP and no HRDs. The data skews towards 100%. As HRDs decreases (the X axis), the COTP (y axis) increases.

43. For the pre-Covid-19 trains, Amtrak's analysis revealed the average performance was 74% COTP and 992 minutes of HRD per 10,000 train miles. The median was 79% COTP and 944 minutes of HRD per 10,000 train miles. Similarly, for the post-Covid-19 trains, the average performance was 79% COTP and 870 minutes of HRD. The median was 84% COTP and 851 minutes of HRD. In short, *both the pre and post-Covid-19 data sets* demonstrate there is an association between 900 minutes of HRD per 10,000 train miles *and* 80% COTP.

44. Moreover, Amtrak also analyzed HRD and COTP data from October 2016 through March 2019. In total, Amtrak analyzed 8,582 trains. The following graph depicts the trains' performance:

Host Responsible Delays vs Customer OTP

All Amtrak trains with Amtrak, Metro North and Long Island Railroad removed as hosts (i.e., not including Amtrak or Northeast Corridor portion of network)



45. Again, the top left corner of the graphs depicts trains achieving 100% COTP and no HRDs. And, again, the data skews towards 100%. As HRDs decreases (the X axis), the COTP (Y axis) increases.

46. For these trains, Amtrak’s analysis revealed that the average performance was 74% COTP and 1,024 minutes of HRD per 10,000 train miles. The median was 79% COTP and 974 minutes of HRD per 10,000 train miles. Because Amtrak analyzed over 8,500 data points, it is clear that there is an association between 80% COTP and approximately 900 minutes of HRD per 10,000 train miles.

47. In total, Amtrak has now analyzed six years’ worth of performance data recorded in the normal course of business. The COTP and HRDs seen in the data set from October 2016 through March 2019 (which CN agrees is “representative” because it reflects operation of Amtrak’s trains before the pandemic) is consistent with the COTP and HRDs seen in the data set

from April 2019 through March 2022 (which CN contends is “skewed”).

48. CN cannot simply write-off Amtrak’s data on the basis that it included trains that operated during the Covid-19 Pandemic. Those trains cannot be characterized as “not representative” of train performance simply because COTP was high and HRDs were low. Amtrak analyzed six years’ worth of data. Any data set that large will include some periods of variability.

49. I, Yoel Weiss, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

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Dated: August 25, 2022

A handwritten signature in blue ink that reads "Yoel Weiss". The signature is written in a cursive style with a light blue background highlight.

Yoel Weiss
Senior Principal - Host Railroad Development
National Railroad Passenger Corporation

CERTIFICATE OF SERVICE

I, Jerry A. Cuomo, declare under penalty of perjury that the foregoing is true and correct.

Pursuant to 49 § 1104.12, I hereby certify that on the 25th day of August, 2022 I have caused to be served a copy of the foregoing Rebuttal Brief of National Railroad Passenger Corp. in Response to Reply Brief of Canadian National Railway Company and supporting Verified Statements and Exhibits, upon all parties of record via electronic mail.

Executed on: August 25, 2022

By: /s/ Jerry A. Cuomo
Jerry A. Cuomo

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David T. Rankin
2500 Lou Menk Drive
P.O. Box 961039
Fort Worth, TX 76161

Michael K. Murphy
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

Justin J. Marks
1666 K Street, Nw Ste 500
Washington, DC 20006

Executed on: August 25, 2022

By: /s/ Jerry A. Cuomo
Jerry A. Cuomo