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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

Dear Ms. Brown:

We represent National Railroad Passenger Corporation (“Amtrak”). Pursuant to ¶ 3 of the Board’s October 28, 2022 Decision, Amtrak and Canadian National Railway Corp. (“CN”) were “directed to submit any workpapers, underlying tables, exhibits, or analyses with respect to their 2022 opening, reply, and rebuttal pleadings that have not already been submitted . . .” (10/28/22 Decision, p. 3). Amtrak complied with this directive on November 30, 2022, when it submitted, among other things, “underlying tables” related to assertions made in the Rebuttal Verified Statement of Yoel Weiss dated August 25, 2022 (“Weiss Rebuttal VS”).

In preparing its submission, Amtrak identified an error in ¶ 7 of the Weiss Rebuttal VS. As originally submitted, that paragraph reads:

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).

However, that paragraph should read (with corrections highlighted):

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 2,263 of those delay minutes (.32 % of the total HRD minutes).

A corrected version of the Weiss Rebuttal VS was part of Amtrak's CONFIDENTIAL submission on November 30, 2022. To assure that the PUBLIC version of the Weiss Rebuttal VS is consistent with the CONFIDENTIAL version, enclosed for PUBLIC filing is a corrected version of that statement.

We have conferred with counsel for CN and CN does not object to Amtrak correcting this error (subject to CN's reservation of a right to respond). Should the Board have any questions, please contact the undersigned. Thank you for your attention to this matter.

Respectfully submitted,

Jerry A. Cuomo

Jerry A. Cuomo

Enclosures

cc: David A. Hirsh, Esq. (via email)
All Parties of Record

**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 2,263 of those delay minutes (.32 % 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.

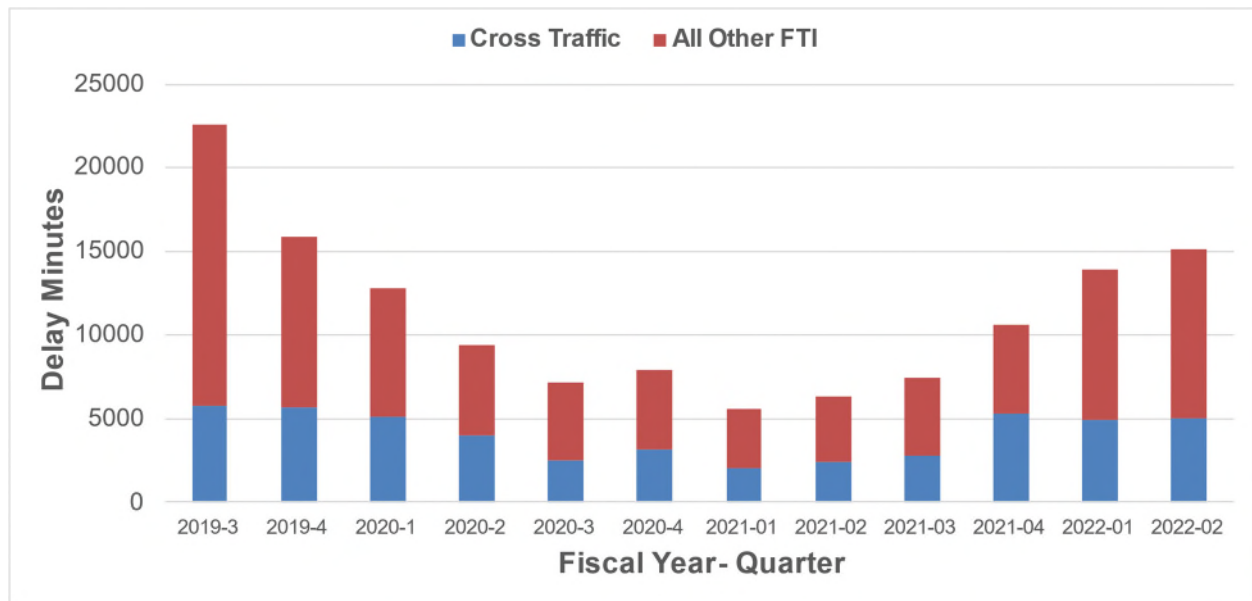
⁶ Note, Trains 391 and 392 did not operate for seventeen months of the relevant period.

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.

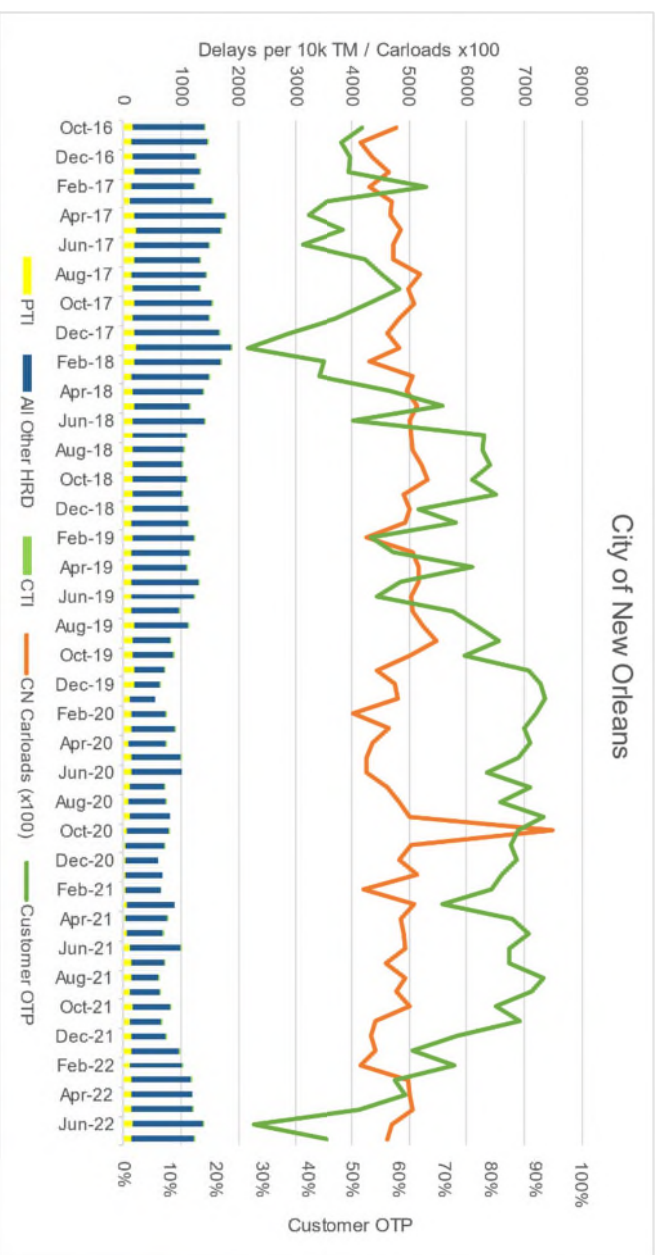
⁹ The specific report used was "CN - Cars summary by AAR Grouping" which is available at: www.cn.ca/en/investors/key-weekly-metrics/

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>

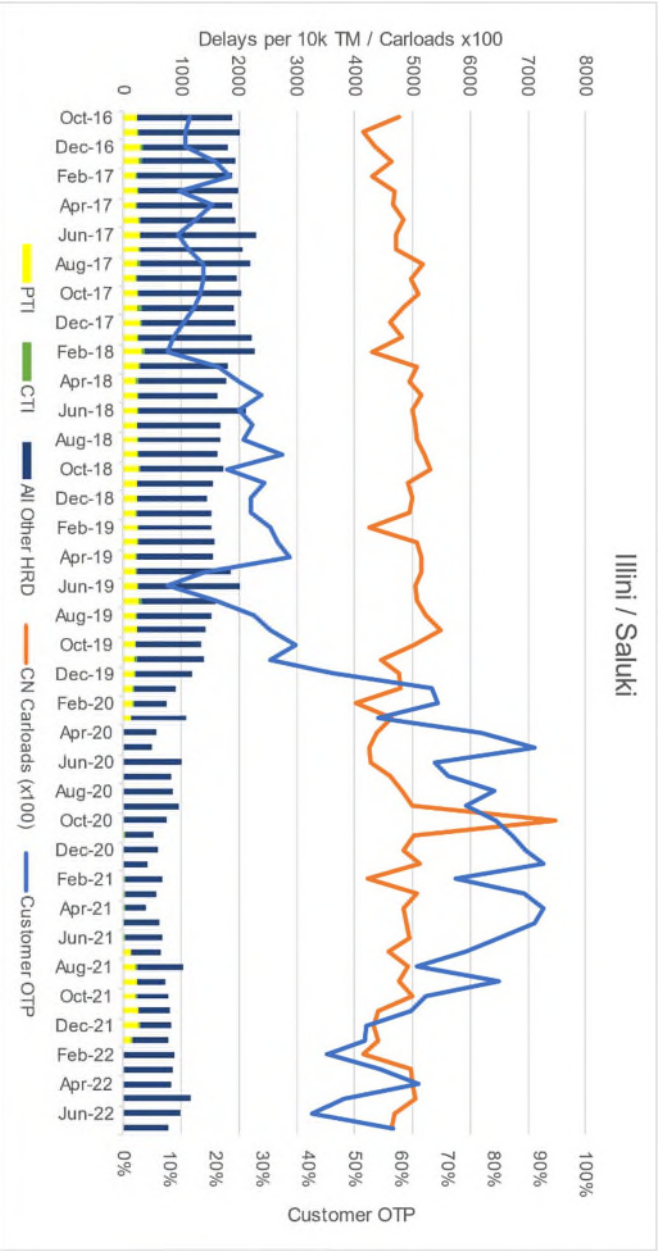
¹³ PTI and CTI were reduced due to the Covid-19 Pandemic.

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.

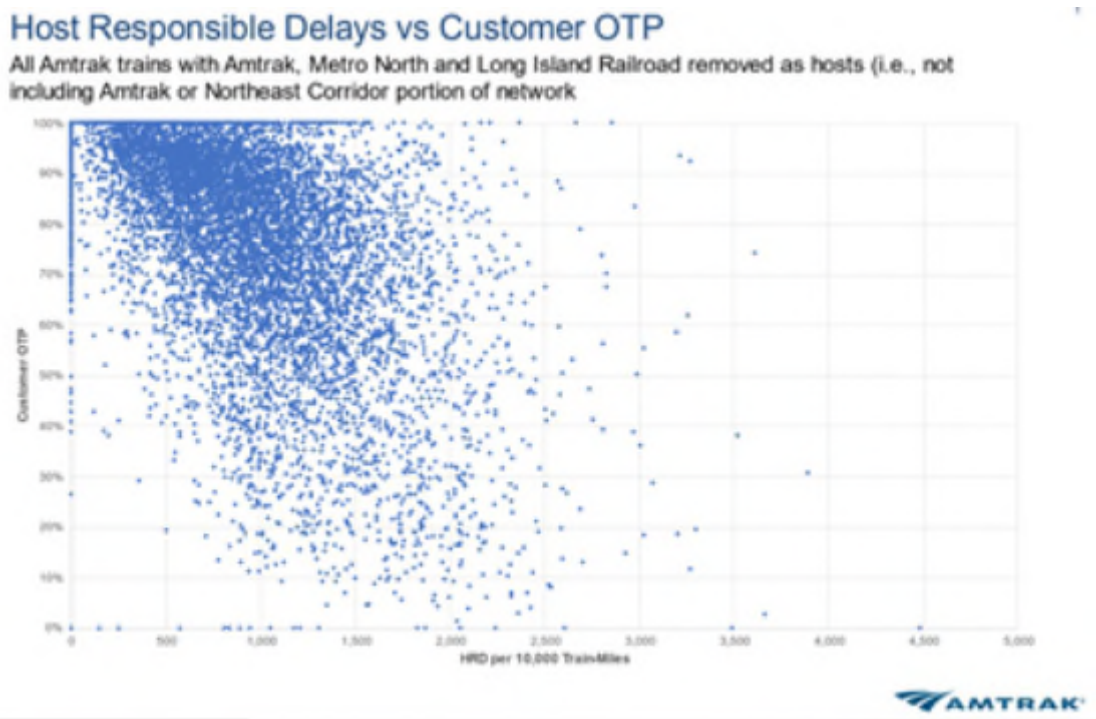
¹⁵ In the event CN criticizes Amtrak’s use of freight volume generally as not being an indicator of the actual freight traffic on the Disputed Routes, CN has not provided route specific freight traffic data that would allow Amtrak to perform a more detailed analysis.

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.

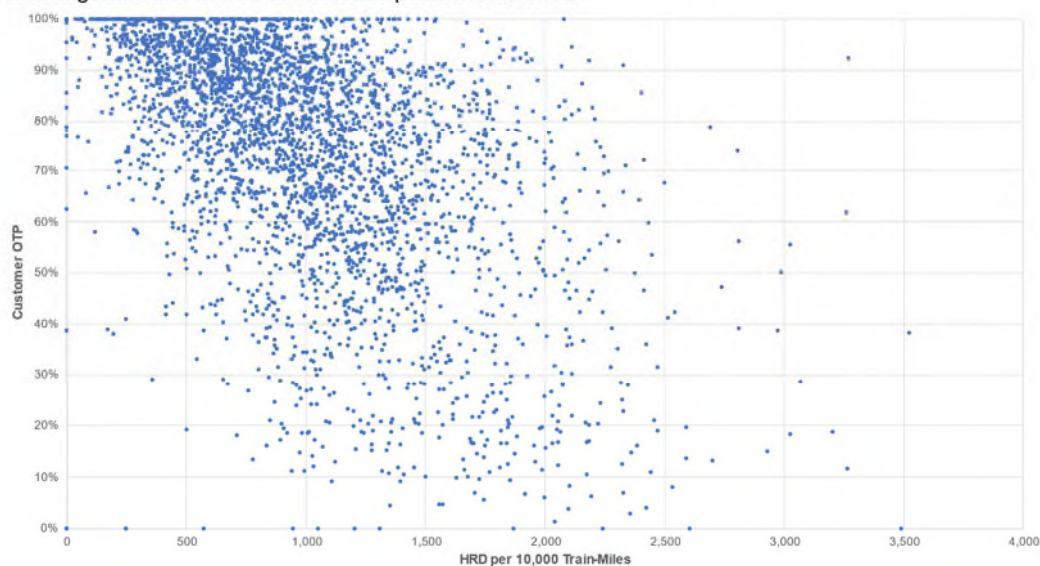
analysis is “not representative” of typical train performance due to the Covid-19 Pandemic. The discussion above in ¶¶ 21 to 36 demonstrates that the timeframe analyzed is representative of the overall performance of trains on CN’s system. Upon review of CN’s allegations in its reply submission, Amtrak: (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)

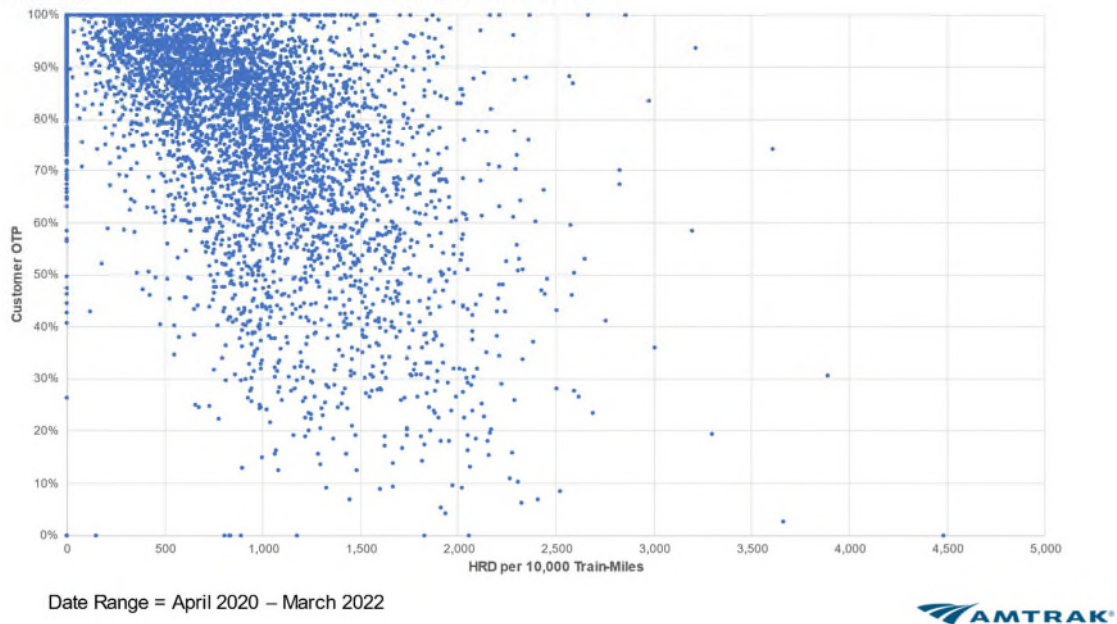


Date Range = April 2019 – March 2020



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)



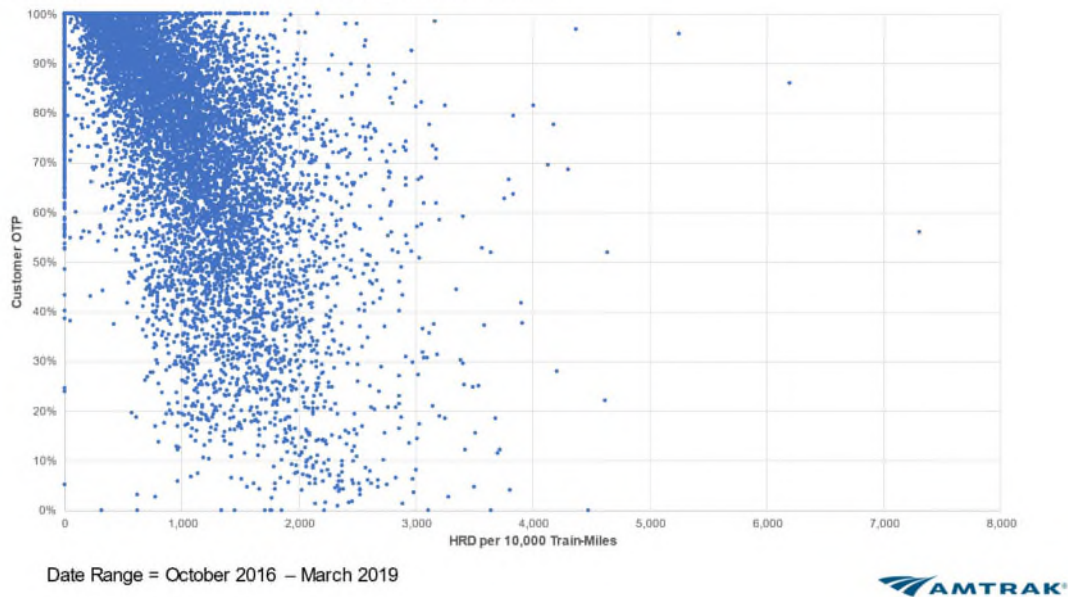
42. The top left corner of both graphs depict trains achieving 100% COTP and no HRDs. The data skews towards 100%. As HRDs decreases (the X axis), the COTP (y axis) increases.

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.

[The remainder of this page has been intentionally left blank]

Dated: August 25, 2022

A handwritten signature in blue ink that reads "Yoel Weiss".

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 5th day of December, 2022 I have caused to be served a copy of the foregoing corrected Rebuttal Verified Statement of Yoel Weiss on Behalf of National Railroad Passenger Corp., upon all parties of record via electronic mail.

Executed on: December 5, 2022

By: /s/ Jerry A. Cuomo
Jerry A. Cuomo

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 5th day of December, 2022 I have caused to be served a copy of the foregoing corrected Rebuttal Verified Statement of Yoel Weiss on Behalf of National Railroad Passenger Corp., upon the following parties of record via USPS First Class Mail:

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Executed on: December 5, 2022

By: /s/ Jerry A. Cuomo
Jerry A. Cuomo