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April 26, 2023

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: STB Docket No. NOR 42175, Complaint and Petition of the National Railroad Passenger Corp. under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2

Dear Ms. Brown:

As a Party of Record in this proceeding, Norfolk Southern Railway Company ("NSR") provides the following comments in response to the April 13, 2023 letter filed by Mr. John Putman, General Counsel, U.S. Department of Transportation ("DOT Letter"). The DOT Letter rightly notes that "[t]he Board's decision and its approach to an investigation of the causes of substandard on-time performance (OTP) of Amtrak service will have far-reaching implications beyond the Sunset Limited service and will be essential, whatever its conclusions, to strengthening Amtrak passenger train performance." NSR wholeheartedly agrees with this statement.

Notwithstanding DOT's recognition of the significance and importance of this proceeding, the DOT Letter, perplexingly, then states that the Surface Transportation Board (the "STB" or "Board") should only "conduct a focused and time-limited investigation." DOT Letter at 1 (emphasis supplied). The letter also requests an "expedited resolution" and requests that the investigation not be a "drawn-out" adversarial proceeding. DOT Letter at 2. In DOT's view, this "time-limited," "focused" and "expedited" investigation should rely in large part on the "OTP and train delay data" that

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the Federal Railroad Administration already collects and publishes.¹ NSR does not support a “drawn-out” proceeding, but given the significance of this proceeding, any investigation should not exclude the ability of parties to fully participate, to access and evaluate up-to-date information beyond what the FRA publishes, and to put that data into proper context, even if doing so would appear to be “adversarial.” Nor should any such investigation be limited to just the OTP and train delay data that FRA already collects and publishes on a quarterly basis.

The DOT suggested approach, seemingly relying upon a sole source of data, and attempting to limit the “adversarial nature” of the proceeding, appears to preclude parties, like NSR, from challenging that data, conducting discovery, and developing and presenting contrary or contextual data. Such an approach is not consistent with the “far-reaching” nature of this proceeding nor with standard due process rights applicable to any administrative investigation. It is vital for the STB to put into place a process designed to allow the STB to make an informed decision on a record developed with the fair input of all parties, rather than to truncate the proceeding to the detriment of the due process rights of many of the parties and to the detriment of the public that the STB is challenged to protect pursuant to its clear mandates.² Indeed, such a DOT suggested approach seems to urge the STB to ignore a fundamental Congressional mandate as part of the statute, which is to “obtain information from all parties involved” when making its determination. 49 USC 24308(f)(1).

Norfolk Southern urges the STB to develop a reasoned, fair, and informed process that protects all interests, is aimed at developing facts, and applicable not only in this immediate proceeding but others in the future. Such an approach is consistent with the statute, with the far-reaching implications of this proceeding, and ensures that all parties’ interests, not just those of passengers on Amtrak routes, are considered.

¹ The latest data published by the FRA reflects service between July 1, 2022 and September 30, 2022. <https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and> (accessed on April 18, 2023).

² See, e.g., 49 USC 10101(2) (“fair and expeditious regulatory decisions when regulation is required”); 49 USC 10101(4) (“to ensure the development and continuation of a sound rail transportation system ... to meet the needs of the public and the national defense”); 49 USC 10101(5) (“to ensure effective ... coordination between rail carriers and other modes”); and 49 USC 24308(f)(1) (“As part of its investigation, the Board has authority to review the accuracy of the train performance data”).

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If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins

cc: Parties of Record