

SERVICE DATE – SEPTEMBER 12, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42175

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

Digest:¹ The Board directs Canadian Pacific Kansas City Limited (CPKC) to participate as a party of record to this investigative proceeding and to respond to the Board’s request for information. Because CPKC will participate as a party, its petition to intervene is moot.

Decided: September 11, 2023

By decision issued on July 11, 2023 (July 2023 Decision), the Board initiated an investigation under section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub. L. No. 110-432, 122 Stat. 4848, codified at 49 U.S.C. § 24308(f)(1), to examine the cause(s) of substandard on-time performance on Amtrak’s *Sunset Limited* service. The *Sunset Limited* is a 1,997-mile-long Amtrak passenger train service that runs three times weekly, in each direction, between New Orleans, La., and Los Angeles, Cal. The route travels mostly over track hosted by Union Pacific Railroad Company (UP), as well as track owned or operated by Amtrak; BNSF Railway Company (BNSF); Canadian National Railway Company (CN) (operating through its subsidiary Illinois Central Railroad Company); the New Orleans Public Belt Rail Corporation (NOPB); and the Southern California Railroad Authority (SCRRA), all of which are considered necessary parties to the investigation. See July 2023 Decision, NOR 42175, slip op. at 10. The Board has ordered each of the necessary parties to provide certain information to the Board as part of its investigation. Id. at 14-15, App. A.

On August 28, 2023, Canadian Pacific Kansas City Limited (CPKC) filed a petition to intervene in this proceeding. CPKC states that it has an interest in this proceeding because its rail carrier subsidiary, The Kansas City Southern Railway Company (KCS), operates over approximately 124 miles of rail line (between Beaumont, Tex., and Rosenberg, Tex.), over which Amtrak’s *Sunset Limited* also operates.² (CPKC Pet. to Intervene 1.) CPKC states that it

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

² According to CPKC, KCS operates over this Beaumont-Rosenberg segment pursuant to trackage rights that it was granted by the Board in Union Pacific Corp.—Control & Merger—

anticipates that much of the arguments and evidence submitted in this proceeding will be subject to the protective order³ and that intervention is therefore necessary for CPKC to evaluate whether any of the positions taken by the parties or proposed relief might implicate its interests. (*Id.* at 2.) CPKC states, however, that it does not anticipate taking any position on the merits of the issues raised in this proceeding and therefore does not anticipate seeking discovery, submitting evidence or argument, or seeking any relief in this proceeding (though it reserves its right to do so). (*Id.*) CPKC argues that it satisfies the criteria set forth in 49 C.F.R. § 1112.4(a) to be granted intervenor status, specifically, that its interests would not unduly disrupt the schedule or unduly broaden the issues. (*Id.* at 4-5.) As discussed below, CPKC’s petition also indicated that it owns and dispatches a small portion of the route over which the *Sunset Limited* operates. (*Id.* at 1 n.1.)

On September 5, 2023, Amtrak filed a reply to CPKC’s petition to intervene. Amtrak does not oppose CPKC’s petition to intervene due to the limited nature of participation CPKC states in its petition.

DISCUSSION AND CONCLUSIONS

In the July 2023 Decision, the Board explained that when carrying out an investigation under 49 U.S.C. § 24308(f)(1), the Board “**shall obtain information from all parties involved.**” July 2023 Decision, NOR 42175, slip op. at 10 (citing 49 U.S.C. § 24308(f)(1) (emphasis added)). Accordingly, the Board designated carriers that own or dispatch segments of the *Sunset Limited*’s route as parties to the investigation. *Id.* at 10. Here, CPKC states in its petition to intervene that it “owns and dispatches 1.8 miles of the *Sunset Limited*’s route from the connection between KCSR and UP (at Tower 31) on the east side of the Neches River Bridge to Beaumont (on the west end of the Neches River Bridge). CPKC also operates over 1.2 miles of CN trackage in New Orleans that is used by the *Sunset Limited*.” (CPKC Pet. to Intervene 1 n.1.) The Board had not considered CPKC’s ownership of this 1.8-mile segment when it initiated the investigation and no parties raised it as a potential concern. Accordingly, the Board must now consider whether CPKC is a necessary party to the investigation.

CPKC’s involvement in the *Sunset Limited* route appears relatively limited; however, in the July 2023 Decision, the Board found that CN and NOPB were necessary parties to the investigation despite also having limited involvement in the *Sunset Limited* route. July 2023 Decision, NOR 42175, slip op. at 10. In that decision, the Board specifically found that CN was a necessary party to the investigation because—like CPKC—CN has dispatching authority over a segment of the *Sunset Limited* route. *Id.* The 1.8 miles of line owned by CPKC also includes the

Southern Pacific Rail Corp., 1 S.T.B. 233 (1996), i.e., the UP/SP merger. (CPKC Pet. to Intervene 1.)

³ The Board issued a decision establishing a protective order in this proceeding in a decision served on August 18, 2023. Compl. & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—For Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2 (Decision ID No. 51823), NOR 42175 (STB served Aug. 18, 2023).

Neches Bridge, a segment over which capacity concerns were raised in a recent proceeding.⁴ CPKC's ownership and ability to dispatch trains over parts of the *Sunset Limited* route could thus have bearing on the investigation, as CPKC itself implicitly recognized with its request for intervention.

Accordingly, the Board will direct CPKC to participate as a party to this proceeding and will add CPKC to the service list. CPKC also will be required to respond to the Board's interrogatories and request for documents, specifically, Appendix A, Parts II and V, of the July 2023 Decision. CPKC's responses will be due within 30 days from the date of this decision.⁵ Although this is less time than other parties to the proceeding will have had, the amount of information and materials that CPKC must produce in response to Appendix A should be relatively less given its limited connection to the *Sunset Limited* route.⁶ The Board does not anticipate that the addition of CPKC as a party will impact the existing procedural schedule.

Because CPKC will be directed to participate as a party to this proceeding, its petition to intervene will be denied as moot. CPKC sought to intervene here to allow it to review confidential materials that are filed under seal. As a party to the proceeding, CPKC will have access to such materials going forward, subject to the protective order. In addition, the other parties to this proceeding will be directed to provide confidential versions of their prior filings to CPKC, subject to execution of the necessary undertakings required by the protective order.

Lastly, to ensure that this investigation includes all necessary parties, Amtrak will be directed to notify the Board if it is aware of any entity not already a party to this docket that owns or leases rail tracks, or dispatches train movements, on any portion of the *Sunset Limited* route. Further, if UP, BNSF, CN, NOPB, SCRRA, or CPKC are aware of any entity not already

⁴ See Canadian Pac. Ry.—Control—Kan. City S. (CP/KCS), FD 36500, slip op. at 93-94 (STB served Mar. 15, 2023). In CP/KCS, the Board noted that the bridge “presents capacity concerns that predate the [Merger] Transaction” and that “the approximately 11 CPKC trains that Applicants expect to be added to bridge traffic in the three years following the Transaction could exacerbate these preexisting concerns.” CP/KCS, FD 36500, slip op. at 93. The Board imposed a reporting requirement on CPKC regarding traffic over the bridge. Id. at 94, 198.

⁵ The other parties to this proceeding have already filed responses to Appendix A, Part II, and their remaining responses to Appendix A are due by September 25, 2023.

⁶ In a previous decision, the Board extended the due date to respond to Appendix A, Parts III, IV, and V, for all parties despite only UP having requested the extension. The Board did so in response to Amtrak's concern that granting the extension just to UP would give it an informational advantage. Compl. & Pet. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—For Substandard Performance of Amtrak's Sunset Ltd. Trains 1 & 2 (Decision ID No. 51825), NOR 42175 (STB served Aug. 18, 2023). Although the decision here would give CPKC an opportunity to view other parties' responses prior to submitting its own responses, the Board finds that concerns of CPKC having an informational advantage are negligible. The initial interrogatories and requests for documents that CPKC will be required to respond to generally involve only data, not narratives. See July 2023 Decision, NOR 42175, App. A, Parts II and V.

a party to this docket that owns or leases rail tracks, or dispatches train movements, on any portion of the *Sunset Limited* route, they must file and alert the Board.

It is ordered:

1. CPKC is added as a party of record to this proceeding and is directed to respond to Appendix A, Parts II and V, of the July 2023 Decision, by October 12, 2023. CPKC will be added to the service list in this proceeding.

2. CPKC's petition to intervene is denied as moot.

3. UP, CN, NOPB, BNSF, Amtrak, and SCRRA are directed to provide confidential versions of their prior filings to CPKC, subject to execution of the necessary undertakings required by the protective order.

4. Amtrak is directed to notify the Board by September 22, 2023, if it is aware of any entity not already a party to this docket that owns or leases rail tracks, or dispatches train movements, on any portion of the *Sunset Limited* route. Additionally, if UP, BNSF, CN, NOPB, SCRRA, or CPKC are aware of any entity not already a party to this docket that owns or leases rail tracks, or dispatches train movements, on any portion of the *Sunset Limited* route, they must file and alert the Board.

5. This decision is effective on its service date.

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