

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

307653

ENTERED
Office of Proceedings
December 19, 2023
Part of
Public Record

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

**UNION PACIFIC RAILROAD COMPANY'S
PETITION TO REVISE PROCEDURAL SCHEDULE**

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**UNION PACIFIC RAILROAD COMPANY'S
PETITION TO REVISE PROCEDURAL SCHEDULE**

Union Pacific Railroad Company ("Union Pacific") hereby asks the Board to revise the contemplated schedule for this proceeding to provide Union Pacific 90 days to reply to the opening statement filed by The National Railroad Passenger Corporation ("Amtrak"). Under the currently contemplated schedule, Union Pacific would be required to file its reply statement 30 days after Amtrak files its opening statement. *See Complaint and Petition of the National Railroad Passenger Under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2*, NOR 42175, slip op. at 13 (STB served July 11, 2023) ("July 11 Order"); *see also Complaint and Petition of the National Railroad Passenger Under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2*, NOR 42175, slip op. at 2 (STB served Nov. 20, 2023) ("November 20 Order").

The Board's contemplated procedural schedule unfairly favors Amtrak. The schedule would give Amtrak 45 days after the end of discovery to submit an opening statement but give Union Pacific just 30 days to submit a reply. *See July 11 Order at 13; November 20 Order at 2*. In other words, Amtrak will have the entire period from the date the Board issued the July 11 Order until the date its opening statement is due to prepare its opening statement, including supporting verified statements from its fact and expert

witnesses. By contrast, Union Pacific will have only 30 days to reply. Such a schedule gives Amtrak an exceptionally unfair advantage in preparing evidentiary submissions. Union Pacific respectfully requests the Board establish a schedule that gives Union Pacific at least 90 days to reply to Amtrak's opening statement.

The novelty of the issues and substantial volume of data involved in this proceeding warrant granting Union Pacific far more than 30 days to file a reply. This case centers on allegations that Union Pacific violated Amtrak's statutory "preference over freight transportation." 49 U.S.C. § 24308(c). The July 11 Order required both Amtrak and Union Pacific to produce vast quantities of data regarding train delays and freight and passenger operations to address that issue. However, Board precedent does not define what constitutes a preference violation, nor does it identify the evidence the Board believes would establish such a violation. Further, the July 11 Order was silent as to how the Board plans to use the requested data to determine whether a preference violation has occurred.

Amtrak's Complaint similarly fails to set forth with specificity the acts or evidence it believes constitute a preference violation. Union Pacific attempted to elicit information on this critical topic from Amtrak through its own discovery requests. However, Union Pacific was met with a series of objections, including that its request was "premature." Specifically, on August 23, 2023, Union Pacific asked Amtrak to identify delays to Sunset Limited trains from October 1, 2021, through December 8, 2022—the "relevant period" under the Board's July 11 Order—that Amtrak contends were attributable to a failure to give Amtrak preference. On November 18, 2022, three months after Union Pacific's request, and nearly a year after submitting its Complaint, Amtrak said it could not respond because it was "still reviewing documents, data, and information submitted to the Board."

See Ex. A at 7.¹ Amtrak also complained Union Pacific was trying to “invade[] the attorney-client privilege and/or work product protection . . . by purporting to require the premature disclosure of legal judgments about whether a particular delay was attributable to a failure to comply with Amtrak’s statutory right to preference.” *Id.* If Amtrak could not or would not identify specific preference violations nearly a year *after* filing its Complaint, Union Pacific cannot reasonably be expected to respond to whatever evidence Amtrak ultimately presents in just 30 days.

Union Pacific cannot feasibly review every delay to a Sunset Limited train to prove the negative—to show why each delay does not constitute a preference violation—especially without knowing what the Board or Amtrak may consider to be a violation. Yet under the contemplated schedule, Union Pacific will have just 30 days to review whatever evidence Amtrak has been developing over all this time and prepare its reply. This massive disparity in time to prepare evidence is grossly inequitable. The disparity is also inconsistent with the Board’s interest in “further develop[ment of] the record through the submission of evidence and the presentation of arguments.” July 11 Order at 11. Fundamental fairness requires that the Board adopt a schedule giving Union Pacific much more than 30 days to prepare a reply to evidence that was more than a year in the making.

Union Pacific submits 90 days is the minimum amount of time the schedule should provide for it to prepare its reply submission. In a prior filing, Union Pacific asked for 60 days to file its reply. The Board denied Union Pacific’s earlier request for an extension as premature but invited Union Pacific to request an extension as the proceeding progressed.

¹ Exhibit A is a copy of Amtrak’s November 21, 2023, responses and objections to the first set of interrogatories served by Union Pacific Railroad Company.

See Complaint and Petition of the National Railroad Passenger Under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2, NOR 42175, slip op. at 2 (STB served Aug. 18, 2023). At this point, Amtrak has made clear it will not produce evidence regarding its preference claims in advance of filing its opening statement, so Union Pacific is renewing its request for an extension. Moreover, in light of Amtrak's inability or unwillingness to identify preference violations nearly a year after filing its Complaint, Union Pacific believes 60 days will not be enough time to develop a meaningful reply to whatever evidence Amtrak ultimately submits. Union Pacific therefore asks the Board to provide Union Pacific 90 days to file a reply to Amtrak's opening statement.

Respectfully submitted,

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December 19, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2023, I caused a copy of the foregoing document to be served by email on Administrative Law Judge McCarthy and all parties of record in Docket No. NOR 42175.

/s/ Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD
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

**AMTRAK RESPONSES AND OBJECTIONS TO FIRST SET OF INTERROGATORIES
FROM UNION PACIFIC RAILROAD COMPANY**

GENERAL OBJECTIONS

1. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent they seek to impose obligations beyond, exceeding, or otherwise inconsistent with discovery obligations under 49 C.F.R. § 1114.

2. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent any Interrogatory would require Amtrak to spend an unreasonable amount of time, effort, and resources in order to respond when balanced against the potential probative value (if any) of the information requested, and to the extent that full compliance with any Interrogatory is not possible in the time permitted by the governing Board regulations, the governing Board Order,¹ or the governing Board discovery schedule.

3. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent they seek information not relevant to the claim of any party and not reasonably calculated to lead to the discovery of admissible evidence.

4. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent they call for information that is already in the possession of Union Pacific Railroad

¹ See Decision, *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*, Docket No. NOR 42175 (July 11, 2023) ("Order").

Company (“UP”), for information that is publicly available, and for information already produced to UP or the Board in this proceeding. Such Interrogatories are overbroad, unduly burdensome, duplicative, cumulative, and would needlessly increase the cost of this proceeding.

5. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order, or privilege, including but not limited to the attorney-client privilege and work-product protection. Any inadvertent disclosure of such information shall not be deemed a waiver of the applicable privilege or protection.

6. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent any Interrogatory contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions, or states legal conclusions. The statements and omissions in Amtrak’s responses and objections do not indicate and should not be construed as meaning that Amtrak agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Interrogatory, that the scope of the Interrogatory is consistent with the discovery permitted in this proceeding, or that the information or documents are relevant and admissible.

7. Amtrak objects to the Interrogatories, including all Definitions and Instructions, to the extent they seek information or documents that are not in the possession, custody, or control of Amtrak.

8. Amtrak objects to the Interrogatories to the extent they mischaracterize, misquote, or excerpt the Complaint and Petition.

9. Amtrak objects to the Interrogatories, including all definitions and Instructions, to the extent they seek information or documents that do not exist or are not maintained in the

ordinary course of business. Amtrak further objects to the Interrogatories, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of information or documents in a manner different from the manner in which they are maintained in the ordinary course of business.

10. Amtrak objects to the number of Interrogatories that UP has propounded, which is inconsistent with the governing Board Order and discovery schedule and exceeds the number of interrogatories permitted under the Federal Rules of Civil Procedure. Amtrak reserves the right to seek a protective order relieving it from the obligation to respond to the unduly burdensome, disproportionate, and otherwise impermissible number of interrogatories that UP has propounded.

11. Amtrak reserves any and all objections to the use or admissibility of any information, material, documents, or communications identified, produced, or disclosed in response to these Interrogatories.

OBJECTIONS TO DEFINITIONS

Objection to Definition No. 8. Amtrak objects to the definition of “Communications” as unduly burdensome and disproportionate to the needs of this proceeding. As the parties have agreed, neither will collect and produce text messages.

Objection to Definition No. 13. Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak further objects to the definition because the investigation is ongoing. Amtrak’s objections and responses are based on current and reasonably available information gathered since UP serves its discovery requests. Amtrak reserves the right to at any time supplement, clarify, or otherwise amend any response, and to at any time supplement, clarify, or otherwise amend its objections, as more information becomes available.

Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop.

Objection to Definition No. 14. Amtrak objects to the definition of “Document” to the extent it purports to require that Amtrak produce documents not within its possession, custody, or control, and to the extent inconsistent with the parties’ agreement to modify certain requests to seek only “Analyses.”

Objection to Definition No. 19. Amtrak objects that the definition of Host Railroad is unduly burdensome and disproportionate to the needs of this investigation because it purports to require that Amtrak search for and provide information about railroads and entities that are not party to this proceeding and about routes that are not at issue in this proceeding. Unless otherwise indicated, Amtrak will limit its responses to entities that host a portion of the *Sunset Limited* route.

Objection to Definition No. 26. Amtrak objects that the definition of “Operating Agreement” in Definition 26 is unduly burdensome and disproportionate to the needs of this investigation because it purports to require that Amtrak search for and provide information about routes not at issue in this proceeding. Unless otherwise indicated, Amtrak will limit its responses to the *Sunset Limited*.

OBJECTIONS TO INSTRUCTIONS

Objection to Instruction No. 1. Amtrak objects to this instruction because it purports to require that Amtrak obtain information from an unreasonably wide array of sources, and is therefore unduly burdensome and disproportionate to the needs of the proceeding. For the same reason, Amtrak objects to this instruction to the extent that full compliance is not possible in the time permitted by the governing Board regulations, Order, or discovery schedule.

Objection to Instruction No. 3. Amtrak objects to this instruction as unduly burdensome and disproportionate to the needs of the proceeding because it purports to require that Amtrak provide information that is cumulative and duplicative.

Objection to Instruction No. 4. Amtrak objects to this instruction because it purports to require that Amtrak obtain information for time periods irrelevant to this proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and significantly more expansive than the default time period for Board requests.² For those reasons, this instruction is also unduly burdensome and disproportionate to the needs of the proceeding. Amtrak objects to the request to the extent that full compliance is not possible in the time permitted by the governing Board regulations, Order, or discovery schedule, and incorporates objections articulated in its Motion for Protective Order. Unless otherwise indicated, Amtrak will limit its response (if any) to the Relevant Period established in the Order.

Objection to Instruction 5. Amtrak objects to this Instruction to the extent it seeks to impose obligations that supplement, exceed, or are inconsistent with obligations under C.F.R. § 1114, and as unduly burdensome and disproportionate to the needs of the proceeding.

² In its Order, the Board issued requests for documents, data, and information to the parties. For purposes of responding to its requests, the Board defined the “Relevant Period” as October 1, 2021 through December 8, 2022. *See* Order at 20.

Objection to Instruction 6. Amtrak objects to this Instruction to the extent it seeks to impose obligations that supplement, exceed, or are inconsistent with obligations under C.F.R. § 1114, and as unduly burdensome and disproportionate to the needs of the proceeding, including because it purports to require that Amtrak associate documents with requests that are duplicative, overlapping, and cumulative. Amtrak will not sort its production by Request or otherwise produce an index associating documents to the duplicative, overlapping, and cumulative Requests propounded by UP unless otherwise agreed by the parties.

RESPONSES AND OBJECTIONS

Request No. 17. For any delay to any Sunset Limited Train that occurred from October 1, 2021, through December 8, 2022, that Amtrak contends was attributable to a failure to give Amtrak Preference, provide the following information in a Machine-Readable table:

- a. The train number of the Amtrak train affected, as recorded by Amtrak;
- b. Surrogate train number used by another party for the Amtrak train affected, if applicable;
- c. The Train Index Date of the train affected;
- d. The train ID date assigned by the host railroad;
- e. The delay ID number employed by Amtrak for the train involved;
- f. Date and time that the delay began;
- g. Date and time that the delay ended;
- h. Duration of the delay in minutes;
- i. Railroad to which Amtrak assigned responsibility for the delay;
- j. Delay cause (code) as found in Appendix B the Complaint;
- k. Other causation information (i.e., any additional causation information supplied by the conductor or other personnel);
- l. Location of the delay:
 1. Host Railroad Subdivision name;
 2. Uniform Milepost Number;
 3. Delay location type; and
 4. Amtrak crew district name
- m. Latitude and longitude data;
- n. Indicate if the delay was disputed at any time;
- o. For delays that were disputed:
 1. Whether the delay was resolved or unresolved;
 2. An explanation of the dispute that includes a description of any revisions made. If the dispute was unresolved, explain why;
 3. Date of the revision, if applicable;
 4. Host Railroad's concurrence or nonconcurrence in revision, if applicable; and
 5. Status as of the date of submission of this response, if applicable;

- p. Action the Host Railroad should have taken to avoid the alleged failure to give Amtrak Preference.

Response: Amtrak objects to this request as premature, including because the Board is continuing to investigate the failure to provide *Sunset Limited* Trains with their statutory right to preference over freight transportation in using a rail line, junction or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, because Amtrak will need to review any additional documents, data, and information submitted to the Board, and because Amtrak has yet to receive and will need to review dispatching tapes, documents, data, and information requested from UP in party-led discovery. Amtrak further objects to this request because it invades the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgments about whether a particular delay was attributable to a failure to comply with Amtrak's statutory right to preference over freight transportation in using a rail line, junction, or crossing, and about what alternative course of action would comply with Amtrak's statutory right to preference over freight transportation.

Amtrak further objects to this request to the extent UP seeks information that is in its own possession, custody, and control or is not within Amtrak's possession, custody, and control. Amtrak further objects to this request as unduly burdensome because it purports to require that Amtrak complete an analysis of the 22,615 delays to *Sunset Limited* Trains that occurred within the Relevant Period, and further objects to the request to the extent that compliance with that purported requirement is not possible within the time permitted for party-led discovery in this proceeding. Additionally, Amtrak objects to the request to the extent that it calls for legal conclusions and objects to the request as both unduly burdensome and disproportionate to the needs of this proceeding to the extent it requires that Amtrak re-produce material also provided in response to Board requests. Amtrak further objects to the request because it seeks information not kept in the

ordinary course of business and to the extent it purports to require that Amtrak conduct a special study or create any documents.

Subject to its general and specific objections—and reserving the right to modify, amend, or supplement this response based on its continuing review and on materials that have been or will be produced to the Board or in party-led discovery—Amtrak respectfully directs UP to the document Bates Stamped AMTRAK_STB_Native_0030, which identifies delays that Amtrak may contend were attributable to a failure to provide Amtrak with its statutory right to preference over freight transportation in using a rail line, junction or crossing, and also includes detailed information about each delay. To be clear, Amtrak reiterates that its review of documents, data, and information concerning the failure to provide Amtrak with preference is ongoing and may be affected by information that is in the sole possession of UP, has been produced to the Board or Amtrak in this investigation, or will be produced to the Board or Amtrak in this investigation.

Request No. 23: Describe with particularity the reasons why the notation “insufficient run time” would appear in a CDR, to the extent the information is not provided in response to Request No. 22.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Subject to its general and that specific objection, Amtrak responds as follows: Amtrak permits conductors to enter explanations when reporting train delays. Conductors may enter “insufficient run time” when trains experience a delay during one segment of the route, the reason for that delay is not apparent to the conductor, and the conductor in the absence of other information concludes that the delay segment has been completed under optimal or near-optimal conditions. A more formal and comprehensive evaluation of Pure Run Time may or may not confirm a conductor’s perception that there is insufficient run time for a particular segment.

Request No. 24: Describe with particularity the reasons why the notation “lost time no apparent reason” would appear in a CDR, to the extent the information is not provided in response to Request No. 22.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Subject to its general and that specific objection, Amtrak responds as follows: The phrase “lost time no apparent reason” may appear in a conductor delay narrative when a conductor is unable to identify the cause of a delay based on information available to the conductor. When time is lost for reasons not apparent to the conductor, the conductor is instructed to record the delay as an Amtrak-responsible delay, even though the true cause of that delay may be attributable to a host or third-party.

Request No. 25. Describe with particularity the processes, procedures, and criteria employed by Amtrak to determine (a) how an individual delay to an Amtrak train or a type of delay to an Amtrak train should be categorized for purpose of calculating the COTP Metric; and (b) how an individual delay to an Amtrak train or a type of delay to an Amtrak train should be categorized for purpose of calculating the Train Delay Metric.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak further objects to this Request as unduly burdensome, including because it is duplicative and cumulative of Board Requests 12 and 13. Amtrak further objects to subpart (a) of this Request because the COTP Metric is calculated as set forth in 49 C.F.R. § 273.5(a). Amtrak also objects to this request because it purports to require that Amtrak obtain information for time periods irrelevant to this proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and significantly more expansive than the default time period for Board Requests. Indeed, for those reasons, this request is also unduly burdensome and disproportionate to the needs of the proceeding. Subject to its general and specific objections, and consistent with

49 C.F.R. § 1114.26(b), Amtrak respectfully directs UP to Amtrak's Response to Board Request Nos. 12-13 and the documents cited therein.

Request No. 26. Describe with particularity the processes, procedures, and criteria employed by Amtrak to determine whether a CDR should be corrected.

Response: Amtrak objects to the definition of the phrase "Describe with particularity" because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak further objects to this Request as unduly burdensome, including because it is duplicative and cumulative of Board Requests 14-16. Amtrak also objects to this request because it purports to require that Amtrak obtain information for time periods irrelevant to this proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and significantly more expansive than the default time period for Board Requests. Indeed, for those reasons, this request is also unduly burdensome and disproportionate to the needs of the proceeding. Subject to its general and specific objections, and consistent with 49 C.F.R. § 1114.26(b), Amtrak respectfully directs UP to Amtrak's Response to Board Request Nos. 14-16 and the documents cited therein.

Request No. 36: Describe with particularity Amtrak's policies, procedures, and practices relating to (a) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as Host-Responsible Delay; (b) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as Amtrak-Responsible Delay; (c) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as Third-Party Responsible Delay; (d) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as FTI; and (e) the recording, coding, measurement, and reporting of the COTP Metric.

Response: Amtrak objects to the definition of the phrase "Describe with particularity" because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak further objects to this Request as unduly burdensome, including because it is duplicative and cumulative of Board Requests 1, 12-13. Consistent with the parties' agreement, Amtrak will confine its response to the Relevant Period. Subject to its general and

specific objections, and consistent with 49 C.F.R. § 1114.26(b), Amtrak respectfully directs UP to Amtrak's Response to Board Request Nos. 1, 12-13 and the documents cited therein.

Request No. 37: Describe with particularity how the policies, procedures, and practices described in response to Request No. 36 are communicated to Amtrak's conductors, assistant conductors, engineers, and second engineers.

Response: Amtrak objects to the definition of the phrase "Describe with particularity" because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Consistent with the parties' agreement concerning this request, Amtrak will confine its response to the Relevant Period. Subject to its general and specific objections, Amtrak responds as follows: When hired, assistant conductors receive information about delay coding during their new-hire training. As part of the delay coding training session, assistant conductors also receive a manual that contains information about the reporting and recording delays on host railroads, which is provided to personnel involved in recording, reporting, or otherwise assisting in the preparation, maintenance, and evaluation of delay data. *See* Amtrak_STB_0000061; Amtrak_STB_0000017. Assistant conductors are also partnered with a promoted Conductor to receive On Job Training ("OJT") and gain experience with delay reporting. Only after being elevated from an assistant conductor to a conductor do personnel become responsible for delay reporting. Upon promotion, personnel receive further training on delay coding, as well as recurrent training. Amtrak further responds that engineers and second engineers are not responsible for delay reporting. To the extent engineers and second engineers assume positions that require managing conductors (*i.e.*, Trainmaster or, in some cases, Road Foremen), those personnel attend a delay coding training session, where they receive materials described in Amtrak's response to Board Request No. 16.

Request No. 38: Identify all changes to any policies, procedures, or practices described in response to Request No. 36 and describe with particularity the nature of each such change.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak further objects to this Request as unduly burdensome, including because it is duplicative and cumulative of Board Requests 1, 12-13. Consistent with the parties’ agreement, Amtrak will confine its response to the Relevant Period. Subject to its general and specific objections, and consistent with 49 C.F.R. § 1114.26(b), Amtrak respectfully directs UP to Amtrak’s Response to Board Request Nos. 1, 12, and 13, as well as the May 10, 2021 Delay Manual (Amtrak_STB_0000061) and October 10, 2022 Delay Manual (Amtrak_STB_0000017).

Request No. 39: Describe with particularity Amtrak’s policies, procedures, and practices relating to Communications with dispatchers and other employees of Union Pacific.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to the phrase “other employees” as ambiguous, overbroad, and unduly burdensome. Amtrak interprets this request to seek information concerning communications between individuals responsible for the day-to-day operation of *Sunset Limited* Trains on UP rail lines. Also, and consistent with the parties’ agreement, Amtrak will confine its response to the Relevant Period.

Subject to its general and specific objections, Amtrak responds as follows: Amtrak communications with UP dispatchers occur pursuant to rules and instructions issued by UP, including the UP rulebook, employee timetables, and any special instructions issued to the operating crew. Additional rules and instructions governing the day-to-day communications between Amtrak personnel and UP dispatchers are provided in the Service Standards Manual AMTRAK_STB_0000906. *See, e.g.,* Manual at 1-32 (communications concerning immediate

threats to the safety and security of customers or train crews); *id.* at 2-1 (communications concerning emergency medical assistance).

Request No 40. Describe with particularity how the policies, procedures, and practices described in response to Request No. 39 are communicated to Amtrak's conductors, assistant conductors, engineers, and second engineers.

Response: Amtrak incorporates by reference its objections to Request No. 39. Amtrak interprets this request to seek information concerning policies, procedures, and practices related to communications between individuals responsible for the day-to-day operation of *Sunset Limited* Trains on UP rail lines. Also, and consistent with the parties' agreement, Amtrak will confine its response to the Relevant Period. Subject to its general and specific objections, Amtrak responds as follows: Amtrak communications with UP dispatchers occur pursuant to rules and instructions issued by UP, including the UP rulebook, employee timetables, and any special instructions issued to the operating crew, which are disseminated by Union Pacific, posted in the crew base, and also accessible through credentials assigned by Union Pacific. Rules and instructions governing the day-to-day communications between Amtrak personnel and UP dispatchers are also communicated to personnel through the Service Standards Manual (AMTRAK_STB_0000906) and in trainings conducted upon hiring and promotion.

Request No. 41. Identify all changes to any policies, procedures, or practices described in response to Request 39 and describe with particularity the nature of each such change.

Response: Amtrak incorporates by reference its objections to Request No. 39. Amtrak interprets this request to seek information concerning policies, procedures, and practices related to communications between individuals responsible for the day-to-day operation of *Sunset Limited* Trains on UP rail lines. Also, and consistent with the parties' agreement, Amtrak will confine its response to the Relevant Period. To the extent this Request seeks information about changes to the UP rulebook, employee timetables, or any special instructions issued to the operating crew,

Amtrak respectfully objects to the Request because that information is within the possession, custody, or control of UP. Subject to its general and specific objections, and consistent with 49 C.F.R. § 1114.26(b), Amtrak respectfully directs UP to the Service Standards Manuals Bates Stamped AMTRAK_STB_0000906; AMTRAK_STB_0001539; AMTRAK_STB_0001228.

Request No. 42. State whether any Amtrak employees are or have been evaluated, compensated, supervised, or disciplined based in whole or part on information they recorded or failed to record in CDRs, and if so, identify the basis for this statement.

Response: Amtrak objects to this request as irrelevant, unduly burdensome, and disproportionate to the needs of this proceeding to the extent it purports to require information about whether Amtrak employees have been evaluated, compensated, supervised, or disciplined for the act of recording or omitting information in CDRs, rather than the substance of information recorded or omitted. Amtrak also objects to the phrases “supervised,” “evaluated,” and “in whole or in part” as vague and ambiguous. Consistent with the parties’ agreement, Amtrak will confine its response to the Relevant Period and to formal disciplinary processes. Subject to its general and specific objections, Amtrak responds that, based on its reasonable and diligent review, it has not identified any Amtrak employee responsible for recording or revising delays that has been compensated or disciplined based on the substance of the information they recorded or failed to record in CDRs.

Request No. 44. Identify all sources and stores of data maintained by Amtrak relating to the performance of Sunset Limited Trains, including but not limited to data regarding On-Time Performance and Train Delays. For each data set, describe what it contains, how it was collected, when it was collected, and who collected it.

Response: Amtrak objects to this request as unduly burdensome, including because it is duplicative and cumulative of Board Requests 7-14. Amtrak objects to the phrase “relating to the performance of Sunset Limited Trains” as vague and ambiguous. Amtrak objects to the phrase “On-Time Performance” to the extent it is intended to encompass measures of on-time

performance other than Customer On-Time Performance and Contractual On-Time Performance. Amtrak will respond to this request by providing information with respect to On-Time Performance and Train Delays. Subject to its general and specific objections, and consistent with 49 C.F.R. § 1114.26(b), Amtrak respectfully directs UP to Amtrak Response to Board Request Nos. 7-14 and the documents cited therein.

Request No. 49: Identify and describe with particularity all sources of funding available or potentially available to Amtrak for investment in Infrastructure on the Sunset Limited Route.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak further objects to the request as unduly burdensome because it purports to require that Amtrak identify “all” sources of funding. Amtrak objects to the request to the extent it assumes that Amtrak should use or seek funding for investment in infrastructure on the *Sunset Limited* route, which is owned or hosted primarily by UP. Amtrak objects to the request as unduly burdensome to the extent it duplicates UP requests 45-47. Subject to its general and specific objections, and based on its reasonable and diligent investigation, Amtrak responds that sources of funding potentially available to Amtrak for investment in certain types of infrastructure³ on the *Sunset Limited* route include:

- The Consolidated Rail Infrastructure and Safety Improvements Program
- The Railroad Crossing Elimination Program
- Restoration & Enhancement Grants
- The FRA Federal-State Partnership for Intercity Passenger Rail Program
- Amtrak’s National Network Grant
- Department of Transportation Megaproject Program

Request No. 51: Describe with particularity any measures or plans Amtrak has to reduce Amtrak-Responsible Delays and produce all documents relating to such measures or plans.

³ Amtrak interprets the term infrastructure to include, among other things, stations, new rolling stock, and other railroad assets.

Response: Amtrak hereby responds exclusively to the request that it describe with particularity any measures or plans it has to reduce Amtrak-Responsible Delays.⁴ Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to the request as unduly burdensome, including because it is duplicative and cumulative of Board Request 43. Subject to its general and specific objections, Amtrak respectfully directs UP to Amtrak Response to Board Request No. 43.

Request No. 52: Describe with particularity any measures or plans Amtrak has to reduce Third-Party Responsible Delays and produce all documents relating to such measures or plans.

Response: Amtrak hereby responds exclusively to the request that it describe with particularity any measures or plans it has to reduce Third-Party Responsible Delays.⁵ Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to the request as unduly burdensome, including because it is duplicative and cumulative of Board Request 43. Subject to its general and specific objections, Amtrak respectfully directs UP to Amtrak Response to Board Request No. 43

Request No. 77: Identify and describe with particularity the “policies” referenced in Paragraph 8 of the Complaint that allegedly deny Sunset Limited Trains their statutory right to preference.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request to the extent it selectively quotes and excerpts

⁴ To avoid confusion, Amtrak and UP have separately negotiated modifications of the request that it produce “all documents” concerning such measures or plans. Amtrak will separately meet and confer about this document request.

⁵ To avoid confusion, Amtrak and UP have separately negotiated modifications of the request that it produce “all documents” concerning such measures or plans. Amtrak will separately meet and confer about this document request.

the Complaint and Petition. Amtrak objects to the request because the Board's investigation is ongoing, because Amtrak is still reviewing documents, data, and information submitted to the Board, and because Amtrak will need to review additional documents, data, and information submitted to the Board. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation. Subject to its general and specific objections, Amtrak further responds that the dispatching policies and/or practices so referenced are identified and described in Paragraphs 127-140 of its Complaint and Petition.

Request No. 79: Identify and describe with particularity the “practices” referenced in Paragraph 8 of the Complaint that allegedly deny Sunset Limited Trains their statutory right to preference.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request to the extent it selectively quotes and excerpts the Complaint and Petition. Amtrak objects to the request because the Board's investigation is ongoing, because Amtrak is still reviewing documents, data, and information submitted to the Board, and because Amtrak will need to review additional documents, data, and information submitted to the Board. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation. Subject to its general and specific objections, Amtrak further responds

that the dispatching policies and/or practices so referenced are identified and described in Paragraphs 127-140 of its Complaint and Petition.

Request No. 81: Identify and describe with particularity the “operational practices” referenced in Paragraph of the Complaint that allegedly result in systematic violations of Amtrak’s rights.

Responses: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request to the extent it selectively quotes and excerpts the Complaint and Petition. Amtrak objects to the request because the Board’s investigation is ongoing, because Amtrak is still reviewing documents, data, and information submitted to the Board, and because Amtrak will need to review additional documents, data, and information submitted to the Board. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation. Subject to its general and specific objections, Amtrak further responds that the “operational practices” so referenced are identified and described in Paragraphs 127-140 of Amtrak’s Complaint and Petition.

Request No. 84: Identify each instance in which Amtrak alleges Union Pacific “prioritized freight trains over Sunset Limited Trains” when “resolving meets and passes.” *See* Complaint ¶ 9.

Response: Amtrak objects to this request as premature, including because the Board is continuing to investigate the failure to provide Amtrak with its statutory right to preference over freight transportation in using a rail line, junction, or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, because Amtrak will need to review any additional documents, data, and information submitted to the Board, and because Amtrak has yet

to receive and will need to review dispatching tapes, documents, data, and information requested from UP in party-led discovery. Amtrak further objects to this request because it invades the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgments about whether a particular delay was attributable to a failure to comply with Amtrak's statutory right to preference over freight transportation.

Amtrak further objects to this request to the extent UP seeks information that is in its own possession, custody, and control or is not within Amtrak's possession, custody, and control. Amtrak further objects to this request as unduly burdensome because it purports to require that Amtrak complete an analysis of the 22,615 delays to *Sunset Limited* Trains that occurred within the Relevant Period, and further objects to the request to the extent that compliance with that purported requirement is not possible within the time permitted for party-led discovery in this proceeding.

Amtrak objects to this request to the extent it selectively quotes and excerpts the Complaint and Petition. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation.

Subject to its general and specific objections, and reserving the right to modify, amend, or supplement this response based on its continuing review and based on materials that have been or will be produced to the Board or in party-led discovery, Amtrak respectfully directs UP to UP delays coded FTI (Meet), FTI (Cross Over), FTI (Blocked), FTI (Freight Train in the Way), FTI

(Other), RTE, and DCS in the document Bates Stamped Amtrak_STB_Native_0030,⁶ which identifies delays that Amtrak may contend that UP “prioritized freight trains over Sunset Limited Trains” when “resolving meets and passes.” To be clear, Amtrak reiterates that its review of documents, data, and information concerning the failure to prioritize *Sunset Limited Trains* in resolving meets and passes is ongoing and may be affected by information that is in the sole possession of UP, has been produced to the Board or Amtrak in this investigation, or will be produced to the Board or Amtrak in this investigation.

Request 85: Identify each instance in which Amtrak alleges Union Pacific “prioritized freight trains over Sunset Limited Trains” when “determining access to main lines.” *See* Complaint ¶ 9.

Response: Amtrak objects to this request as premature, including because the Board is continuing to investigate the failure to provide Amtrak with its statutory right to preference over freight transportation in using a rail line, junction, or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, because Amtrak will need to review any additional documents, data, and information submitted to the Board, and because Amtrak has yet to receive and will need to review dispatching tapes, documents, data, and information requested from UP in party-led discovery. Amtrak further objects to this request because it invades the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgments about whether a particular delay was attributable to a failure to comply with Amtrak’s statutory right to preference over freight transportation.

Amtrak further objects to this request to the extent UP seeks information that is in its own possession, custody, and control or is not within Amtrak’s possession, custody, and control. Amtrak further objects to this request as unduly burdensome because it purports to require that

⁶ Amtrak reserves the right to contend that delays occurring between El Monte and Yuma Junction should also be attributed to UP.

Amtrak complete an analysis of the 22,615 delays to *Sunset Limited* Trains that occurred within the Relevant Period, and further objects to the request to the extent that compliance with that purported requirement is not possible within the time permitted for party-led discovery in this proceeding.

Amtrak objects to this request to the extent it selectively quotes and excerpts the Complaint and Petition. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation.

Subject to its general and specific objections, and reserving the right to modify, amend, or supplement this response based on its continuing review, Amtrak respectfully directs UP to UP delays coded FTI (meet), FTI (follow), FTI (cross over), FTI (cross-traffic), FTI (blocked), FTI (congestion), FTI (freight congestion), FTI (freight train in the way), FTI (other), RTE, and DCS in the document Bates Stamped Amtrak_STB_Native_0030,⁷ identifying delays for which Amtrak may contend that UP “prioritized freight trains over *Sunset Limited* Trains” when “determining access to main lines.” To be clear, Amtrak reiterates that its review of documents, data, and information concerning the failure to prioritize *Sunset Limited* Trains in determining access to main lines is ongoing and may be affected by information that is in the sole possession of UP, has been produced to the Board or Amtrak in this investigation, or will be produced to the Board or Amtrak in this investigation.

⁷ Amtrak reserves the right to contend that delays occurring between El Monte and Yuma Junction should also be attributed to UP.

Request 86: Identify each instance in which Amtrak alleges Union Pacific “prioritized freight trains over Sunset Limited Trains” when “otherwise failing to ensure that tracks are available for the Sunset Limited Trains.” *See* Complaint ¶ 9.

Response: Amtrak objects to this request as premature, including because the Board has only just begun its investigation of the failure to provide Amtrak with its statutory right to preference over freight transportation in using a rail line, junction, or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, and because Amtrak will need to review additional documents, data, and information submitted to the Board. Amtrak further objects to this request because it invades the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgment about whether Amtrak will contend that a particular delay was attributable to a failure to comply with Amtrak’s statutory right to preference. Amtrak further objects to this request as unduly burdensome because it purports to require that Amtrak complete an analysis of the 22,615 delays to *Sunset Limited* Trains that occurred within the Relevant Period, and further objects to the request to the extent that compliance is not possible within the time permitted for party-led discovery in this proceeding.

Amtrak objects to this request to the extent it selectively quotes and excerpts the Complaint and Petition. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation.

Subject to its general and specific objections, and reserving the right to modify, amend, or supplement this response based on its continuing review, Amtrak respectfully directs UP to UP

delays coded FTI (meet), FTI (follow), FTI (cross over), FTI (cross-traffic), FTI (blocked), FTI (congestion), FTI (freight congestion), FTI (freight train in the way), FTI (other), FTI (emergency, derailment, disabled, breakdown), FTI (pick up/drop off freight crew), RTE, DCS, and DMW in the document Bates Stamped Amtrak_STB_Native_0030,⁸ which identifies instances in which Amtrak may contend that UP prioritized freight trains over Sunset Limited Trains” by “otherwise failing to ensure that tracks are available for the Sunset Limited Trains.” To be clear, Amtrak reiterates that its review of documents, data, and information concerning the failure to ensure that tracks were available for *Sunset Limited* Trains is ongoing and may be affected by information that is in the sole possession of UP, has been produced to the Board or Amtrak in this investigation, or will be produced to the Board or Amtrak in this investigation.

Request 87: Identify Amtrak’s system-wide average train speed for each year beginning in 2016, excluding Amtrak’s average train speed for Sunset Limited Trains, as Amtrak calculates system-wide average train speed for purposes of 49 U.S.C. § 24101(c), and as referenced in Paragraph 12 of the Complaint.

Response: Amtrak objects to this request because it purports to require that Amtrak obtain information for time periods irrelevant to this proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and significantly more expansive than the default time period for Board Requests. Indeed, for those reasons, this instruction is also unduly burdensome and disproportionate to the needs of the proceeding. Amtrak further objects to the request to the extent it mischaracterizes the Complaint. Subject to its general and specific objections, Amtrak respectfully directs UP to the document Bates Stamped Amtrak_STB_Native_0031, which provides the average train speed for each of Amtrak’s long distance routes based on scheduled arrivals and departures for each of the years 2019, 2020, 2021, and 2022.

⁸ Amtrak reserves the right to contend that delays occurring between El Monte and Yuma Junction should also be attributed to UP.

Request 91: Identify and describe in detail what “host status” means, as the term “host status” is used in Paragraph 37 of the Complaint.

Response: As used in Paragraph 37 of the Complaint, the term “host status” refers to the determination that CN serves as the host railroad for the *Sunset Limited* over a 2.2-mile segment of track between Southport Junction and East Bridge Junction.

Request 106: Identify and describe with precision the actions Amtrak alleges Union Pacific could take to “reasonably” address the “substandard performance of Sunset Limited Trains.” See Complaint ¶ 84.

Response: Amtrak objects to this request as premature, including because the Board is continuing to investigate the failure to provide *Sunset Limited* Trains with their statutory right to preference over freight transportation in using a rail line, junction or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, and because Amtrak will need to review additional documents, data, and information submitted to the Board. Amtrak further objects to this request because it invades the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgment about what constitutes a “reasonable action.”

Amtrak objects to this request to the extent it selectively quotes and excerpts the Complaint and Petition. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation. Subject to its general and specific objections, and while reserving the right to modify, amend or supplement this response based on its continuing review, Amtrak respectfully directs UP to Amtrak’s Response to Board Request No. 43.

Request No. 114: For each of Amtrak’s current published schedules for intercity trains, identify the route mileage, Pure Running Time, scheduled running time, Dwell Time, Excess Dwell Time, Recovery Time, and Miscellaneous Time, and the most recently quarterly average actual running time reported to the FRA.

Response: Amtrak also objects to this request because it purports to require that Amtrak provide information for time periods irrelevant to this proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and significantly more expansive than the default time period for Board Requests. Indeed, for those reasons, this instruction is also unduly burdensome and disproportionate to the needs of the proceeding. Amtrak further objects to this request because it purports to require that Amtrak provide information a significant number of intercity train routes that have no relevance to this proceeding and is in that respect unduly burdensome and disproportionate to the needs of the proceeding. Amtrak further objects to this request because it purports to require that Amtrak provide information that is publicly available, including information reported to and published by the FRA.

Consistent with the parties’ agreement regarding this request, Amtrak will confine its response to the Relevant Period and to published schedules for its long-distance routes. Subject to its general and specific objections, Amtrak respectfully refers UP to the following schedule skeletons: Auto Train Amtrak_STB_Native_0032; California Zephyr Amtrak_STB_Native_0033; Capitol Limited Amtrak_STB_Native_0034; Cardinal Amtrak_STB_Native_0035; City of New Orleans Amtrak_STB_Native_0036; Coast Starlight Amtrak_STB_Native_0037; Crescent Amtrak_STB_Native_0038; Empire Builder Amtrak_STB_Native_0039; Lake Shore Limited Amtrak_STB_Native_0040; Silver Service Amtrak_STB_Native_0041; Southwest Chief Amtrak_STB_Native_0042; Texas Eagle Amtrak_STB_Native_0043.

Request No. 122: Identify and describe with particularity the “operational adjustments” Amtrak alleges it identified in Paragraph 120 of the Complaint.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request to the extent it purports to require that Amtrak identify every operational adjustment that Amtrak has identified for UP. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation.

Subject to its general and specific objections, Amtrak responds that it has identified several operational adjustments to address performance concerns on the *Sunset Limited*, such as

{{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } }.

Request No. 124: Identify and describe with particularity the “additional recovery time” Amtrak alleges it identified in Paragraph 120 of the Complaint.

Response: Amtrak objects to the definition of the phrase “describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request to the extent it mischaracterizes or misquotes the Complaint and Petition. Subject to its general and specific objections, Amtrak responds that

Amtrak agreed during a 1998 renegotiation of the Amtrak-UP operating agreement to increase the amount of Recovery Time in the *Sunset Limited* schedule. Amtrak further responds that in 2005, at a time when the *Sunset Limited* was arriving (on average) eight hours late at each of its endpoints, Amtrak based on certain assurances by UP agreed to add approximately 3.5 hours to the Train 1 and Train 2 schedules.

Request No. 126: Identify and describe with particularity the “extended dwell time” Amtrak alleges it identified in Paragraph 120 of the Complaint.

Response: Amtrak objects to the definition of the phrase “describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to the request to the extent it mischaracterizes or misquotes the Complaint and Petition. Subject to its general and specific objections, Amtrak responds that it provides more dwell time than the *Sunset Limited* requires to complete station operations at San Antonio, where the *Sunset Limited* 1 has 160 minutes of dwell time. For completeness, Amtrak further responds that in practice scheduled dwell frequently exceeds the time required for passenger activities during a *Sunset Limited* station stop.

Request No. 128: Identify and describe with precision the “operational procedures” that Amtrak alleges Union Pacific has failed to implement or enforce in Paragraph 120 of the Complaint.

Response: Amtrak objects to the definition of the phrase “Describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to the request because the Board’s investigation is ongoing, because Amtrak is still reviewing documents, data, and information submitted to the Board, and because Amtrak will need to review additional documents, data, and information submitted to the Board. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more

information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation.

Subject to its general and specific objections, and while again reserving the right to modify, amend, or supplement this response based on its continuing review, Amtrak further responds that the “operational procedures” so referenced include maintaining sidings of sufficient length to accommodate all of its freight trains, ensuring that *Sunset Limited* trains are dispatched ahead of non-fitting freight trains, adequately planning for the expiration of freight crews, dispatching *Sunset Limited* trains on the Houston rather than Beaumont subdivision, adequately coordinating with other hosts and with railroads that control crossings about the location and handoff of Amtrak passenger trains, planning meets to minimize delays to Amtrak trains, and affording *Sunset Limited* Trains their statutory preference in use of rail lines, junctions, and crossing. *See generally* Complaint and Petition at 127-140.

Request No. 129: Identify and describe with precision the amount of time associated with each delay that Amtrak identifies in response to the Request 7 in Appendix A—Part III of the Board’s Order served July 11, 2023, would have been reduced by the “operational procedures” that Amtrak alleges Union Pacific has failed to implement or enforce in Paragraph 120 of the Complaint would have eliminated.

Response: Amtrak objects to this request as premature, including because the Board is continuing to investigate the failure to provide *Sunset Limited* Trains with their statutory right to preference over freight transportation in using a rail line, junction or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, because Amtrak will need to review any additional documents, data, and information submitted to the Board, and because Amtrak has yet to receive and will need to review dispatching, documents, data, and information requested from UP in party-led discovery. Amtrak further objects to this request because it invades

the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgments about whether a particular delay was attributable to a failure to comply with Amtrak's statutory right to preference, and about what alternative course of action would comply with Amtrak's statutory right to preference.

Amtrak further objects to this request to the extent UP seeks information that is in its own possession, custody, and control or is not within Amtrak's possession, custody, and control. Amtrak further objects to this request as unduly burdensome because it purports to require that Amtrak complete an analysis of the 22,615 delays to *Sunset Limited* Trains that occurred within the Relevant Period, and further objects to the request to the extent that compliance with that purported requirement is not possible within the time permitted for party-led discovery in this proceeding. Additionally, Amtrak objects to the request to the extent that it calls for legal conclusions and objects to the request as both unduly burdensome and disproportionate to the needs of this proceeding to the extent it requires that Amtrak re-produce material also provided in response to Board requests. Amtrak further objects to the request because it seeks information not kept in the ordinary course of business and to the extent it purports to require that Amtrak conduct a special study or create any documents.

Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation. Subject to its general and specific objections, and reserving the right to modify, amend, or supplement this response based on its continuing review, Amtrak respectfully directs UP to UP delays coded FTI (meet), FTI (follow), FTI (cross over), FTI (cross-traffic), FTI

(blocked), FTI (congestion), FTI (freight congestion), FTI (freight train in the way), FTI (other), FTI (emergency, derailment, disabled, breakdown), FTI (pick up/drop off freight crew), RTE, DCS, and DMW in the document Bates Stamped Amtrak_STB_Native_0030, which identifies delays that Amtrak may contend would have been reduced by implementation or enforcement of operational procedures referenced in Paragraph 120 of its Complaint and Petition, and provides available information about the length of time associated with those delays. To be clear, Amtrak reiterates that its review of documents, data, and information concerning operational procedures identified in Paragraph 120 of the Complaint is ongoing and may be affected by information that is in the sole possession of UP, has been produced to the Board or Amtrak in this investigation, or will be produced to the Board or Amtrak in this investigation.

Request No. 135: Identify and describe with particularity each of the delays that could have been addressed by advanced notification from Union Pacific, as alleged in Paragraph 139 of the Complaint.

Response: Amtrak objects to this request as premature, including because the Board is continuing to investigate the failure to provide *Sunset Limited* Trains with their statutory right to preference over freight transportation in using a rail line, junction or crossing, because Amtrak is still reviewing documents, data, and information submitted to the Board, because Amtrak will need to review any additional documents, data, and information submitted to the Board, and because Amtrak has yet to receive and will need to review dispatching, documents, data, and information requested from UP in party-led discovery. Amtrak further objects to this request because it invades the attorney-client privilege and/or work product protection, including by purporting to require the premature disclosure of legal judgments about whether a particular delay was attributable to a failure to comply with Amtrak's statutory right to preference, and about what alternative course of action would comply with Amtrak's statutory right to preference.

Amtrak further objects to this request to the extent UP seeks information that is in its own possession, custody, and control or is not within Amtrak's possession, custody, and control. Amtrak further objects to this request as unduly burdensome because it purports to require that Amtrak complete an analysis of the 22,615 delays to *Sunset Limited* Trains that occurred within the Relevant Period, and further objects to the request to the extent that compliance with that purported requirement is not possible within the time permitted for party-led discovery in this proceeding.

Amtrak objects to the request to the extent it excerpts or mischaracterized the Complaint and Petition. Amtrak reserves the right to modify or amend its Complaint and Petition, and reserves its right to expand, supplement, modify, or otherwise develop its allegations and contentions as more information becomes available. Amtrak likewise reserves the right to rely on facts, documents, information, and events that it may subsequently identify or develop during the course of the investigation. Subject to its general and specific objections, and reserving the right to modify, amend, or supplement this response based on its continuing review, Amtrak respectfully directs UP to UP delays coded FTI (cross-traffic), as well as delays occurring at Iowa Junction (XIJ), Live Oak (XLL), and East Bridge Junction (XEB), and delays relating to any other handoff or control point involving UP-hosted track, in the document Bates Stamped Amtrak_STB_Native_0030, which identifies delays that Amtrak may contend could have been reduced by implementation of advanced notification from Union Pacific. To be clear, Amtrak reiterates that its review of documents, data, and information concerning advanced notification by UP is ongoing and may be affected by information that is in the sole possession of UP, has been produced to the Board or Amtrak in this investigation, or will be produced to the Board or Amtrak in this investigation.

Request No. 137: Identify and describe with particularity the amount of the “financial loss” suffered by Amtrak, as alleged in Paragraph 141 of the Complaint.

Response: Amtrak objects to the definition of the phrase “describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request as premature and inconsistent with the Board’s Order initiating this investigation, which established a two-stage procedural framework because “the fact finding, evidence, and argument required to assess damages and prescribe other relief would be a time-consuming process for both the parties and the Board,” and “it would be wasteful and premature for the Board to develop the record needed to assess damages and relief before it determines whether there is a violation of Amtrak’s statutory preference.” Order at 12. Amtrak further objects to this request as unduly burdensome to the extent that compliance is not possible within the time permitted for party-led discovery in Phase 1 of this proceeding. Amtrak objects to this request to the extent to requires Amtrak to perform a special study and as premature to the extent it purportedly requires Amtrak to provide documents or information it my submit during briefing in this proceeding. Amtrak also objects to this request as premature and inconsistent with the Board’s Order initiating this investigation for the additional reasons set out in its correspondence dated October 5, 2023. *See* Correspondence at 10-11.

Request No. 139: Identify and describe with particularity the amount of “reduced ticket sales” experienced by Amtrak, as alleged in Paragraph 142 of the Complaint, for (a) Sunset Limited Trains, and (b) other Amtrak services.

Response: Amtrak objects to the definition of the phrase “describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request as premature and inconsistent with the Board’s Order initiating this investigation, which established a two-stage procedural framework because “the fact finding, evidence, and argument required to assess damages and prescribe other relief

would be a time-consuming process for both the parties and the Board,” and “it would be wasteful and premature for the Board to develop the record needed to assess damages and relief before it determines whether there is a violation of Amtrak’s statutory preference.” Order at 12. Amtrak further objects to this request as unduly burdensome to the extent that compliance is not possible within the time permitted for party-led discovery in Phase 1 of this proceeding. Amtrak objects to this request to the extent to requires Amtrak to perform a special study and as premature to the extent it purportedly requires Amtrak to provide documents or information it my submit during briefing in this proceeding. Amtrak also objects to this request as premature and inconsistent with the Board’s Order initiating this investigation for the additional reasons set out in its correspondence dated October 5, 2023. *See* Correspondence at 10-11.

Request No. 142: Identify and describe with particularity the amount of costs that delays to Sunset Limited Trains have imposed on Amtrak, as alleged in Paragraph 144 of the Complaint, separately with regard to: (a) labor costs for (i) conductors, (ii) engineers, (iii) onboard service personnel; (iv) mechanical personnel, and (v) station personnel; (b) engine idling costs; (c) alternative passenger transportation costs; (d) vouchers for missed connections; (e) additional maintenance costs; (f) additional equipment costs; and (g) any additional costs.

Response: Amtrak objects to the definition of the phrase “describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request as premature and inconsistent with the Board’s Order initiating this investigation, which established a two-stage procedural framework because “the fact finding, evidence, and argument required to assess damages and prescribe other relief would be a time-consuming process for both the parties and the Board,” and “it would be wasteful and premature for the Board to develop the record needed to assess damages and relief before it determines whether there is a violation of Amtrak’s statutory preference.” Order at 12. Amtrak further objects to this request as unduly burdensome to the extent that compliance is not possible within the time permitted for party-led discovery in Phase 1 of this proceeding. Amtrak objects to

this request to the extent to requires Amtrak to perform a special study and as premature to the extent it purportedly requires Amtrak to provide documents or information it my submit during briefing in this proceeding. Amtrak also objects to this request as premature and inconsistent with the Board's Order initiating this investigation for the additional reasons set out in its correspondence dated October 5, 2023. *See* Correspondence at 10-11

Request No. 147: Identify and describe with particularity the amount of federal funding Amtrak has received, separately for each year from 2016 through the present, to pay for operating costs relating to delays to Sunset Limited Trains.

Response: Amtrak objects to the definition of the phrase “describe with particularity” because it purports to require that Amtrak draw legal conclusions about the purported relevance or materiality of facts. Amtrak objects to this request as premature and inconsistent with the Board's Order initiating this investigation, which established a two-stage procedural framework because “the fact finding, evidence, and argument required to assess damages and prescribe other relief would be a time-consuming process for both the parties and the Board,” and “it would be wasteful and premature for the Board to develop the record needed to assess damages and relief before it determines whether there is a violation of Amtrak's statutory preference.” Order at 12. Amtrak objects to this request to the extent to requires Amtrak to perform a special study. Amtrak also objects to this request as premature and inconsistent with the Board's Order initiating this investigation for the additional reasons set out in its correspondence dated October 5, 2023. *See* Correspondence at 10-11

Respectfully submitted,

Dated: November 21, 2023

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Interrogatory Response Verification

I, James A. Blair, declare that I am an employee of National Railroad Passenger Corporation (“Amtrak”) and authorized to execute this Interrogatory Response Verification. The matters stated within the above responses to UP’s First Set of Interrogatories are not all within my personal knowledge, and I am informed and believe that there is no single employee or officer of Amtrak who has personal knowledge of all such matters. However, to the extent not within my personal knowledge, Amtrak’s responses to the foregoing Interrogatories were prepared based on materials from sources including Amtrak’s records and files, and the facts stated in those responses and objections are true to the best of my knowledge, information and belief. I declare under penalty of perjury under the laws of the United States of America that statements in this Interrogatory Response Verification are true and correct to the best of my knowledge, information, and belief.

November 21, 2023
Dated



James A. Blair
Authorized Representative of Amtrak

CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that copies of this document have on this day been served via email on all parties of record.

November 21, 2023

/s/ Jessica Ring Amunson
Jessica Ring Amunson