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BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. NOR 42175

ENTERED
Office of Proceedings
January 23, 2024
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

**AMTRAK’S RENEWED MOTION TO COMPEL PRODUCTION
OF DOCUMENTS FROM UNION PACIFIC RAILROAD COMPANY**

Further to the January 16, 2024 conference (“Conference”) conducted before Judge McCarthy, the National Railroad Passenger Corporation (“Amtrak”) respectfully renews its Motion to Compel Union Pacific Railroad Company (“UP”) to timely produce documents that Amtrak requested on September 12, 2023, and that UP has failed to produce (the “Motion”). Amtrak seeks an order requiring that: (1) UP produce train movement data for non-Amtrak trains that used the UP rail lines at issue during the Relevant Period; (2) UP produce all train movement data in a native or machine readable format; (3) UP produce a data dictionary for certain dispatch records and make available for review all dispatch playbacks preserved pursuant to its litigation hold; (4) UP be made to either produce additional communications concerning dispatching policies, practices, procedures, or explain why none exist; (5) UP be required to produce agreements governing the economic terms applicable to “premium” trains that used the UP rail lines at issue during the Relevant Period; and (6) Amtrak receive two weeks from the date of any further productions to review those productions and determine whether additional relief is required to augment the Board’s investigative record.¹

¹ In making this Motion, Amtrak does not waive and expressly reserves all rights to seek additional relief regarding the sufficiency of UP’s discovery responses and document productions. In response to requests other than those

INTRODUCTION

Though this is a Board-led investigation under 49 U.S.C. § 24308(f), the Board has determined that party discovery should be permitted to further develop the Board's investigative record. Consistent with that direction, Amtrak served targeted discovery on UP meant to address particular gaps in the investigative record. Amtrak propounded that discovery on September 12, 2023.

Over the subsequent months, UP obfuscated and delayed. Three examples are pertinent to this renewed motion. First, in response to Amtrak's request for Dispatching Records, UP represented that dispatch playbacks were available and assured Amtrak that it was assessing technical means to produce them. After the period for propounding discovery closed, however, UP reversed itself and told Amtrak that dispatch playbacks for the Relevant Period had been destroyed and therefore had never actually been available. UP offered no explanation other than a "miscommunication" nor any indication that it would produce other Dispatching Records² responsive to Amtrak's initial document request. Further correspondence revealed that UP failed to assess the full scope of documents responsive to that request. After Amtrak filed the Motion, UP produced Dispatching Records that it admits are incomplete. This has hampered Amtrak's access to evidence at the core of this proceeding.

Second, UP initially objected to producing a single communication in this proceeding. After Amtrak pressed for communications related to dispatching decisions, policies, practices, and procedures, UP represented that it would search for and produce them. However, UP repeatedly

addressed in this Motion, UP has produced just 48 total documents. The parties are continuing to confer about the adequacy of that production.

² As in its Motion, Amtrak uses the term Dispatching Records to refer to all documents responsive to its initial document request, which sought dispatching tapes, dispatching playbacks, and other documents logging or recorded dispatching decisions, including but not limited to dispatching decisions related to dispatching of all trains entering, exiting, continuing, or otherwise traversing the UP Lines.

refused to indicate when the production of communications would begin. To promote the expeditious conduct of this proceeding, Amtrak was forced to file its Motion seeking an order compelling their production by a date certain. Only after Judge McCarthy held a hearing in this matter and pressed UP for a date certain for its production did UP finally produce communications. However, when UP finally made this production, after months of purported search and review, it contained just 63 substantive communications concerning its dispatching policies, procedures, practices, and decisions.

Third, UP has ignored or resisted Amtrak's offers to compromise on the production of agreements with shippers on the UP Lines at issue in this proceeding ("UP Lines"). In its initial request, Amtrak attempted to mitigate any burden on UP by limiting its request for agreements to those involving variable compensation. When UP complained that reviewing agreements to determine whether they contain variable compensation was too burdensome, Amtrak suggested that UP produce all agreements with shippers using the UP Lines and permit Amtrak to undertake the evaluation of variable compensation.

UP took more than six weeks to consider that proposed compromise, then rejected it based on an entirely different set of burden objections. None of those new burden objections had merit, and UP's additional delay deprived the parties of an opportunity to meaningfully confer. Nonetheless, Amtrak again attempted to find a reasonable compromise. In its Motion, Amtrak offered to narrow the document request to agreements concerning "premium" trains as defined on UP's website. UP ignored that proposal in its reply brief and offered no further solutions at the Conference. Instead, UP asserted at the hearing that it was incapable of identifying premium trains based on the definition of premium trains on UP's own website.

Amtrak has made good faith efforts to work with UP throughout discovery. It dedicated considerable time and resources to address the voluminous, overlapping, duplicative, and burdensome 150 discovery requests that UP propounded. Amtrak also met and conferred with UP on the discovery requests that Amtrak propounded, proposed compromises with respect to UP's objections, and exercised patience when UP represented that searches were underway.

UP should not be permitted to persist in this way. Its attempt to moot the motion to compel Dispatching Records through a partial production is insufficient and will cause further delay, for example because it excludes readily accessible and important data, information, and {{ [REDACTED] }} for non-Amtrak trains. UP's attempt to moot the motion to compel production of communications by providing just 63 communications raises questions about the adequacy of its search.³ And UP's continued refusal to engage on proposed compromises with respect to shipper contracts is also unacceptable. To ensure that the Board has a complete record, the Motion should be granted.⁴

BACKGROUND

On December 8, 2022, Amtrak filed and served its Complaint concerning the substandard on-time performance of *Sunset Limited* Trains. Pursuant to the mandatory provisions in 49 U.S.C. § 24308(f)(1), the Board then opened this investigation. In doing so, the Board established a procedural framework for the investigation, *see* Motion at 3-4, and ordered the parties to preserve all documents and data related to the subject matter of the investigation. Board's July 11, 2023 Order ("Order") at 16.

³ On January 22, 2023, UP informed Amtrak that UP is "still in the process of reviewing a small number of additional [communications] that might be responsive" to Amtrak's requests for dispatching communications, and that UP expects to produce any additional responsive communications by February 2, 2024.

⁴ Additionally, Amtrak should be given two weeks after any further productions to assess those productions and determine whether additional relief is necessary to augment the Board's investigative record.

Amtrak and UP have taken vastly different approaches to discovery. *See* Motion at 4-6. Unlike UP, Amtrak served targeted document requests. *See id.* Among other things, Amtrak sought three categories of material addressed in the Motion: (1) Dispatching Records; (2) communications concerning dispatching policies, practices, procedures, and decisions; and (3) agreements with freight customers involving certain types of variable compensation.⁵ Each of the relevant requests seeks documents that were not requested by or produced in response to the Board's own investigative questions.

Amtrak has previously recounted events precipitating the Motion. *See* Motion at 6-7.⁶ The Motion was filed December 20, 2023. UP replied on January 9, 2024. Later that day, UP made a partial production of Dispatching Records. The partial production included two categories of material. The first came from UP’s computer-aided dispatching system (“CADX Data”) and includes 20 gigabytes of data produced in native format. Amtrak is still reviewing this data. Based on its preliminary review, it appears that the data {{ [REDACTED] [REDACTED] }}. The second category of material includes dispatchers’ records of train movements (“Train Movement Data”). The Train Movement Data includes or appears to include, among other things, {{ [REDACTED] [REDACTED] [REDACTED] }}.⁷ *See* UP Reply at 3. UP produced Train Movement Data only for *Sunset Limited* Trains (not all of the other trains that used the UP Lines during the Relevant Period) and produced that data in PDF format. *See* **Ex. C**.

⁵ See **Ex. A** at 8-9 (Request Nos. 3, 4, 6, 9, and 15).

⁶ To avoid repetition, Amtrak respectfully incorporates the background section of its Motion by reference.

⁷ An example of one Train Movement Record is attached as **Ex. C**.

On January 16, 2024, the parties appeared before Judge McCarthy to address the Motion. During the Conference, Amtrak argued for the production of Train Movement Data for non-Amtrak trains, the production of Train Movement Data in native or machine-readable format,⁸ the production of communications by a date certain, and the production of shipper contracts with premium shippers.⁹ Amtrak also emphasized that it would require time to complete its preliminary review of the CADX Data, any additional Train Movement Data, and any communications, in order to assess whether further relief was needed. UP resisted the production of remaining Train Movement Data, committed to producing communications by January 19, and insisted that it did not know how to define “premium trains” that are advertised on UP’s own website.

During the Conference, Judge McCarthy found that the additional Train Movement Data went to the core of this proceeding, that communications should be produced promptly, and that the requested shipper contracts were relevant. In view of the partial production of Dispatching Records and the dispute concerning the definition of premium trains, Judge McCarthy instructed Amtrak to renew its motion to compel. The next day, UP produced 168 documents related to communications. However, as explained below, nearly two-thirds of those documents are junk files with no bearing upon this matter (e.g., an Apple or Microsoft logo).¹⁰

ARGUMENT

I. Dispatching Records

Dispatching Records are essential evidence in this proceeding.¹¹ Accordingly, Amtrak requested “[a]ll dispatching tapes, dispatching playbacks, and other documents logging or

⁸ Counsel for UP represented that UP would produce Train Movement Data in machine readable format if available in that format.

⁹ Judge McCarthy asked whether Amtrak would limit its request for shipper contracts to agreements with shippers in this category and Amtrak agreed to do so.

¹⁰ An example of one such file is attached as **Ex. D**.

¹¹ Amtrak respectfully incorporates by reference its previous discussion of Dispatching Records, including why they are critical to this investigation. *See* Motion at 8-10.

recording Dispatching Decisions, including but not limited to Dispatching Decisions related to the dispatching of all trains entering, exiting, continuing, or otherwise traversing the UP Lines.” See **Ex. A** at 8 (Request No. 6). In its responses and objections, UP unilaterally narrowed the scope of the request and said it would “allow” Amtrak to come to Omaha to view dispatching playbacks. See **Ex. B** at 7 (Response No. 6). The parties then engaged in lengthy negotiations over whether it was technically feasible for UP to provide Amtrak with the dispatch playbacks in a form that would not require Amtrak to travel to Omaha. Amtrak pressed for continuing access to the dispatch playbacks because they are critical evidence. Each playback visually depicts the real time decisions that dispatchers make and can be reviewed to determine how these choices were carried out on the ground, much like a game tape for a sporting event.

Months later, and only after the time to propound new discovery had passed, UP suddenly announced that the playbacks did not exist. In response to the subsequent Motion, UP disclosed that it destroys dispatch playbacks after 99 hours. Also in response to the Motion, UP made a partial production of Dispatching Records, providing the CADX data and providing Train Movement Data for *Sunset Limited* Trains. That production is not sufficient for at least three reasons. First, UP has not provided adequate information about how to interpret the CADX data,¹² and has not provided any information about how to interpret the Train Movement Data. Second, UP continues to withhold Train Movement Data for all non-Amtrak Trains. Third, UP produced Train Movement Data for Amtrak trains in a burdensome PDF format. These issues are addressed below.

A. Further relief is required to address the prejudice imposed by UP’s reversal on the availability of visual playbacks.

¹² Although UP produced an instructional document concerning the CADX data, it appears out of date. For example, {{ [REDACTED] }}.

As explained above, dispatch playbacks provide valuable evidence about dispatching decisions and train conflict resolution. They distill the relative position of trains, track infrastructure, and other relevant operating conditions into a simple visual format that facilitates efficient and reliable analysis. Amtrak reasonably relied on the representation that playbacks would be made available. Because UP did not correct that misrepresentation until December 14, 2023, Amtrak was deprived of an opportunity to propound additional discovery.

UP's partial production of Dispatching Records, also made after the expiration of time to propound party discovery, is not sufficient to address that prejudice. Using a large amount of data to reconstruct information ordinarily available through a simple visual will be challenging.¹³ Among many other things, it will require analyzing more than 20 GB (millions of rows) of CADX data and (should the motion be granted) Train Movement Data for nearly 42,000 trains. To compound the challenge, Amtrak currently lacks adequate information about how to read or interpret the data. For example, with respect to the CADX data, the instructional document UP provided appears out of date and {{ [REDACTED] }}. With respect to the Train Movement Data, UP has not explained the starting or ending positions for fields reflected in the materials, defined the data in those fields, described the data in those fields, or provided other information that would allow Amtrak to analyze the material more efficiently and reliably.

To address these challenges, UP should be ordered to provide data dictionaries for the CADX and Train Movement Data. Those data dictionaries should contain the same information required by the Board's instruction for data submitted in machine-readable format,¹⁴ which was designed to ensure the Board could make meaningful use of data submitted by the parties to this

¹³ If dispatch playbacks are like game tape, then Amtrak will be attempting to reconstruct the action based on information about the players and each individual movement on the field. This process, though important, will be time-consuming and costly.

¹⁴ See Order, App. A—Part I, Instruction No. 6.

investigation. UP should also be ordered to make available for review dispatch playbacks preserved pursuant to its litigation hold, which will provide valuable context about how CADX and Train Movement Data can be used to reconstruct and evaluate train conflict resolution and other matters critical to this proceeding.¹⁵

B. UP should be compelled to produce Train Movement Data for all trains.

Compelling production of UP Train Movement Data for all trains will address gaps in the investigative record. The Train Movement Data contains information related to several Board requests and not contained within the CADX data, prior productions to Amtrak, or prior productions to the Board. For example, the Train Movement Data contains {{[REDACTED] [REDACTED] [REDACTED]}}}. Obtaining that information for all trains will ensure Amtrak and the Board can more reliably evaluate fundamental issues in this proceeding, including the cause of delay to a *Sunset Limited* Train, responsibility for that delay, and the role of any preference violation in the delay. Particularly with respect to freight trains that directly compete with *Sunset Limited* Trains for track infrastructure, it is important that Amtrak and the Board have access to {{[REDACTED] [REDACTED] [REDACTED]}}}. For those reasons, Judge McCarthy found during the Conference that Train Movement Data is not only relevant but goes to the core issues in this proceeding.

UP claims that producing Train Movement Data for freight trains would be unduly burdensome. However, that claim lacks merit and appears designed primarily to support a

¹⁵ Amtrak respectfully reserves the right to seek additional relief, such as leave to take further discovery, if these measures prove insufficient to clarify how to interpret the Dispatching Records.

16 { { } }.

conclusory request for cost-shifting.¹⁷ UP represents that a single employee could retrieve the balance of its Train Movement Data in 2-3 weeks. *See* UP Reply at 3. UP fails to explain how undertaking such an exercise constitutes an undue burden. Moreover, UP Train Movement Data was responsive to Amtrak's initial document request for Dispatching Records. Had UP begun working on this production when it received the request in September, 2023, it would already have had significantly more time than it purportedly needs to complete production. Requiring that UP bear the supposed burden of requiring that one employee shift or defer unspecified business responsibilities, in order to comply with discovery obligations in a federal investigation, is particularly reasonable because it will help cure the prejudice imposed by UP's own failure to timely disclose that playbacks were unavailable.

C. UP should be compelled to produce all Train Movement Data in Native or Machine-Readable Format.

In addition to placing improper limits on the scope of Train Movement Data that it produced, UP produced those records in PDF format. *See* Ex. C. Based on its review of the Train Movement Data produced, it appears that the source material was converted from a machine-readable format. If Train Movement Data is being converted to PDF for production, that necessarily delays production. It also renders the data almost impossible to analyze efficiently. Converting PDFs into machine-readable data is technologically challenging and unreliable. Accordingly, Amtrak will need to undertake a significant amount of manual data entry to analyze the material, a time consuming and costly process that also introduces risk of human error.

¹⁷ The Board should also reject UP's meritless request for cost-shifting, for several reasons. First, UP cites no authority for the request and should not be afforded any additional opportunity to do so at this late stage. Second, the ordinary presumption is that parties should pay their own such costs, and that is especially appropriate here because UP is undertaking this search to address prejudice cause by its own representations. Third, the costs involved cannot conceivably outweigh those required for Amtrak to respond to the 150 requests propounded by UP. Finally, the request concerns data that is relevant, readily accessible, and unavailable from other sources, on issues of importance to the Board's investigation.

Producing the data in machine-readable format will obviate the need for that considerable expenditure and assist the Board in its review of the data.¹⁸ For those reasons, UP should be compelled to produce all Train Movement Data in native format.

II. Dispatching Communications

Amtrak requested that UP produce communications concerning the UP policies, practices, and procedures applicable to dispatching decisions, and communications between UP supervisors and dispatchers pertaining to dispatching decisions involving *Sunset Limited* Trains. *See Ex. A* at 8-9 (Request Nos. 3, 4, 9). If dispatching playbacks are analogous to game tape, then these communications are like the gameplans and play calls. They will supplement Board investigative requests on dispatching issues, which did not seek communications.

After several months of purported search and review, UP has now produced 168 documents apparently related to the communications. But that number is misleading. Only about 63 of the documents contain substantive content. The remaining documents (105) contain nothing but the image of a company logo or an error message, all useless to this proceeding. *See Ex. D* and *Ex. E*.¹⁹

This small number of documents is surprising.²⁰ Even if most communications concerning decisions to delay the *Sunset Limited* Trains take place verbally or through an instant messaging application,²¹ which would raise serious questions about whether UP adequately documents decisions that implicate compliance with federal law, Amtrak requested internal and third-party

¹⁸ *Cf.* Order, App. A—Part III at Request Nos. 7-11, 36-38 (requesting data in machine-readable format); Order, App. A—Part IV at Request Nos. 8, 11, 19 (same).

¹⁹ As UP designated the junk files Confidential, Amtrak is not attaching them to the Public Version of this motion.

²⁰ UP has represented, contrary to its prior commitment to produce communications by January 19, that it is still reviewing documents for responsiveness. However, the number of documents under review is “small” and UP may determine that none require production.

²¹ As UP represented during the Conference, the parties agreed to forego the production of instant messages, given the limited time for party discovery.

communications concerning the policies, practices, and procedures applicable to those decisions.

UP has made several representations about those policies, practices, and procedures to the Board.

To take just a few examples, UP has told the Board that:

- UP interprets preference to require balancing delays to *Sunset Limited* Trains against impacts on other trains and UP's rail network;²²
- UP is continuing to refine and develop the functionality of both CADX and the Movement Planner algorithm to ensure that they appropriately account for and address the wide variety of issues that arise in planning for its network;²³
- UP dispatchers receive instruction regarding protocols for dispatching Amtrak Trains;²⁴
- UP dispatchers operate pursuant to protocols contained in several sources, including (among other things) its General Code of Operating Rules, its Train Dispatcher Rules, timetables, track bulletins, office notices, standard processes, and general orders;²⁵
- UP in its Movement Planner algorithm assigns Amtrak trains and UP's premium intermodal trains the highest numeric priority.²⁶

Each of these representations concern UP policies, practices, and procedures applicable to dispatching decisions on the UP Lines. However, few (if any) of the 63 communications produced to date address them. That strains credulity. UP should be ordered to expand its search for communications concerning UP policies, practices, and procedures applicable to dispatching decisions, and to specifically search for documents concerning each of the above representations. If such communications do not exist, then UP should be required to explain to the Board why they do not exist.

III. Contracts

²² UP Response at 32.

²³ *Id.* at 33-34.

²⁴ *Id.* at 31.

²⁵ *Id.*

²⁶ *Id.* at 34.

Amtrak requested that UP produce agreements between UP and freight customers that shipped over the UP Lines and reflect variable compensation depending on the timeliness of delivery or availability of train cars.²⁷ UP acknowledges that responsive agreements exist.²⁸ Their production is important. UP has told the Board that its (incorrect) interpretation of preference involves balancing delays to *Sunset Limited* Trains against impacts on other trains and UP's rail network.²⁹ UP has also told the Board that it considers contractual incentives and penalties in moving passenger trains over its lines.³⁰ Access to UP agreements with shippers is therefore necessary to ensure Amtrak and the Board can evaluate the magnitude of contractual incentives that UP might have in directing traffic over its network, and the force those contractual incentives might have when dispatchers or their supervisors evaluate how to balance delays to *Sunset Limited* and other trains. For precisely that reason, Judge McCarthy found the contracts relevant during the Conference.³¹

UP also complains that producing the agreements is unduly burdensome. Initially, UP claimed that the undue burden resulted from the need to determine which contracts involve variable compensation. When Amtrak obviated that concern,³² UP attempted to assert a different one, claiming that the process for identifying any of its commercial contracts was too burdensome. That argument lacks merit. First, UP has not substantiated the time or cost required to complete

²⁷ See Motion at 13-15; Ex. A at 9 (Request No. 15).

²⁸ UP Reply at 6.

²⁹ See UP Response at 32 (representing that dispatchers are taught that "Amtrak's preference does not mean they should disregard impacts to other trains or the network as a whole to ensure Amtrak trains are never slowed or stopped en route").

³⁰ See *id.* at 11-12 (representing that UP had less incentive to seek adjustment of operating schedules with Amtrak when the consequence for failure to achieve on-time performance was defined by {{[REDACTED]}}).

³¹ Perhaps anticipating this finding, UP offered to stipulate that some of its contracts provide incentives to meet service commitments. However, that stipulation is insufficient. Amtrak and the Board must have access to the financial terms of variable rate agreements to meaningfully evaluate their force and potential effect, including relative to {{[REDACTED]}}.

³² *Supra* at 3.

production. It should not be heard to do so now, after staying silent during the lengthy meet and confer process and in its reply. Second, UP has not been asked to perform a special study. Amtrak only asks that UP identify and produce contractual agreements kept in the ordinary course of business. That UP must perform some work to identify existing materials does not transform the request into one demanding the creation of data.³³

Although UP did not articulate cognizable burden in discovery correspondence or its reply, Amtrak has taken additional steps to drive a reasonable resolution. More specifically, Amtrak agreed to limit its request for contracts to premium shippers. UP asserts now that it does not know how to define that term, even though Amtrak applied the definition from UP's own website.³⁴ Amtrak nevertheless adds that UP appears to define premium trains to include freight transported in intermodal containers, finished vehicles, and automotive parts.³⁵ To facilitate a prompt resolution, Amtrak is willing to further limit its request to agreements with shippers that rely on those premium intermodal trains assigned the same numeric priority as Amtrak trains in UP's Movement Planner algorithm.³⁶ Because UP has told the Board and the public that "premium intermodal trains" receive the highest numeric priority in UP's computer aided dispatching system, and the same numeric priority as Amtrak passenger trains, UP should have no difficulty defining that term for purposes of the request.

CONCLUSION

For the foregoing reasons, the motion to compel should be granted and Amtrak respectfully requests entry of an order requiring that:

³³ Cf. UP Reply at 5 (citing Board decision concluding that request for creation of locomotive fuel consumption data was a special study).

³⁴ See Motion at 14, n.31. Had UP not waited until December 14, 2023 to articulate its burden argument, the parties could have evaluated proposed compromises and attempted to negotiate definitional issues without troubling the Board.

³⁵ See e.g., *Premium*, UP.COM, at <https://www.up.com/customers/premium/>.

³⁶ See UP Response at 34.

1. UP produce train movement data for non-Amtrak trains that used the rail lines at issue during the Relevant Period;
2. UP produce all train movement data in a native or machine readable format;
3. UP produce a data dictionary for Dispatching Records and make available for review all dispatch playbacks preserved pursuant to its litigation hold;
4. UP be made to either produce additional communications related to the representations it made to the Board about dispatching or explain why none exist;
5. UP be required to produce agreements governing the economic terms applicable to premium trains that used the UP rail lines at issue during the Relevant Period; and,
6. Amtrak receive two weeks from the date of any further productions to review those productions and determine whether additional relief is required to augment the Board's investigative record.

Dated: January 23, 2024

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that copies of this document are simultaneously being provided by email to all parties identified on the service list for this proceeding, Docket Number NOR 42175.

January 23, 2024

/s/ Jessica Ring Amunson
Jessica Ring Amunson

EXHIBIT A

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'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO UNION PACIFIC RAILWAY COMPANY**

Pursuant to 49 C.F.R. §§ 1114.30 and the Surface Transportation Board's Order in the captioned matter served July 11, 2023, the National Railroad Passenger Corporation ("Amtrak") serves this First Set of Requests for Production of Documents on Union Pacific Railroad Company ("UP"). These Requests are to be interpreted and answered in accordance with the Definitions and Instructions below. Amtrak requests that UP provide its responses and objections to these Requests within fifteen (15) days of service of these Requests, unless otherwise agreed upon by the parties.

DEFINITIONS

1. The terms "UP," "You," or "Your" refer to Union Pacific Railroad Company, as well as its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, representatives, officers, agents, counsel, employees, consultants, and any person authorized to act or acting on its behalf.
2. The term "BNSF" refers to BNSF Railway Company, as well as its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, representatives, officers, agents, counsel, employees, consultants, and any person authorized to act or acting on it.
3. The term "CN" refers to Canadian National Railway Company, its subsidiary Illinois Central Railroad Company, as well as each of their corporate affiliates, parents, subsidiaries,

business units, divisions, predecessors, representatives, officers, agents, counsel, employees, consultants, and any person authorized to act or acting on its behalf.

4. The term “SCRRA” refers to the Southern California Railroad Authority, as well as its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, representatives, officers, agents, counsel, employees, consultants, and any person authorized to act or acting on its behalf.

5. The term “NOPB” refers to New Orleans Public Belt Rail Corporation, as well as its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, representatives, officers, agents, counsel, employees, consultants, and any person authorized to act or acting on its behalf.

6. The term “2000 Operating Agreement” means the Agreement dated January 1, 2000, between Amtrak and UP, including all amendments to that Agreement.

7. The term “algorithm” refers to any program, software, or set of rules used to determine an outcome based on one or more factors.

8. The term “communication” means any oral, written, or electronic transmission of information, including but not limited to meeting, discussions, conversations, telephone calls, memoranda, white papers, letters, email messages, and notes.

9. The term “Contractual OTP” means on-time performance of trains as calculated for purposes of determining compensation owed to Union Pacific under the 2000 operating agreement.

10. The term “Customer OTP” means on time performance of trains as calculated under the customer on-time performance metric and/or minimum standard promulgated by the Federal Railroad Administration, and has the same meaning as in the Complaint. *See, e.g., Complaint ¶¶ 48-51.*

11. The term “dispatcher” refers to an individual who directs the movement of trains

within a division of trackage and coordinates their movement from one division to another, whether individually or in conjunction with a joint desk.

12. The term “Dispatching” refers to the direction of trains within a division of trackage and/or the coordination of movement of trains from one division to another, whether individually or in conjunction with a joint desk.

13. The term “Dispatching Decisions” refers to decisions that involve Dispatching of any freight or passenger train on the UP Lines.

14. The term “documents” shall be construed broadly, to include all material subject to discovery under 49 C.F.R. § 1114.30(a)(1) or any other Board rule or regulation, and to include every copy of a document not identical to the original or any other copy. For the avoidance of doubt, the term “documents” includes every writing, recording, photograph, summary, spreadsheet, or other record in any form, whether handwritten, printed, typed, taped, electronic, or in any other graphic, digital, magnetic, optical, or mechanical form, however produced, reproduced, or recorded, and includes electronic documents (such as electronic mail messages and all attachments to mail messages).

15. The term “HRD” refers to host-responsible delay(s) and has the same meaning as in the Complaint. *See, e.g.*, Complaint ¶ 52.

16. The term “Investigative Period” means the period of time beginning October 1, 2021 through and including December 8, 2022.

17. The term “on-time performance” means on-time performance as determined, discussed, recorded, or reported for any purpose, including without limitation Contractual OTP or Customer OTP.

18. The term “Pending Board Requests” refers to interrogatories and document requirements for UP that are set out in Appendix A – Part IV of the Surface Transportation Board’s

July 11, 2023 Decision in the above-captioned proceeding.

19. The term “Preference” refers to the statutory requirement that, except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Surface Transportation Board orders otherwise under 49 U.S.C. § 24308(c).

20. The term “RPSA” means the Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327, including all amendments thereto (codified at 49 U.S.C. §§ 24101 *et seq.*).

21. The term “Sunset Limited Trains” refers to Amtrak Trains 1 and 2, as described more fully in Amtrak’s Complaint. Each of the Sunset Limited Trains is individually referred to as a Sunset Limited Train.

22. The term “UP Lines” means any rail line, junction, or crossing that is owned, dispatched, jointly dispatched, controlled, managed, directed, supervised, maintained, or administered by UP, and on which any Sunset Limited Train transited between October 1, 2021 and December 8, 2022.

INSTRUCTIONS

1. Amtrak has tried to minimize duplication between these Requests and the Pending Board Requests. If UP asserts that one or more of the following Requests is covered by a Pending Board Request, UP must identify the overlapping Pending Board Request in its response, and also produce all responsive documents not otherwise being produced to the Board.

2. Unless otherwise indicated, the Requests below cover the time period from October 1, 2021 through and including December 8, 2022.¹

3. Please provide separate written responses to all of the following Requests, and repeat each Request and the number of each Request with each response. If you object to any Request, identify the number of the Request to which you object, state the basis for your objection in sufficient detail so as to permit the adjudication of the validity of the objection, and produce any documents responsive to any portion or portions of the Request that you do not find objectionable.

4. Documents sought in these Requests include documents currently or previously within UP's possession, custody or control, as well as those documents which come into UP's possession subsequent to service thereof. Each of the following Requests is continuing in nature and Amtrak hereby requests that if you obtain any additional responsive documents at any later date, you promptly so inform Amtrak and produce those documents.

5. When any Request calls for the production of any portion of any document, the entire document containing any such portion must be produced.

6. Documents offered in response to these Requests must be furnished in as organized and usable form as possible, and should be produced in a manner organized and labeled to correspond to the following Requests. Electronically stored information shall be produced in a

¹ Amtrak reserves the right to revise this time period following any written decision from Judge McCarthy regarding the appropriate scope of discovery in this proceeding and/or following the parties' forthcoming meet and confer.

method and manner as agreed upon by the parties.

7. If any responsive document or communication has been destroyed, lost, or become beyond UP's possession, custody, or control, UP must provide a list identifying the document or communication as completely as possible, providing (1) the date the document or communication was destroyed, lost, or transferred beyond UP's control; (2) the manner of the destruction, loss, or transfer; (3) the reason for the destruction, loss, or transfer; (4) the person or entity authorizing the destruction, loss, or transfer; (5) the person or entity that destroyed, lost, or transferred the document or communication.

8. If UP asserts a claim of privilege regarding a document or communication, UP must provide a log identifying each document or communication as completely as possible, and UP must produce any portion of a document or communication that contains non-privileged and responsive material.

9. The present tense shall be construed to include the past and future tenses and the past and future tenses shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these Requests.

10. The singular shall be construed to include the plural and the plural shall be construed to include the singular, whenever context permits. The terms such as "and" and "or" have both conjunctive and disjunctive meanings, and shall be construed in the broadest and most inclusive manner, in order to bring into the scope of each Request all responsive information that might otherwise be construed to be outside the scope of the Request.

11. Words such as "include" and "including" are illustrative and not limitative, and shall be construed in the broadest and most inclusive manner, in order to bring into the scope of each Request all responsive information that might otherwise be construed to be outside the scope of the Request.

12. The terms “relating to,” “related to,” “concerning,” and “showing” are to be construed broadly, to include: addressing, referring to, concerning, showing, concerning, comprising, identifying, stating, consisting of, evidencing, alluding to, responding to, connected with, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of, incorporating, mentioning, embodying, containing, studying, reporting on, commenting on, considering, recommending, constituting in any way, or having any logical or factual connection with the subject matter. Likewise, the terms “any” and “all” shall mean “each and every.”

13. Production must be made to outside counsel of record for Amtrak at Jenner & Block: Alex Trepp, 1099 New York Avenue N.W., Ste. 900, Washington, DC 20001, atrepp@jenner.com, with a copy to Albert Peterson, 1099 New York Avenue N.W., Ste. 900, Washington DC 20001 apeterson@jenner.com.

REQUESTS FOR PRODUCTION

1. All document management policies, retention policies, and/or retention schedules applicable to documents or communications relating or referring to (i) the On-Time Performance of Sunset Limited Trains, (ii) Dispatching Decisions, or (iii) policies, practices, and procedures that govern, affect, or apply to Dispatching Decisions, (iv) policies, practices, and procedures that govern, affect, or apply to the implementation of Preference.

2. All documents concerning UP policies, practices, and procedures relating to Dispatching Decisions, including but not limited to documents providing train or customer-specific instructions, or concerning or reflecting any modification of those policies, practices, and procedures during the Investigative Period.

3. All communications between or among current and/or former UP management, employees, or other personnel concerning policies, practices, and procedures applicable to Dispatching Decisions.

4. All communications between or among UP and BNSF, CN, NOPB, SCRRRA, any governmental entity, and/or any other third-party concerning policies, practices, and procedures applicable to Dispatching Decisions.

5. All documents constituting, concerning, or reflecting any Dispatching Decision that departed or deviated from the policies, practices, and procedures applicable to Dispatching Decisions, or otherwise failed to implement or comply with policies, practices, and procedures applicable to Dispatching Decisions.

6. All dispatching tapes, dispatching playbacks, and other documents logging or recording Dispatching Decisions, including but not limited to Dispatching Decisions related to the dispatching of all trains entering, exiting, continuing, or otherwise traversing the UP Lines.

7. All daily system, region, or division performance reports concerning any operations

on the UP Lines.

8. All documents concerning whether or under what circumstances a dispatcher responsible for Dispatching Decisions may override algorithmic Dispatching Decisions.

9. All communications between UP supervisors and dispatchers pertaining to Dispatching Decisions involved Sunset Limited Trains.

10. Documents sufficient to show any criteria used to evaluate or compensate dispatchers and all documents related to any evaluations, reviews, or other feedback provided to dispatchers responsible for Dispatching Decisions.

11. For the time period November 11, 2020 to Present, all documents relating to any investigations, audits, studies, reviews, analyses, or other similar evaluations conducted by UP regarding Dispatching Decisions, HRD, or Preference on the UP Lines.

12. All documents relating to any disciplinary actions taken or contemplated against a dispatcher and concerning one or more Dispatching Decisions.

13. All documents concerning any operational adjustment, scheduling adjustment, capital investment, or other similar action that UP has analyzed or considered to address, evaluate, or understand delays to freight or passenger trains traveling on the UP Lines, including all documents relating to the reason(s) UP did not implement any such adjustments, investment, or other similar actions.

14. All documents concerning UP efforts to obtain funds from federal, state, or other sources for capital expenditures on the UP Lines.

15. All agreements with freight customers using any portion of the UP Lines for which UP's compensation varies depending on the time or timeliness of the delivery of products or commodities, or depending on availability of loaded cars for unloading or empty cars for loading of customer products or commodities.

16. All documents constituting or concerning UP's current operating plan(s) for lines used by Sunset Limited Trains, and all documents constituting or concerning efforts to measure operational performance against UP's current operating plan(s) or operating schedule(s) for lines used by Sunset Limited Trains.

17. All corporate policies, protocols, guidance documents, or other materials related to the implementation of Preference, or used to evaluate the implementation of Preference.

18. Documents sufficient to show any procedures or systems used to implement or evaluate the implementation of Preference.

19. For the UP Lines, documents sufficient to associate locomotive numbers associated with each train that operated on a fixed schedule during the Investigative Period.

20. All documents analyzing, assessing, investigating, studying, reviewing or otherwise evaluating how the adoption and implementation of precision-scheduled railroading has affected the on-time performance of intercity passenger trains and/or affected the implementation of Preference.

21. All documents analyzing, assessing, investigating, studying, reviewing or otherwise evaluating how UP's network planning and design have affected, are affecting, or will affect the on-time performance of Sunset Limited Trains and/or implementation of Preference on the UP Lines, including but not limited to documents concerning any ongoing or anticipated capital investments that will affect UP's network capacity on the UP Lines.

22. All documents concerning policies, protocols, or procedures related to how You prioritize freight traffic on the UP Lines, or the dispatching of any intermodal or other trains carrying priority freight on the UP Lines.

23. For the time period November 11, 2020 to Present, all documents relating to any modeling, studies, reviews, analyses, investigations, or other similar evaluations conducted by UP regarding the Sunset Limited schedule or freight schedules on lines used by Sunset Limited Trains.

24. All documents reflecting or relating to UP's consideration of Sunset Limited Trains in determining, assessing, evaluating, studying, or otherwise considering freight volumes for lines used by the Sunset Limited Trains.

September 12, 2023

Respectfully submitted:
/s/ Jessica Ring Amunson

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that I have this day caused a copy of this document to be served upon UP by email to counsel for UP at the following email address:

Mrosenthal@Cov.Com

September 12, 2023

/s/ Jessica Ring Amunson
Jessica Ring Amunson

EXHIBIT B

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

**RESPONSES AND OBJECTIONS TO AMTRAK'S FIRST SET
OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

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October 4, 2023

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

**RESPONSES AND OBJECTIONS TO AMTRAK'S FIRST SET
OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Union Pacific Railroad Company responds to Amtrak's First Set of Requests for
Production of Documents served on September 12, 2023, 2023, as follows:

GENERAL RESPONSES

The following General Responses apply to each of Amtrak's requests:

1. When Union Pacific says it will produce responsive documents, Union Pacific will produce responsive documents to the extent they exist and can be located in a reasonable search. Subject to the specific and general objections that follow, responsive documents will be produced on a rolling basis.
2. Production of documents does not necessarily imply that the documents are relevant to or admissible in this proceeding and is not to be construed as waiving any objection stated herein.

GENERAL OBJECTIONS

The following General Objections are made with respect to all of Amtrak's requests. Any additional specific objections are stated at the beginning of the response to each document request.

1. Union Pacific objects to the production of, and is not producing, documents subject to the attorney-client privilege, work-product doctrine, joint defense privilege, or any other applicable privilege or protection. Any production or disclosure of such information is inadvertent and should not be construed as a waiver. Union Pacific reserves all rights under applicable law, including the Protective Order in this case, to demand or require the return of all copies thereof and non-use by Amtrak or by any other person or entity in this or any other proceeding.

2. Union Pacific objects to the production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

3. Union Pacific objects to the production of documents that constitute or disclose confidential or proprietary or sensitive nonpublic information. Subject to and without waiving this objection, Union Pacific will produce such information, if not otherwise objectionable, designated “Confidential” or “Highly Confidential,” subject to the terms of the Protective Order in this case. Union Pacific reserves the right to seek additional protection as needed.

4. Union Pacific objects to the production of documents that are sensitive security information (SSI), classified or otherwise prohibited from disclosure, or documents whose public release could jeopardize the safety of the public and/or Union Pacific employees. Subject to and without waiving this objection, Union Pacific will only produce SSI information to the extent authorized by law and in the manner authorized by law, including the procedures set forth in FRA SSI Order 2011-06-FRA-01 (July 29, 2011) and the terms of the Protective Order in this case.

5. Union Pacific objects to the production of, and in general is not producing, public documents that are readily available to Amtrak, including but not limited to documents on public file at the Surface Transportation Board (the Board), the Securities and Exchange Commission (SEC), or in the Interstate Commerce Commission Archives, or clippings from newspapers or other public media. Any production by Union Pacific of documents in this category shall not be considered a waiver of this objection.

6. Union Pacific objects to the production of, and in general is not producing, documents that are readily obtainable by Amtrak from its own files or publicly available sources. Any production by Union Pacific of documents in this category shall not be considered a waiver of this objection.

7. Union Pacific objects to Amtrak's requests to the extent they call for the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and Union Pacific by its responses does not, unless otherwise noted, undertake to prepare or produce any special studies. Any production by Union Pacific of documents in this category shall not be considered a waiver of this objection.

8. Union Pacific objects to Definition No. 1 to the extent it seeks to require Union Pacific to produce documents not in its possession, custody, or control.

9. Union Pacific objects to Definition No. 14 to the extent it seeks to impose obligations beyond, in addition to, or inconsistent with Union Pacific's discovery obligations under 49 C.F.R. Part 1114.

10 Union Pacific objects to Instruction Nos. 1, 4, 5, 7, and 8 as unduly burdensome and to the extent they seek to impose obligations on Union Pacific beyond, in addition to, or inconsistent with Union Pacific's discovery obligations under 49 C.F.R. Part 1114.12.

11. Union Pacific objects to Instruction No. 5 to the extent it purports to require Union Pacific to produce documents subject to the attorney-client privilege, work-product doctrine, joint defense privilege, or any other applicable privilege or protection.

12. Union Pacific's responses and objections are based upon information presently known to it. Union Pacific reserves the right to rely upon facts, documents, or other evidence it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

SPECIFIC OBJECTIONS AND RESPONSES

Request No. 1

All document management policies, retention policies, and/or retention schedules applicable to documents or communications relating or referring to (i) the On-Time Performance of Sunset Limited Trains, (ii) Dispatching Decisions, or (iii) policies, practices, and procedures that govern, affect, or apply to Dispatching Decisions, (iv) policies, practices, and procedures that govern, affect, or apply to the implementation of Preference.

Union Pacific Response:

Union Pacific objects to this Request as overbroad and unduly burdensome to the extent it seeks documents that do not reflect current policies.

Subject to and without waiving its objections, Union Pacific will produce copies of current document management policies, retention policies, and/or retention schedules.

Request No. 2

All documents concerning UP policies, practices, and procedures relating to Dispatching Decisions, including but not limited to documents providing train or customer-specific instructions, or concerning or reflecting any modification of those policies, practices, and procedures during the Investigative Period.

Union Pacific Response:

Union Pacific objects to this Request as overbroad and unduly burdensome in that it requests “[a]ll documents” concerning Union Pacific policies, practices and procedures relating to Dispatching Decisions. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it is generally duplicative of Request Nos. 22 and 24 in Appendix A, Part IV, of the Board’s decision served July 11, 2023.

Request No. 3

All communications between or among current and/or former UP management, employees, or other personnel concerning policies, practices, and procedures applicable to Dispatching Decisions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll communications” concerning policies, practices, and procedures applicable to Dispatching Decisions, and in that it requests communications not concerning dispatching of Sunset Limited Trains. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it is generally duplicative of Request Nos. 22 and 24 in Appendix A, Part IV, of the Board’s decision served July 11, 2023.

Request No. 4

All communications between or among UP and BNSF, CN, NOPB, SCRRA, any governmental entity, and/or any third-party concerning policies, practices, and procedures applicable to Dispatching Decisions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll communications” between or among the identified entities concerning policies, practices, and procedures applicable to Dispatching Decisions, and as seeking documents not relevant to any issue in this proceeding in that it requests documents not concerning dispatching of Sunset Limited Trains.

Request No. 5

All documents constituting, concerning, or reflecting any Dispatching Decision that departed or deviated from the policies, practices, and procedures applicable to Dispatching Decisions, or otherwise failed to implement or comply with policies, practices, and procedures applicable to Dispatching Decisions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll documents” constituting, concerning, or reflecting certain Dispatching Decisions, and as seeking documents not relevant to any issue in this proceeding in that it requests documents not concerning dispatching of Sunset Limited Trains.

Request No. 6

All dispatching tapes, dispatching playbacks, and other documents logging or recording Dispatching Decisions, including but not limited to Dispatching Decisions related to the dispatching of all trains entering, exiting, continuing, or otherwise traversing the UP Lines.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll” dispatching tapes, dispatching playbacks, and other documents logging or recording Dispatching Decisions.

Subject to and without waiving its objections, Union Pacific will allow Amtrak representatives to review dispatching playbacks involving train movements on the UP Lines in person at Union Pacific’s facilities in Omaha, Nebraska.

Request No. 7

All daily system, region, or division performance reports concerning any operations on the UP Lines.

Union Pacific Response:

Union Pacific objects to this request as overbroad, unduly burdensome, and as seeking documents not relevant to any issue in this proceeding in that it requests “[a]ll” daily performance reports concerning “any operations” on the UP Lines.

Subject to and without waiving its objections, Union Pacific will produce responsive documents concerning train operations on the UP Lines.

Request No. 8

All documents concerning whether or under what circumstances a dispatcher responsible for Dispatching Decisions may override algorithmic Dispatching Decisions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll documents” concerning whether and under what circumstances a dispatcher may override Dispatching Decisions. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it is

generally duplicative of Request Nos. 22, 23, and 24 in Appendix A, Part IV, of the Board's decision served July 11, 2023.

Request No. 9

All communications between UP supervisors and dispatchers pertaining to Dispatching Decisions involving Sunset Limited Trains.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests "[a]ll communications" between Union Pacific supervisors and dispatchers pertaining to Dispatching Decisions involving Sunset Limited Trains. Union Pacific dispatchers dispatched hundreds of Sunset Limited Trains during the Investigative Period, and supervisors and dispatchers regularly communicate about dispatching decisions.

Request No. 10

Documents sufficient to show any criteria used to evaluate or compensate dispatchers and all documents related to any evaluations, reviews, or other feedback provided to dispatchers responsible for Dispatching Decisions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests "all documents" related to any evaluations, reviews, or other feedback provided to dispatchers responsible for Dispatching Decisions, and as seeking documents not relevant to any issue in this proceeding in that it requests documents not concerning evaluations, reviews, or feedback related to dispatching of Sunset Limited Trains.

Subject to and without waiving its objections, Union Pacific will produce documents sufficient to show criteria used to evaluate or compensate dispatchers, to the

extent it has not already produced such documents in response to Request 22 in Appendix A, Part IV, of the Board's decision served July 11, 2023.

Request No. 11

For the time period November 11, 2020 to Present, all documents relating to any investigations, audits, studies, reviews, analyses, or similar evaluations conducted by UP regarding Dispatching Decisions, HRD, or Preference on the UP Lines.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests "all documents" relating to the requested materials, and as seeking documents not relevant to any issue in this proceeding in that it requests documents relating to Dispatching Decisions not involving Sunset Limited Trains.

Subject to and without waiving its objections, Union Pacific will produce any investigations, audits, studies, reviews, analyses, or similar evaluations regarding Dispatching Decisions involving Sunset Limited Trains, HRD, or Preference.

Request No. 12

All documents relating to any disciplinary actions taken or contemplated against a dispatcher and concerning one or more Dispatching Decisions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests "all documents" relating to disciplinary actions taken or "contemplated," and as seeking documents not relevant to any issue in this proceeding in that it requests documents concerning Dispatching Decisions not involving Sunset Limited Trains.

Subject to and without waiving its objections, Union Pacific will produce documents sufficient to show any disciplinary actions taken against a dispatcher concerning Dispatching Decisions involving Sunset Limited Trains.

Request No. 13

All documents concerning any operational adjustment, scheduling adjustment, capital investment, or other similar action that UP has analyzed or considered to address, evaluate, or understand delays to freight or passenger trains traveling on the UP Lines, including all documents relating to the reason(s) UP did not implement any such adjustments, investment, or other similar actions.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll documents” concerning the actions that Union Pacific has analyzed or considered for a variety of purposes. Union Pacific also objects to this request as vague and unclear in that it suggests adjustments and investments could be used to evaluate or understand delays. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it appears to be generally duplicative of Request No. 21 in Appendix A, Part IV, of the Board’s decision served July 11, 2023.

Request No. 14

All documents concerning UP efforts to obtain funds from federal, state, or other sources for capital expenditures on the UP Lines.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “[a]ll documents” concerning efforts to obtain funds for capital expenditures on the UP Lines.

Subject to and without waiving its objections, Union Pacific will produce documents sufficient to show efforts to obtain funds for capital expenditures on the UP Lines, to the extent it has not already produced such documents in response to Request No. 21 in Appendix A, Part IV, of the Board’s decision served July 11, 2023

Request No. 15

All agreements with freight customers using any portion of the UP Lines for which UP's compensation varies depending on the time or timeliness of the delivery of products or commodities, or depending on availability of loaded cars for unloading or empty cars for loading of customer products or commodities.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that responding would require reviewing all agreements with the thousands of customers that use some portion of the UP Lines, and as seeking documents not relevant to any issue in this proceeding.

Request No. 16

All documents constituting or concerning UP's current operating plan(s) for lines used by Sunset Limited Trains, and all documents constituting or concerning efforts to measure operational performance against UP's current operating plan(s) or operating schedule(s) for lines used by Sunset Limited Trains.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests "[a]ll documents" concerning Union Pacific's current operating plans. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it appears to be generally duplicative of Request No. 8 in Appendix A, Part IV, of the Board's decision served July 11, 2023.

Request No. 17

All corporate policies, protocols, guidance documents, or other materials related to the implementation of Preference, or used to evaluate the implementation of Preference.

Union Pacific Response:

Union Pacific will produce responsive documents, to the extent it has not already produced them in response to Request Nos. 22 and 24 in Appendix A, Part IV, of the Board's decision served July 11, 2023.

Request No. 18

Documents sufficient to show any procedures or systems used to implement or evaluate the implementation of Preference.

Union Pacific Response:

Union Pacific will produce responsive documents, to the extent it has not already produced them in response to Request Nos. 22 and 24 in Appendix A, Part IV, of the Board's decision served July 11, 2023.

Request No. 19

For the UP Lines, documents sufficient to associate locomotive numbers associated with each train that operated on a fixed schedule during the Investigative Period.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that more than 49,000 scheduled trains operated on the UP Lines during the Investigative Period, and as seeking information not relevant to any issue in this proceeding.

Request No. 20

All documents analyzing, assessing, investigating, studying, reviewing or otherwise evaluating how the adoption and implementation of precision-scheduled railroading has affected the on-time performance of intercity passenger trains and/or affected the implementation of Preference.

Union Pacific Response:

Union Pacific will produce responsive documents.

Request No. 21

All documents analyzing, assessing, investigating, studying, reviewing or otherwise evaluating how UP's network planning and design have affected, are affecting, or will affect the on-time performance of Sunset Limited Trains and/or implementation of Preference on the UP Lines, including but not limited to documents concerning any ongoing or anticipated capital investments that will affect UP's network capacity on the UP Lines.

Union Pacific Response:

Union Pacific objects to this request as vague and unclear in that documents requested in the phrase beginning "including" do not appear to be a subset of the primary request. Union Pacific also objects to this request to the extent it implicitly assumes "network planning and design" affects implementation of Preference. Union Pacific further objects to the request as overbroad and unduly burdensome to the extent it is intended to request "[a]ll documents" concerning capital investments that will affect Union Pacific's capacity on the UP Lines.

Request No. 22

All documents concerning policies, protocols, or procedures related to how You prioritize freight traffic on the UP Lines, or the dispatching of any intermodal or other trains carrying priority freight on the UP Lines.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests "[a]ll documents" concerning Union Pacific policies, practices and procedures relating to prioritizing freight traffic on the UP Lines. Union Pacific also objects to this request as duplicative of Request No. 2. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it is generally duplicative of Request Nos. 22 and 24 in Appendix A, Part IV, of the Board's decision served July 11, 2023.

Request No. 23

For the time period November 11, 2020 to Present, all documents relating to any modeling, studies, reviews, analyses, investigations, or other similar evaluations conducted by UP regarding the Sunset Limited schedule or freight schedules on lines used by Sunset Limited Trains.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “all documents” relating to any modeling studies or similar evaluations, and as seeking documents not relevant to any issue in this proceeding in that it requests documents involving freight schedules. Union Pacific further objects to this request as unduly burdensome and not proportional to the needs of the case in that it is generally duplicative of Request Nos. 3, 4, 5, 6, 7, 8, 9, and 10 in Appendix A, Part IV, of the Board’s decision served July 11, 2023. Union Pacific also objects to this request as premature to the extent it requests documents Union Pacific may submit in reply comments in this proceeding.

Subject to and without waiving its objections, will produce final modeling studies or similar evaluations conducted by Union Pacific regarding the Sunset Limited schedule.

Request No. 24

All documents reflecting or relating to UP’s consideration of Sunset Limited Trains in determining, assessing, evaluating, studying, or otherwise considering freight volumes for lines used by the Sunset Limited Trains.

Union Pacific Response:

Union Pacific objects to this request as overbroad and unduly burdensome in that it requests “all documents” reflecting or relating to Union Pacific’s consideration of Sunset Limited trains in considering freight volumes for lines used by those trains.

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Attorneys for Union Pacific Railroad Company

October 4, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 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

EXHIBIT C

REDACTED – HIGHLY CONFIDENTIAL

EXHIBIT D

REDACTED – CONFIDENTIAL

EXHIBIT E

REDACTED – CONFIDENTIAL