

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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February 9, 2024
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Public Record

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

**UNION PACIFIC RAILROAD COMPANY'S
REPLY TO RENEWED MOTION TO COMPEL**

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The Board should deny the renewed motion to compel filed by Amtrak on January 23, 2024. However, Union Pacific is willing to help Amtrak understand the CADX log information it produced. Union Pacific is also willing to accept Amtrak's proposed compromise regarding contracts that "reflect variable compensation." Union Pacific addresses the specific points raised by Amtrak's motion in the sections below.¹

I. The Board should not order Union Pacific to produce additional documents logging or recording "Dispatching Decisions."

Amtrak's request for production of additional Trainsheets seeks information that is not proportional to the needs of the case, and production of the requested information would impose burdens and expenses on Union Pacific that far outweigh the value of the information sought. However, Union Pacific is willing to take reasonable steps to help Amtrak understand the 20 gigabytes of dispatching-related data that Union Pacific produced in Microsoft Access database files.

¹ In accordance with the Board's Order served July 11, 2023, Highly Confidential material in this pleading is denoted with double brackets ("{{ }}") and redacted from the public version of this filing.

A. The Board should not order Union Pacific to produce Trainsheets for non-Amtrak trains.

Amtrak's Document Request No. 6 requested information about Union Pacific's

"Dispatching Decisions." Specifically, Amtrak requested:

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

See Exhibit A at 8. Amtrak defined "Dispatching Decisions" as "decisions that involve Dispatching of any freight or passengers train on the UP Lines." *Id.* at 3. It defined "UP Lines" as the Union Pacific rail lines used by Amtrak's Sunset Limited Trains. *Id.* at 4. Amtrak's request covered the time period from October 1, 2021, through and including December 8, 2022. *Id.* at 5. The Board had defined that time period as the "Relevant Period" for this proceeding. *See* Decision served July 11, 2023, slip op. at 20.

Union Pacific understood Amtrak was primarily interested in obtaining what the parties refer to as dispatching playbacks. Dispatching playbacks are essentially a series of static images captured every few seconds containing information about the status of Union Pacific's network, including where trains are located and any path cleared by dispatchers to move them towards their destination. Union Pacific has the ability to replay captured images while focusing on specific portions of its network. However, because of the technology and amount of data involved, Union Pacific's playback capability is available only for a rolling 99-hour period.² Because of the 99-hour

² Storing 99 hours of data consumes approximately 288 gigabytes of in-memory data.

limitation, Union Pacific could not provide access to dispatching playbacks for the Relevant Period when Amtrak requested the information in September 2023.³

When Amtrak indicated an interest in reviewing other dispatching information, Union Pacific reminded Amtrak about its production of a substantial amount of detailed dispatching data in response to the Board's Investigative Request No. 23. *See Exhibit B.* When Amtrak continued to demand still more data, Union Pacific produced Trainsheets for all Sunset Limited Trains that moved during the Relevant Period.⁴

A sample Trainsheet is attached to this reply as Exhibit C. Each Trainsheet contains a variety of information about a train. Each train is identified using an alphanumeric code. For example, Exhibit C contains information for the westbound Sunset Limited train identified as "AMT1 02."

Union Pacific does not have an existing set of Trainsheets in a machine readable format or any other format. When Union Pacific needs a Trainsheet for a specific train, it creates one using a computer program that imports and combines information relating to the train from existing databases. As Exhibit C shows, the information combined to create a Trainsheet includes information regarding the train's Engine Consist (*i.e.*, the locomotives), Crew Consist (*i.e.*, the engineer, conductor, and other personnel); OS

³ For the same reason, Union Pacific had no dispatching playbacks from the Relevant Period that were subject to Board's July 11, 2023, Order instructing parties to retain records relevant to its investigation.

To the extent Amtrak is claiming it needs to be able to review more recent playbacks to understand Union Pacific's dispatching practices, *see* Renewed Mot. at 9, Amtrak does not need any additional discovery from Union Pacific. Amtrak employees already have access to a web display of Union Pacific dispatch information on a near real-time basis that shows network, train location, and train information and allows them to view activity on the portions of the Sunset Limited Route dispatched by Union Pacific.

⁴ Amtrak's motion refers to these documents as "Train Movement Data."

Times (*i.e.*, the arrival and departure times at reporting stations on the route); Delays (*i.e.*, delayed arrivals or departures from stations on the route, including any recorded Reasons and Comments), and any Unusual Occurrences. Union Pacific created and produced Trainsheets to Amtrak using the same process it uses when it creates and produces train sheets for its own business purposes.

Amtrak's renewed motion to compel seeks production of additional Trainsheets. Specifically, Amtrak seeks production of Trainsheets for all non-Amtrak trains that moved over the Sunset Limited Route during the Relevant Period. Based on Union Pacific's analysis, complying with Amtrak's request would require Union Pacific to create and produce Trainsheets for approximately 42,000 trains—several orders of magnitude more than the 366 Amtrak trains that moved over the route.

Amtrak has not justified imposing the substantial burden of producing additional Trainsheets on Union Pacific. *First*, Amtrak has not explained why the information is relevant. Union Pacific produced Trainsheets for Sunset Limited Trains in an effort to satisfy Amtrak's demand for additional dispatching-related information, but Trainsheets are not "documents logging or recording Dispatching Decisions," as Amtrak requested in its Document Request No. 6. Trainsheets sometimes identify delays that may in some sense involve Dispatching Decisions, such as delays relating to "train meets,"⁵ but they do not log or record dispatching decisions themselves. In any event, Union Pacific has produced Trainsheets for Sunset Limited Trains that operated in the Relevant Period, so to the extent Trainsheets address delays experienced by Amtrak trains, Amtrak has that

⁵ A "train meet" is a situation in which trains pass while traveling in opposite directions. When the trains are operating in a territory with just a single main line, a dispatcher must coordinate the pass so it occurs where one of the trains is on a passing siding.

information. Amtrak says Trainsheets contain other types of information that might bear on dispatching decisions indirectly, *see* Renewed Mot. at 9, but Amtrak's argument has no limiting principle—Amtrak could say the same of any Union Pacific data regarding operations on the Sunset Limited Route.

Second, with regard to the burden of production, Amtrak misrepresents Union Pacific's reply to Amtrak's initial motion to compel by claiming that "a single [Union Pacific] employee would retrieve the balance of its Train Movement Data in 2-3 weeks." Renewed Mot. at 10. Union Pacific's reply noted that creating and retrieving the 366 Amtrak Trainsheets took Union Pacific employees more than two business days. *See* Reply at 3. Basic math says producing 42,000 Trainsheets would take approximately 229 days. Union Pacific did estimate that employees could develop programming to automate the production process within 2 to 3 weeks, if they could devote their full time to the project. However, Union Pacific employees do not have capacity to devote their full time to such a project, and the Board's rules do not require Union Pacific to develop programming to produce data in a form in which it does not currently exist. *See PPL Mont., LLC v. The Burlington N. & Santa Fe Ry.*, STB Docket No. 42054, slip op. at 3 (served Nov. 9, 2000) ("Our discovery rules, however, require parties to furnish information in their possession, not to prepare special studies.").

Amtrak's responses to Union Pacific's showing of undue burden have no merit. Amtrak says Union Pacific would be done producing Trainsheets if it began producing them when Amtrak submitted its discovery requests in September 2023. *See* Renewed Mot. at 10. But Amtrak's assertion is irrelevant. Union Pacific's burden objection has

nothing to do with timing. Had Amtrak filed a motion to compel in September 2023, Union Pacific would have raised the same burden objection it raises here.⁶

Amtrak also suggests Union Pacific can be required to bear higher than usual discovery burdens because the case involves a “federal investigation.” Renewed Mot. at 10. But Amtrak made the discovery request at issue, not the Board. Union Pacific has already responded to the Board’s extensive discovery requests, which did not include a request for Trainsheets. Amtrak does not point to any authority granting interested parties heightened power to conduct their own discovery in parallel with federal investigations.

Finally, Amtrak says requiring Union Pacific to produce Trainsheets would help “cure the prejudice imposed by UP’s own failure to timely disclose that playbacks were unavailable.” Renewed Mot. at 10. However, Amtrak never identifies any prejudice from the misunderstanding involving availability of playbacks. Amtrak says it “was deprived of an opportunity to propound additional discovery.” *Id.* at 8. But Amtrak never identifies any additional discovery it would have propounded: Amtrak merely seeks information that it says it previously requested. Amtrak’s prejudice claim adds nothing to its claim that Union Pacific should be required to produce Trainsheets.

In sum, Amtrak has not shown its request that Union Pacific create and produce additional Trainsheets complies with the principles generally applicable to discovery—that it is proportional to the needs of the case, is important in resolving issues in this

⁶ In its October 4, 2023, responses and objections to Amtrak’s document requests, Union Pacific responded to Amtrak’s Document Request No. 6 as “overbroad and unduly burdensome.” *See* Exhibit D.

case, and would likely provide benefits outweighing the burdens of production. *See generally* Fed. R. Civ. P. 26(b)(1). The Board should deny Amtrak's request.

B. Union Pacific is willing to help Amtrak understand Union Pacific's CADX Logs.

Union Pacific could not produce dispatching playbacks for the Relevant Period, but it produced the next best thing—the underlying activity data maintained by Union Pacific.⁷ Union Pacific produced 17 Microsoft Access database files totaling nearly 20 gigabytes of data. In its renewed motion, Amtrak says it needs a “data dictionary” to understand the data. *See* Renewed Mot. at 15. Union Pacific is willing to work with Amtrak to help Amtrak understand how to read data that were produced.

Union Pacific has already tried to help Amtrak understand the data. First, Union Pacific produced the information as an Access database, so Amtrak is incorrect when it claims Union Pacific “has not explained the starting or ending positions for the fields reflected in the materials.” Renewed Mot. at 8. Further, when Union Pacific produced the data, it also produced a document created to explain similar data, though the document was created for the prior version of its dispatching system. *See* Exhibit E. Union Pacific believes Amtrak experts who are familiar with dispatching systems should be able to understand the information Union Pacific produced. For each row of information, the data include date and time information, the location involved, the activity involved, and a separate code indicating whether the activity involved a command sent to the field (identified by a “C”), an indication received from the field

⁷ Amtrak refers to this material as “Dispatching Records.”

(identified by an “I”), a train movement (identified by a “T”), or a request by a dispatcher (identified by an “R”).

However, Union Pacific is willing to answer any questions Amtrak might have about the terminology used to identify specific activities after reviewing the data.

II. Union Pacific fully complied with Amtrak’s request for dispatching communications.

The Board should deny Amtrak’s request that Union Pacific “be made to either produce additional communications related to the representations it made to the Board about dispatching or explain why none exist.” Renewed Mot. at 15.

Amtrak’s document requests contained three requests for “communications” that occurred from October 1, 2021, through and including December 8, 2022. *See* Exhibit A at 8–9 (Request Nos. 3, 4, and 9). Union Pacific also asked Amtrak to produce certain categories of communications. The parties agreed they would respond to such requests by undertaking reasonable searches for responsive emails and would not collect and search through other forms of communication (*e.g.*, texts, instant messages, etc.).

Union Pacific addressed its discovery obligations by using broad search terms to collecting email for the relevant time period from employees likely to have responsive information, developing more targeted searches designed to identify documents more likely to be responsive to individual requests,⁸ manually reviewing all documents identified as potentially responsive, and producing responsive documents.

⁸ For example, a search for all documents including both “Amtrak” and “dispatching” would identify all documents involving Amtrak that include a signature block from anyone in Union Pacific’s Harriman Dispatching Center—a universe far too large to review in the timeframe established by the Board’s procedural schedule.

Although Amtrak claims surprise at the relatively small number of documents produced, it should not be surprised. Amtrak's first request sought communications between or among Union Pacific employees "concerning policies, practices, and procedures applicable to Dispatching Decisions." Exhibit A at 8 (Request No. 3). Union Pacific separately produced a variety of documents regarding its dispatching policies, practices, and procedures in response to the Board's investigative requests and other document requests from Amtrak. As the documents show, Union Pacific's general dispatching policies, practices, and procedures are well established. As a result, there is no reason to expect Union Pacific's policies, practices, and procedures would have been the subject of significant email discussion from October 1, 2021, to December 8, 2022.

Amtrak's second request sought communications "between or among UP, BNSF, CN, NOPB, SCRRA, any governmental entity, and/or any other third-party concerning policies, practices, and procedures applicable to Dispatching Decisions." Exhibit A at 8 (Request No. 4). Union Pacific produced a few documents arguably responsive to this request. However, there is no reason to expect that policies, practices, and procedures applicable to "Dispatching Decisions"—defined as "decisions that involve Dispatching of any freight or passenger train on the *UP Lines*" Exhibit A at 3 (emphasis added), would be the subject of significant email traffic between Union Pacific and other entities.

Amtrak's third request sought communications "between UP supervisors and dispatchers pertaining to Dispatching Decisions involved [sic] Sunset Limited Trains." Exhibit A at 9 (Request No. 9). Amtrak's motion appears focused on this request. However, the absence of responsive emails is not surprising here either. In general,

Union Pacific's dispatchers work in the same facility as their supervisors. As a result, when dispatchers need to communicate with their supervisors, the communications are typically oral. In some circumstances, dispatchers and supervisors communicate using technology other than email, including Microsoft Teams. The Teams technology will generate follow-up emails if the recipient does not appear to have received the initial message. When Union Pacific identified responsive emails in the discovery process, they were produced. Union Pacific also produced emails it identified in the discovery process that were not between dispatchers and their supervisors, but that reported the substance of such communications.

In sum, Union Pacific responded reasonably and in good faith to Amtrak's discovery requests for "communications." Union Pacific has explained why the number of emails produced should not have surprised Amtrak. Union Pacific cannot be "made" to produce communications that cannot be located in a reasonable search. The Board should therefore deny Amtrak's request for relief relating to "dispatching communications."

III. Union Pacific is willing to accept Amtrak's proposed compromise regarding contracts that "reflect variable compensation."

Amtrak seeks irrelevant information in its request that Union Pacific produce agreements with customers using any portion of the Sunset Limited Route from October 1, 2021, through December 8, 2022, "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." Exhibit A at 9 (Request No. 15). Amtrak says such contracts are relevant because Union Pacific "told the Board that it considers contractual incentives

and penalties in moving passenger trains over its lines.” Renewed Mot. at 13. However, in a footnote, Amtrak admits that what Union Pacific told the Board had *nothing* to do with contractual incentives for moving non-Amtrak trains. Rather, Union Pacific was addressing incentives in its contract with *Amtrak*. Union Pacific told the Board it had less incentive to seek adjustments to Amtrak’s operating schedules to achieve on-time performance at each passenger station on a route before adoption of the Federal Railroad Administration’s new on-time performance rules, because the consequences of failing to achieve on-time performance were defined by {{

}} See *id.* at 13 n.30.

Amtrak says Union Pacific’s customer contracts are also relevant because they would allow Amtrak and the Board to “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.” *Id.* at 13. However, neither Amtrak’s initial motion nor its renewed motion identify a single case in which Union Pacific favored a freight train over the *Sunset Limited*. After taking two bites at the apple, Amtrak still failed to show the requested contracts could have any bearing on an issue in this case.

Instead of squarely addressing relevance, Amtrak offers to reduce the burden of production on Union Pacific.⁹ In its renewed motion, Amtrak says it is willing to reduce

⁹ As Union Pacific explained in its reply to Amtrak’s initial motion, identifying and producing responsive contracts would involve a burdensome special study. Union Pacific would have to develop computer programming to identify all the rail cars that moved over the Sunset Limited Route, tie the car movement data to billing data residing in a second database, and then use the billing data to retrieve rate documents residing in a third database. Union Pacific would then have to review each rate document to determine whether it is responsive to Amtrak’s request for contracts in which Union (continued...)

the burden by requesting only Union Pacific's contracts with shippers that rely on trains "assigned the same numeric priority as Amtrak trains in UP's Movement Planner algorithm." *Id.* at 14. The Union Pacific trains assigned the same numeric priority as Amtrak trains in Union Pacific's Movement Planner algorithm are what Union Pacific calls "Z trains." *See* Union Pacific Railroad Company's Response to Appendix A, Part IV at 11. The "Z trains" that moved over the Sunset Limited Route during the Relevant Period {{

}} Solely to avoid the burdens of continuing to litigate this issue, and without waiving its relevance objection, Union Pacific is willing to review {{ to determine whether they contain a provision or provisions under which Union Pacific's "compensation varies depending on the time or timelines 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," and then address the process for producing responsive information, if any exists.¹⁰

Pacific's "compensation varies depending on the time or timelines 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."

¹⁰ {{

(continued...)

IV. Conclusion

For the reasons stated above, the Board should deny Amtrak's renewed motion to compel.

Respectfully submitted,

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February 9, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2024, 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'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

Rosenthal, Michael

From: Rosenthal, Michael
Sent: Thursday, December 14, 2023 7:14 PM
To: 'Trepp, Alex S.'
Subject: RE: STB Docket No. NOR 42175

Alex,

Thanks for your email. Sorry for sending this response at a late hour, but it has been one of those days. I'll respond to your questions in order.

1. Union Pacific expects to complete its production of documents, other than emails responsive to Amtrak's requests for "communications," by December 20. With regard to the emails, based on my ongoing review of documents identified in the review process, I do not expect the process to yield a significant number of additional documents, but it takes time to work through the documents that have identified for review based on search terms.

2. Union Pacific's initial response to Amtrak's request for dispatching playbacks was based on an apparent miscommunication or misunderstanding about the time period at issue. Further investigation has established that Union Pacific does not have playback capability for the period requested by Amtrak. If necessary, Union Pacific can amend its discovery responses. With regard to your reference to 49 CFR 228.17 and 49 CFR 228.9, if you'd like, I can inquire about the documents Union Pacific retains in regard to those provisions, but just reading the list of information in section 228.17, it seems apparent it is very different from playback capability--which is what I understand Amtrak wanted. I will note, however, that Union Pacific's response to the STB's Request No. 23 included data showing changes to signals during the relevant period--if Amtrak is interested in that level of detail.

3. Union Pacific is standing on its burden objection. Amtrak has not explained why the information it seeks is relevant, but it is impossible to imagine any reason that would justify the effort needed to identify responsive contracts, or that would justify the extensive production of highly confidential commercial information contained in Union Pacific's contracts with its customers. To provide the information requested by Amtrak, Union Pacific would first have to identify all rail cars that moved over the Sunset Limited Route using one database. Union Pacific would then have to take the car-by-car information and tie it back to customer waybills and rate document identifiers using a second database. Union Pacific would then have to take the rate document identifier information and use other databases to obtain the actual rate document. Union Pacific would then have to review each rate document to determine whether the document provides for compensation that varies depending on the time or timeliness of delivery. In some cases, particular rate documents are part of larger, master agreements, so Union Pacific would also have to identify and review the master agreements as well. Just the effort to identify applicable rate documents--tying car movement files to waybill files, then using the waybill information to identify rate documents--would involve a special study, not a mere document request, and would involve burdens vastly disproportionate to the needs of the proceeding.

4. Union Pacific does not have a formal process for providing evaluations, reviews, or other feedback to dispatchers other than the process reflected in the document showing the criteria used to evaluate dispatchers. To cut to the chase, Union Pacific does not maintain files on dispatchers that identify/track/discuss/critique individual dispatching decisions.

5. Union Pacific has completed its production as to Amtrak Request 13.

6. As noted in point #1 above, Union Pacific is continuing to work its way through documents identified in the email search process. Union Pacific is not withholding any documents identified as responsive based on burden objections. I trust Amtrak has taken the same approach to its production of communications.

Regards,
Mike

From: Trepp, Alex S. <ATrepp@jenner.com>
Sent: Tuesday, December 12, 2023 10:24 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Subject: RE: STB Docket No. NOR 42175

[EXTERNAL]

Thanks, Mike.

We appreciate the request-by-request response. We have several follow-up questions.

First, in response to several of the requests, Union Pacific indicates that it is searching for and will produce any responsive documents. UP has previously represented it will produce on a rolling basis. However, we need to know when the productions will be complete to ensure that Amtrak has enough time to review the sufficiency of the completed production and evaluate any next steps Amtrak may need to take with respect to the sufficiency of UP's production. Amtrak only served 25 requests and it served them three months ago. The efficient and expeditious conduct of this proceeding requires that the parties wrap that initial discovery. Please confirm when UP will complete its productions.

Second, your response indicates that Union Pacific has determined that it does not possess dispatching playback documents for the Relevant Period. That response is very hard to understand. As an initial matter, it flatly contradicts the UP responses and objections, which stated that UP would "allow Amtrak representatives to review dispatching playbacks involving train movements on the UP Lines in person at Union Pacific's facilities in Omaha, Nebraska." UP Responses and Objections at Response 7. It is also inconsistent with repeated representations that UP has been evaluating whether there exist technical methods for downloading and providing those dispatching playbacks. *See, e.g.*, attached correspondence. And the position is hard to square with UP's regulatory obligations under 49 C.F.R. §§ 228.9 and 228.17.

Please promptly explain the discrepancy between representations that UP made in its initial responses and objections and yesterday's representation that the documents do not exist. Additionally, please note that Amtrak's initial Request encompassed several types of documents other than dispatch playbacks. *See* Request No. 6 (seeking "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"). Based on Union Pacific's initial representation concerning the availability of those playbacks, Amtrak has not previously pressed for other documents responsive to its request. However, Amtrak reserves the right to do so if UP is now for the first time telling Amtrak that the dispatch playbacks do not exist. Amtrak also reserves all other rights in connection with this request.

Third, your response indicates that UP is continuing to evaluate the burdens of responding to Request 15. However, it has been more than six weeks since Amtrak proposed a straightforward compromise to resolve UP's initial objection to this request. If UP intends to stand on burden objections to producing agreements with freight customers that use the UP Lines, please let us know by Thursday December 14. Should UP stand on its burden objection, UP must provide enough detail about the asserted burden to permit Amtrak to evaluate whether the objection is merited.

Fourth, your response indicates that Union Pacific has produced a document showing the criteria used to evaluate dispatchers. As set forth in our October 26, 2023 email, Amtrak continues to believe that in addition to producing documents sufficient to show the pertinent criteria for evaluation, UP must produce documents related to any evaluations, reviews, or other feedback provided to dispatchers responsible for Dispatching Decisions. UP during our

meet and confer agreed to assess whether there exists a formal process for providing evaluations, reviews, or other feedback to dispatchers and then circle back on this portion of the request. Please do so by Thursday December 14.

Fifth, your response indicates that Union Pacific has produced responsive documents located in a reasonable search for Amtrak Request 13. Please confirm whether Union Pacific has completed its production as to that Request.

Finally, with respect to several requests concerning communications, UP continues to qualify its response based on potential burden issues. See Response to Requests 3, 4, and 9. Please confirm that UP is producing communications responsive to each request by December 14. If there are potentially responsive documents that UP is not producing based on objections about burdensomeness, please provide enough detail about the asserted burden to permit Amtrak to evaluate whether the objection is merited.

We remain optimistic that the parties can work collaboratively to resolve remaining issues. As our discussions continue, Amtrak necessarily reserves all rights with respect to the requests and the sufficiency of UP's productions. As to schedule, we cannot evaluate what to tell the Board about scheduling until we have responses to the above. We look forward to hearing from you promptly and are happy to schedule a call to discuss.

Best,
Alex

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, December 11, 2023 9:17 AM
To: Trepp, Alex S. <ATrepp@jenner.com>
Subject: RE: STB Docket No. NOR 42175

External Email - Do Not Click Links or Attachments Unless You Know They Are Safe

Alex,

I've added responses in bold, capital letters.

Regards,
Mike

RFP 1: Amtrak continues to believe that the production of responsive policies should include all policies applicable during the Relevant Period, as defined by the Board. UP is evaluating whether the policies that it intends to produce were modified during the Relevant Period and will circle back.

UNION PACIFIC HAS PRODUCED THE REQUESTED DOCUMENTS.

RFP 2: Amtrak continues to believe that the production of formal and final decks, studies, reports, policies, presentations, memoranda, and other similar documents (together "Analyses") concerning policies, practices, and procedures relating to Dispatching Decisions is appropriate. The parties agreed that Amtrak would provide more granular examples of the type of Analyses requested. With that in mind, Amtrak provides the following illustrative examples of Analyses that would be responsive to this Request:

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH.

1. Analyses concerning compliance with movement planner business rules, pass protocols, train dispatcher rules, and other similar policies or protocols, including those produced in response to Board Request 22;

2. Analyses concerning the impact of movement planner business rules, pass protocols, train dispatcher rules, and other similar policies or protocols on network fluidity, including those produced in response to Board Request 22;
3. Analyses concerning the modification of movement planner business rules, pass protocols, train dispatcher rules, and other similar policies or protocols, including those produced in response to Board Request 22.

RFP 3: Amtrak continues to believe that the production of communications responsive to this request is appropriate. UP indicated that it was already running preliminary searches to assess what could reasonably be located. The parties agreed to table discussion of objections until the results of searches are known and any issues related to burden can be discussed.

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH, SUBJECT TO POTENTIAL BURDEN ISSUES.

RFP 4: Amtrak continues to believe that the production of communications responsive to this request is appropriate. The parties again agreed to table discussion of objections until UP runs preliminary searches and evaluates preliminary returns.

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH, SUBJECT TO POTENTIAL BURDEN ISSUES.

RFP 5: Amtrak continues to believe that the production of documents responsive to this request is appropriate. Amtrak agreed to resolve concerns about the request for "all documents" by modifying its request to seek the production of Analyses. Please confirm that UP will not be limiting its search to Dispatching Decisions that involve a Sunset Limited Train.

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH.

RFP 6: Amtrak continues to believe that the proposal to require that Amtrak representatives (and experts) review dispatching playbacks involving train movements on the UP Lines in person is unworkable because of the time required to review playbacks and the continuing nature of Amtrak's evaluation of the record in this case. Consistent with the parties' discussion, Amtrak will investigate whether it has continuing access to dispatching playbacks for the UP Lines. UP indicated uncertainty about whether there exists a methodology to download and export dispatching playbacks and offered to revert on that issue and burden. Please let us know whether UP can produce the dispatching playbacks.

UNION PACIFIC HAS DETERMINED THAT IT DOES NOT POSSESS DISPATCHING PLAYBACK DOCUMENTS FOR THE RELEVANT PERIOD.

RFP 7: The parties agreed that—subject to modifying the request to seek daily system, region, or division performance reports for "train" rather than "any" operations on the UP Lines—UP will conduct a reasonable and diligent search for and produce non-privileged responsive documents.

UNION PACIFIC HAS PRODUCED DOCUMENTS CONTAINING THE REQUESTED INFORMATION ON A WEEKLY BASIS. UNION PACIFIC DOES NOT HAVE EXISTING DOCUMENTS CONTAINING THE REQUESTED INFORMATION ON A DAILY BASIS.

RFP 9: Amtrak continues to believe that the production of communications responsive to this request is appropriate. UP indicated that it was already running preliminary searches to assess what could reasonably be located. UP agreed to table discussion of objections until the results of searches are known and issues related to burden can be addressed.

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH, SUBJECT TO POTENTIAL BURDEN ISSUES.

RFP 10: Amtrak continues to believe that—in addition to producing documents sufficient to show criteria used to evaluate or compensate dispatchers—UP must produce documents related to any evaluations, reviews, or other feedback provided to dispatchers responsible for Dispatching Decisions. Amtrak agreed to resolve concerns about the

request for “all documents” by modifying its request to exclude a forensic search for email and to exclude feedback based on attendance. UP agreed to assess whether there exists a formal process for providing evaluations, reviews, or other feedback to dispatchers and then circle back.

UNION PACIFIC HAS PRODUCED A DOCUMENT SHOWING THE CRITERIA USED TO EVALUATE DISPATCHERS.

RFP 11: For reasons articulated during our meet and confer, Amtrak continues to believe that Analyses related to Dispatching Decisions are relevant to this proceeding even if they do not expressly reference a Dispatching Decision involving Sunset Limited Trains. Amtrak has also reviewed Requests 2 and 11 and does not believe that Request 11 is duplicative, since it focuses on Dispatching Decisions rather than policies, practices, and procedures governing those decisions. To the extent UP has conducted Analyses of Dispatching Decisions, for example to assess whether particular dispatching decisions concerning freight trains are (i) affecting network fluidity, (ii) creating congestion, (iii) affecting the availability of sidings, (iv) affecting compliance with any contractual obligations regarding timeliness, (v) affecting the availability or expiration of crews, or (vi) otherwise affecting operations on the UP Lines, those Analyses should be produced.

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH.

RFP 13: During the meet and confer, Amtrak agreed to resolve concerns about the request for “all documents” by modifying its request to seek only Analyses. In response to concerns about vagueness or lack of clarity, Amtrak offered to consider clarifying the requests and provides the following clarifications and limitations.

UNION PACIFIC HAS PRODUCED RESPONSIVE DOCUMENTS LOCATED IN A REASONABLE SEARCH.

1. *Operational Adjustments.* Amtrak will limit its request to documents analyzing any operational adjustment implemented or considered to improve on-time performance of Sunset Limited trains or otherwise affecting the on-time performance of Sunset Limited Trains.
2. *Scheduling Adjustments.* Amtrak will limit its request to documents analyzing any scheduling adjustment implemented or considered to improve on-time performance of Sunset Limited Trains (including scheduling adjustments applicable to freight trains and considered for the purpose of improving on-time performance of Sunset Limited Trains).
3. *Capital Investments.* Amtrak will clarify its request to seek documents analyzing capital investments implemented or considered on the UP Lines.

RFP 15: During our meet and confer, the parties agreed to table discussion of each objection so that UP can consider whether to produce all agreements with freight customers using any portion of the UP Lines. Please confirm that UP will produce those agreements.

UNION PACIFIC IS CONTINUING TO EVALUATE THE BURDENS OF RESPONDING TO THIS REQUEST, BUT CONTINUES TO ASSERT ITS OBJECTIONS.

RFP 16: During the meet and confer, Amtrak agreed to resolve concerns about the request for “all documents” by modifying its request to seek only Analyses. Amtrak also explained why this request is not duplicative. UP agreed to search for Analyses constituting or concerning efforts to measure operational performance against UP operating plans or schedules for lines used by the Sunset Limited.

THE DOCUMENTS UNION PACIFIC PRODUCED IN RESPONSE TO RFP 7 CONTAIN INFORMATION ON OPERATIONAL PERFORMANCE.

RFP 19: During the meet and confer, the parties agreed to table discussion of objections while UP evaluates the existence and burden of producing responsive information. Please confirm that UP will produce responsive material if it exists.

UNION PACIFIC IS CONTINUING TO EVALUATE THE BURDENS AND FEASIBILITY OF RESPONDING TO THIS REQUEST, AND INTENDS TO PRODUCE THE REQUESTED INFORMATION IF REASONABLY FEASIBLE.

RFP 21: During the meet and confer, Amtrak agreed to resolve concerns about the request for “all documents” by modifying its request to seek only Analyses. Amtrak also explained why this request is not duplicative. Amtrak also clarifies that the request seeks Analyses that evaluate how network planning and design have affected, are affecting, or will affect the on-time performance of Sunset Limited Trains or the implementation of preference. Please confirm that UP will search for documents responsive to the Request.

UNION PACIFIC IS SEARCHING FOR AND WILL PRODUCE THE REQUESTED DOCUMENTS, TO THE EXTENT ANY EXIST AND ARE LOCATED IN UNION PACIFIC'S REASONABLE SEARCH.

RFP 24: During the meet and confer, Amtrak agreed to resolve concerns about the request for “all documents” by modifying its request to seek only Analyses. Please confirm that UP will search for documents responsive to the Request.
UNION PACIFIC HAS DETERMINED, BASED ON A REASONABLE SEARCH, THAT NO RESPONSIVE DOCUMENTS EXIST.

From: Trepp, Alex S. <ATrepp@jenner.com>
Sent: Friday, December 8, 2023 3:35 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Subject: STB Docket No. NOR 42175

[EXTERNAL]

Mike:

Amtrak has been working diligently and in good faith to respond to the more than 150 discovery requests that UP propounded. Amtrak has already produced more than 1,000 documents and anticipates producing approximately 850 more today. Amtrak has also worked to provide timely responses to issues raised in meet and confers on the voluminous and burdensome document requests that UP served. As you are aware, UP made its first production on Wednesday, providing just 23 documents. Moreover, UP still has not provided its position on discovery disputes raised in our email of October 26, 2023. We have been patient based on repeated assurances that UP is working through these issues. However, the efficient conduct of this proceeding requires that UP provide its position on outstanding discovery issues and confirm when it will complete its production of documents, so that Amtrak can assess next steps. Please provide us with UP's responses on these issues by Tuesday.

Please also let us know whether you have time next week to meet and confer on scheduling issues, in view of the Board's November 20, 2023 Order.

Best,
Alex

Alex S. Trepp

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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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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

**HIGHLY CONFIDENTIAL MATERIAL
REDACTED**