

BEFORE THE
SURFACE TRANSPORTATION BOARD

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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 RESUBMISSION
OF ROOT CAUSE NARRATIVES**

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Pursuant to the Board’s decision served August 19, 2024, Union Pacific is resubmitting its narrative explanations regarding root causes of the “Host-Responsible Delays on a Run-by-Run Basis” listed in Part I of the Appendix to the Board’s February 13 Decision, and the “Select Host-Responsible Delays of 90 Minutes or More” listed in Part II of the Appendix to the Board’s February 13 Decision, where the “Host RR” was identified as “UP,” for the runs of Amtrak’s Sunset Limited Train 1 and Train 2.¹

As directed by the Board, Union Pacific’s revised submissions designate separate portions of each of the 992 narratives as public, “Confidential,” or “Highly Confidential” based on the definitions established in the Protective Order issued in this docket. Union Pacific is therefore submitting twelve documents as attachments to this pleading: each

¹ In its decision served August 19, the Board did not request that Union Pacific resubmit its root cause narratives relating to Amtrak’s Sunset Limited Train 2, which it originally submitted on July 24, 2024. *See* August 19 Decision at 12. Union Pacific is also resubmitting those narratives to provide the Board, parties, and the public with a complete, consistent set root cause narratives.

In addition, Union Pacific notes the Board adopted a procedural schedule in its August 19 decision under which non-parties may file “replies” after the railroad parties reply to Amtrak’s opening statement and parties may file “rebuttal[s]” to the non-party replies 30 days later. *See id.* at 7. However, allowing non-party replies is inconsistent with the Board’s prior recognition that “under the Board’s rules only parties to the proceeding will be permitted to . . . submit substantive arguments.” July 11 Decision at 3 n.5.

of Union Pacific’s four prior submissions is being produced in three versions—“Public,” “Confidential,” and “Highly Confidential.” In each version, “Confidential” material is identified by surrounding it with single braces (“{” “}”), and “Highly Confidential” material is identified by surrounding it with double braces (“{{” “}}”).

Each narrative contains a combination of public, “Confidential,” and “Highly Confidential” information. In the revised submissions, Union Pacific treats the descriptions of alleged Amtrak delays as public. Union Pacific also treats its assessment of the accuracy of Amtrak’s descriptions as public.

In the revised submissions, Union Pacific designates as “Confidential” its narratives analyzing the root causes of alleged delays. Under the Protective Order, a submitting party may designate as “Confidential” any “information, data, documents, or other material produced in discovery to another party to this proceeding, or submitted material in pleadings, that the submitting party in good faith believes reflects proprietary or confidential information.” Union Pacific understands the term “confidential” to mean “private” or “secret.” *See, e.g., Food Mktg. Inst. v. Argus Leader Media*, 558 U.S. 427, 434 (2019); *cf. id.* at 440 (holding information is “confidential” within the meaning of FOIA Exemption 4 where it “is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy”). Union Pacific’s root cause analyses reflect information Union Pacific customarily and actually treats as private. More specifically, as Union Pacific has explained in prior pleadings, and as is confirmed by supporting information it submitted to the Board and the accompanying Verified Statement of Grant Janke, Union Pacific’s root cause analyses reflect detailed train movement data, signal data, and crew data, as well as a variety of other data

regarding day-to-day train operations, including records of mechanical incidents and track maintenance records. Union Pacific keeps all this data private as a matter of course. The data are stored on secure systems within Union Pacific, and they are not customarily shared with individuals who are not employees of Union Pacific. Union Pacific's protective measures have prevented the data at issue from becoming publicly available. *See* Janke V.S. at 1.

In its decision served August 19, the Board observes that other parties in this proceeding made their narrative root cause explanations public. *See* August 19 Decision at 10. Union Pacific does not know whether those other parties relied on the same types of data as Union Pacific to develop their narratives, and if so, whether they treat such data as public or whether they made an exception for this proceeding. Union Pacific customarily treats the data as private and adhered to that policy in this proceeding. *Cf. Occupational Safety & Health Law Project, PLLC v. U.S. Dep't of Labor*, No. 21-2028, 2022 WL 3444935, at *8 (D.D.C. Aug. 17, 2022) (explaining, in the context of FOIA Exemption 4: "[T]he test here is not about general custom in the industry, nor by the government. Rather, the issue is how [the owner of the information] customarily treats the information, not how its peers do.").²

In the revised submissions, Union Pacific designates as "Highly Confidential" the stringline graphs that accompany most of its narratives and provide a visual depiction of Amtrak Sunset Limited trains' movements and interactions with other trains at the

² In its decision served August 19, the Board notes that, in this proceeding, Union Pacific designated certain information about its network infrastructure as confidential for safety reasons, as well as due to commercial considerations. August 19 Decision at 11. To be clear, Union Pacific is not asserting security reasons for designating information in its narrative root cause explanations as "Confidential" and "Highly Confidential."

time and location of alleged delays. Under the Protective Order, a submitting party may designate as “Highly Confidential” any “information, data, documents, or other material produced in discovery to another party to this proceeding, or submitted material in pleadings, that the submitting party in good faith believes reflects competitively sensitive information.” Union Pacific’s stringline graphs submitted in this proceeding reflect competitively sensitive information; namely, they reflect train movement data the Board has consistently allowed parties to designate as “Highly Confidential” pursuant to its protective orders. *See Janke V.S.* at 1; *see also, e.g., Appl. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp. Inc., & Norfolk S. Ry.*, FD 36496, slip op. at 4 (STB served Jan. 28, 2022); *Total Petrochemicals USA, Inc. v. CSX Transp., Inc.*, NOR 42121, slip op. at 3 (STB served June 3, 2010). Competitors could use the stringline graphs, which contain information about train types, service frequency, origins and destinations, and performance capabilities, to analyze Union Pacific’s business and operating strategies and develop more granular, route- and service-specific information about Union Pacific’s competitive capabilities than could be developed from more general, publicly reported service data. *See Janke V.S.* at 1–2.

In its decision served August 19, the Board asks whether Union Pacific has shared any “Highly Confidential” information in its narratives with Amtrak in-house personnel, as is permitted under the Protective Order. August 19 Decision at 11 n.10. Union Pacific and Amtrak agreed shortly after Union Pacific’s April submission of its root cause narratives that certain Amtrak in-house personnel could review the narrative root cause explanations Union Pacific had designated as “Highly Confidential.” Union

Pacific also agreed to allow the same Amtrak in-house personnel access to the supporting documents Union Pacific filed along with the narratives.

Respectfully submitted,

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September 9, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 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

VERIFIED STATEMENT
OF
GRANT JANKE

My name is Grant Janke. I am the Assistant Vice-President of Network and Capital Planning for Union Pacific Railroad Company (“Union Pacific”). My team assesses the resources needed to handle present and future demand, including crews, locomotives, freight cars, mainline capacity, and terminal infrastructure. My team also develops, produces, and assesses Union Pacific’s operating metrics. I understand the Surface Transportation Board has asked Union Pacific to explain why it is designating certain portions of its narratives addressing the root causes of alleged delays to Amtrak’s *Sunset Limited* trains as “Confidential” or “Highly Confidential.”

Union Pacific is designating its narratives analyzing the root causes of alleged delays to *Sunset Limited* trains as “Confidential.” Union Pacific’s root cause analyses reflect detailed train movement data, signal data, and crew data, as well as a variety of other data regarding day-to-day operations, including records of mechanical incidents and track maintenance records. Union Pacific keeps this data private in the regular course of business. The data are stored on secure systems within the company, and they are not customarily shared with individuals who are not employees of the company. My understanding is that Union Pacific’s protective measures have prevented the data at issue from becoming public available.

Union Pacific is designating stringline graphs that accompany most of its root cause narratives as “Highly Confidential.” The stringline graphs reflect competitively sensitive information; specifically, they reflect train movement data, which Union Pacific keeps private in the ordinary course of business, stores on secure systems, and does not share with individuals who are not employees of the company. The stringline graphs are particularly sensitive. They reveal

information about train types, service frequency, origins and destinations, and service frequency, that competitors could use to analyze Union Pacific's business and operating strategies. The stringline graphs provide much more detailed information about Union Pacific's competitive capabilities than could be developed from more general service data that are reported publicly.

VERIFICATION

I, Grant Janke, Assistant-Vice President of Network and Capital Planning for Union Pacific Railroad Company, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on September 9, 2024

/s/ Grant Janke