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December 23, 2024

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re:

NOR 42175

**National Railroad Passenger Corporation—
Complaint and Petition for Investigation —
Substandard Performance of Sunset Limited
Trains 1 and 2**

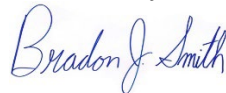
***New Orleans Public Belt Railroad Commission for
the Port of New Orleans Reply and Verified
Statement of Tomeka Watson Bryant***

Dear Ms. Brown:

Attached for filing is the New Orleans Public Belt Railroad Commission for the Port of New Orleans **Reply** to the National Railroad Passenger Corporation **Opening Statement** and a **Verified Statement of Tomeka Watson Bryant**.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Yours truly,



Bradon J. Smith
Attorney for the New Orleans Public Belt
Railroad Commission for the Port of New
Orleans

BJS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOR 42175

**NATIONAL RAILROAD PASSENGER CORP. — COMPLAINT AND PETITION
FOR INVESTIGATION — SUBSTANDARD PERFORMANCE OF *SUNSET*
LIMITED TRAINS 1 AND 2**

**New Orleans Public Belt Railroad Commission for the Port of New Orleans
Reply to National Railroad Passenger Corporation Opening Statement**

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Dated: December 23, 2024

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND.....	2
ARGUMENT	6
I. There is Only One Possible Host Rail Carrier for Any Particular Segment of Track and It is Not NOPB	7
A. There is Only Ever One Host Rail Carrier on a Given Line, Junction, or Crossing.....	7
B. Amtrak Offers No Standard for Who is a Host, but Agrees there Can Only Be One.....	8
C. To Identify the Single Host, NOPB’s “But for” and “Compensation” Questions are Consistent with the Statute as a Whole.....	10
D. NOPB is Not a Host Rail Carrier.....	13
II. The STB Should Abstain from Defining Preference.....	13
III. Amtrak’s Preference Does Not Extend to NOPB’s Maintenance Activities.....	15
IV. Congress Gave the Board Power to Remedy Specific Delays It has Investigated.....	18
CONCLUSION	20

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOR 42175

**NATIONAL RAILROAD PASSENGER CORP. — COMPLAINT AND PETITION
FOR INVESTIGATION — SUBSTANDARD PERFORMANCE OF SUNSET
LIMITED TRAINS 1 AND 2**

**NEW ORLEANS PUBLIC BELT RAILROAD COMMISSION FOR THE PORT OF NEW
ORLEANS REPLY TO NATIONAL RAILROAD PASSENGER CORPORATION OPENING
STATEMENT**

INTRODUCTION

As the Board’s August 19, 2024 order requires, the New Orleans Public Belt Railroad¹ Commission for the Port of New Orleans replies to Amtrak’s Opening Statement to address (1) who a “host” rail carrier of Amtrak is; (2) what “preference” rail carriers must give Amtrak; and (3) the extent the Board may award damages for preference violations. Each question arises under 49 U.S.C. § 24308 (the “Statute”) as amended by the Passenger Rail Investment and Improvement Act of 2008² (the “Act”) which, taken as a whole, provides the best answers:

1. A “host rail carrier” is the singular railroad “but for” whose agreement with Amtrak the Amtrak passenger service would

¹ Compare August 19, 2024 Board decision in this docket at pages 1, 4 (stating the New Orleans Public Belt Rail[road] Commission for the Port of New Orleans “shall” respond to each of the 3 questions) *with* July 20, 2023 and April 15, 2024 NOPB filings at n.1 (noting the correct name of NOPB).

² Pub. L. No. 432-110, Division B Title II (codified in part among scattered sections of 49 U.S.C. Subtitle V).

not exist on a given segment, and has, is, or could currently receive compensation for access under 49 U.S.C. § 24308(a).

2. The extent of Amtrak’s “preference” over “freight transportation” is a question of first impression the Board should forgo until a pending case in the United States District Court for the District of Columbia is complete.³ If the Board does decide what “preference” is, it does not cover maintenance activities.
3. The Board can award damages for those delays “attributable” to preference violations it has investigated and identified, but cannot award damages for preference violations it has never investigated.

BACKGROUND

NOPB is the successor to a former City of New Orleans terminal rail operation of a similar name. Established in 2017 initially as a public corporation, now as a state agency, NOPB has carried forward railroad operations first begun in 1908. *See gen. New Orleans Public Belt Railroad Corporation — Acquisition and Operation Exemption — Public Belt Railroad Commission of the City of New Orleans*. FD 36149 (NOPB notice filed Nov. 22, 2017), 2.

As a terminal or “belt” rail carrier one of NOPB’s principal jobs is to interchange traffic among Class I carriers in New Orleans. *See* September 25, 2023

³ Complaint ¶2, *United States v. Norfolk S. Corp.*, (D.D.C.). Case No. 24-cv-0226, ECF Dkt. 1 filed July 30, 2024 (“*U.S. v. Norfolk S.*”) (“ . . . Norfolk Southern Railway Company regularly fail[s] to provide National Railroad Passenger Corporation ('Amtrak') passenger trains with their statutory right to preference over freight transportation on Amtrak’s Crescent service, which provides daily passenger rail service in each direction between New York, New York, and New Orleans, Louisiana.”).

Verified Response of NOPB, 1–3. To provide that fluidity, NOPB must be interoperable with each carrier’s infrastructure and own movements. That practical necessity means NOPB does not operate signals, schedule train movements, or provide any significant line haul service. Rather, NOPB maintains the lines it owns or leases, timely provides crews and equipment in accordance with its agreements with Class I linehaul carriers, and undertakes rail transportation as foreign road dispatchers and signals permit.

One of these foreign roads is the Union Pacific Railroad Company, successor to the Southern Pacific railroad which had historically operated *Sunset Limited* passenger service. Much of the current route for the *Sunset Limited* dates from 1932. That is when the Interstate Commerce Commission authorized Southern Pacific-subsidary Texas & New Orleans Railroad Company to obtain trackage rights over (1) the Illinois Central Railroad Company from a connection point with New Orleans Union Passenger Terminal-owned track near Southport Junction to East Bridge Junction (about 2 miles of which NOPB now leases) and (2) the former municipal public belt railroad commission’s track—which NOPB now owns—from East Bridge Junction through West Bridge Junction to Avondale (about 5 miles). *Texas & N.O. R. et al. — Operation*, 189 I.C.C. 184, 185–190 (1932) (“*Texas & N.O.*”). Since then, the *Sunset Limited* has used this 7 ½ miles (give or take) of trackage rights to the end of NOPB’s ownership at Avondale where it continues until Live Oak—the end of the segment to which there is disagreement about host status—about another 6 miles down the line. Measured against the entire *Sunset Limited* route, Southport Junction to Live Oak represents 0.6% of the route and NOPB’s involvement is about half (0.4%) that.⁴

⁴ NOPB has no interest in the *Sunset Limited*’s route beyond Avondale and takes no position below on who a host is on that segment.

Southern Pacific used the trackage rights to Avondale to operate the *Sunset Limited* until 1971. Southern Pacific then entered its “Basic Agreement” with Amtrak under the Rail Passenger Service Act to give Amtrak the necessary (1) funding and (2) equipment and property rights for Amtrak to provide passenger service—including the New Orleans to Los Angeles passenger route and underlying trackage rights Amtrak adopted under the historic *Sunset Limited* name. See gen. *Nat’l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry.*, 470 U.S. 451, 455–456 (1985). In consideration of the Basic Agreement, Congress let Southern Pacific discontinue operating its *Sunset Limited* and other intercity passenger services. *Id.*

Amtrak revises the history and claims that the original “public bargain” of hosting under a Basic Agreement included preference. Opening Statement, 5 (“Amtrak would take over the responsibility of providing intercity passenger rail services, but in return, the railroads had to—and must still—provide rail passengers with preference over freight traffic on their rail lines.”). But neither the Basic Agreement nor Congress’s conditions for passenger discontinuance required host rail carriers to give any “preference” in train movements. And according to Amtrak, they still don’t. *Nat’l R.R. Passenger Corp., The Truth About Amtrak’s Legal Right to Preference*.⁵ So, Amtrak’s preference was not part of the “bargain” struck between it and the rail carriers that allowed it to operate on their tracks—i.e., a “host.” Preference came later and separate from the bargain.

Compare Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327–42

⁵ Amtrak.com, available at <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/mythbusters-enforcing-amtraks-legal-right-to-preference.pdf> (last visited December 23, 2024); (“The statutory preference requirement exists independently of the contracts with host railroads: the word “preference” does not even appear in the contracts.”), Exhibit A.

(1970) *with* Amtrak Improvement Act of 1973, Pub. L. No. 93-146 § 10, 87 Stat. 548, 552 (1973).

Indeed, preference could not have been in the Rail Passenger Service Act's discontinue-but-host-bargain, because it applies separately to rail carriers that had no Basic or ongoing [A]greement with Amtrak. *Compare* Amtrak Improvement Act, 87 Stat. 552 (applying preference to any freight train and any “railroad”) *with* *Nat'l R.R. Passenger Corp v. Atchison, Topeka & Santa Fe*, 470 U.S. at 456, n. 9 (identifying 5 passenger-carrying railroads that did not enter into Basic Agreements). Though “preference” was not part of the bargain, what the Basic Agreement did have was the earliest “hosting” relationship. Both the Rail Passenger Service Act and the Basic Agreement required Southern Pacific to sub-license its operating rights over foreign road track to receive relief from passenger service obligations. *Id.*; see also Amtrak_STB_724 (later iteration of Amtrak – Union Pacific operating agreement).

This history shows two things relevant to defining “hosting” and “preference:” one on what a “host” itself is and one on how “hosting” is not equivalent to “preference.” First both law and history identify a “host” rail carrier as the one that first gave the necessary and sufficient rights for Amtrak to have access to track. Per above, that is not NOPB as it has no relationship at law⁶ or in contract with Amtrak.

The second consequence is that “preference” and “hosting” are distinct concepts. Congress enacted preference after-the fact and by statute—whether or not

⁶ The gilded legal phrase is “privity of estate” denoting the concept that persons with a direct relationship, like a landlord and its tenant, had obligations and duties to one another, but that others with an indirect relationship, like a landlord and a sub-tenant, did not. *See gen.* 52 C.J.S. Landlord & Tenant § 60.

a particular rail carrier had discontinued its own trains, “hosted” Amtrak or otherwise has any relationship. That was remedial for Amtrak—the Attorney General can obtain preference for Amtrak regardless of who the host was (or is). 49 U.S.C. § 24103. But *different origins* and *different applicability* means that hosting and preference are, in fact, *different*.⁷

ARGUMENT

In defining what a host rail carrier is, when a preference attaches, and when the Board can award damages, the text and historical backdrop of Congressional acts provide singular, “best” definitions for each. *Loper Bright Enterpr. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024). Careful use of the text itself and the history behind it towards the goal of a “best” reading is now of paramount importance; agencies can no longer use a “permissible” interpretation to achieve a desired outcome. *Id.*

The Act’s text is awkward. But the Statute’s text and history—and the context of each—provides definitions for each interpretation the Board asked. For a “host rail carrier,” the Statute and its history define “the” host as the singular rail carrier “but for” whose relationship with Amtrak the service could not be operated.

For an understanding of “preference,” both the Statute’s text and historical understanding of the word show that the “preference” a rail carrier owes Amtrak is not a comprehensive subordination of an entire network or requirement to make specific schedules or avoid conflicts in all activities—including maintenance of way. No part of the law extends preference to maintenance-of-way activities

⁷ Consider also that a host rail carrier might itself initiate an investigation under the Act if it suspects non-hosting, rail carrier tenants are violating preference. 49 U.S.C. § 24308(f)(1). Absent a sense that rail carriers were gluttons for punishment, Congress would not have empowered a host rail carrier to initiate an investigation of itself for preference violations. Rather, Congress understood the host might not be the rail carrier violating the preference on any given segment.

NOPB performs or requires lifting slow orders for all traffic. Rather, it is a specific direction to rail carriers to resolve discrete rail-movement conflicts between freight and passenger service in favor of Amtrak trains.

Finally, for the Board's question on the extent of damages, Congress affirmatively limited the Board's power to award damages from failures of on-time performance to those preference violations it has actually investigated.

I. There is Only One Possible Host Rail Carrier for Any Particular Segment of Track and It is Not NOPB

Both the Act's text and the history of Congressional regulation of Amtrak's relations with rail carriers support a single best reading of who a "host" is. It is the (1) singular rail carrier—or successor to its interest—that (2) "but for" which the relevant Amtrak service would not operate and (3) who Amtrak pays under the aegis of 49 U.S.C. § 24308(a).

A. There is Only Ever One Host Rail Carrier on a Given Line, Junction, or Crossing.

The Act's text speaks for itself. In setting up the Act's procedure and remedy, Congress repeatedly wrote that the responsibility for on-time performance would fall to "the host" rail carrier. It is "the host rail carrier" that can be ordered to pay (49 U.S.C. § 24308(f)(2)) and must then remit damages. *Id.* at (f)(4). That phrase—"the host rail carrier"—is singular. If Congress had wanted to have multiple host rail carriers on a segment, it would have permitted the Board to make "a host carrier" liable on that segment. Or even more simply, Congress would have made whichever rail carrier violated the preference liable for damages, just as it had passed laws establishing the preference; giving the Department of Justice exclusive enforcement authority and making the preference applicable to all rail carriers. *Compare* Rail Passenger Service Act § 307, 84 Stat. at 1333 (giving

Department of Justice exclusive enforcement authority) *with* Amtrak Improvement Act § 9, 87 Stat. 548 at 552 (establishing preference and making it applicable to all rail carriers).

Congress’s meaning in using the singular definite article “the” is underscored by how Congress used the other singular article, the indefinite “a.” When speaking about any number of potential host rail carrier carriers on an entire route of separately-hosted segments, Congress identified them as a “a” host carrier. See, e.g., 49 U.S.C. § 24308(f)(1). But once an investigation has identified a preference violation *by “a” rail carrier—regardless of whether they are a host—that* caused a failure to meet standards, it is only “the” host rail carrier that must pay damages commensurate with their responsibility. 49 U.S.C. § 24308(f)(2). “A” rail carrier that violates preference is not necessarily “the” host rail carrier for a segment. *Id.* This emphasizes that there can only be but one “host.”

As discussed below in part (C)(2) below, Congress’s prior acts reënforce that there can only be one host carrier. Under 49 U.S.C. § 24308(a)—the codification into which Congress expressly drafted the Act—there is compensation from Amtrak to “the” rail carrier who has made rail assets available to Amtrak. Again, that supposes singularity; the “host” railroad is the one able to evict Amtrak for nonpayment. 49 U.S.C. § 24308(a)(3).

B. Amtrak Offers No Standard for Who is a Host, but Agrees there Can Only Be One.

Amtrak agrees that it has but one host for each segment. Opening Statement, 18 at n. 49–50 (acknowledging operational reality and Federal Railroad Administration designation of a single “host.”). The problem is, Amtrak offers nearly no standard to define who a host rail carrier is. Again, *nearly*: what Amtrak *is clear* about is that it is Amtrak that should be allotted the ability to define who a

host rail carrier is. Opening Statement, 17–19. Amtrak assures the Board that it will “generally” designate the arrangement that “predated joint ownership, operation, or dispatching.” See Opening Statement at 18. But Amtrak admits—evident in its complaint and failure to serve NOPB—it does not always “know” who controls or owns what or what the “predated” arrangement was on a line. Even so, Amtrak’s efforts to assign host status ratifies that there can only be a single “host” rail carrier.

Unfettered discretion to Amtrak is bad policy and invites mischief. It is bad policy because Amtrak discretion provides no certainty amongst multiple-user rail carriers of a line as to “who” host rail carrier is. Plus, it permits Amtrak to designate anyone as the “host” on given track without paying an access fee that subsection (a) of the Statute requires. Both logic and the Statute dictate that if Amtrak wants to choose from multiple candidates, it must pay multiple carriers host fees under Section 24308(a).

Amtrak-discretion is also bad policy because it would be counter-productive to what Amtrak wants to achieve. Amtrak’s approach will invite disputes—as potentially evident here—among all a line’s users about whether the proximate cause of a delay was crew expiration, dispatch, maintenance, or mechanical failure etc. etc. If every carrier is a potential host, then functionally no one is; no carrier will be incentivized to coordinate service improvements.

Beyond the policy, Amtrak’s approach seems destined if not designed to enable unproductive mischief from lawyers. While this case was pending, Amtrak sent an innocuous email to NOPB management asking if a track bulletin NOPB had issued was still in effect. Verified Statement of Tomeka Bryant, Attachment 1 (“Bryant V.S.”). The track bulletin simply advised users that a “preference” was due to Amtrak trains. Bryant V.S., Attachment 2. NOPB replied “Yes,” the bulletin was

still in effect. Bryant V.S. Attachment 1. And so, Amtrak’s lawyers say, based on the track bulletin and a stray statement made in a *proposed PTC implementation plan*,^{8,9} Amtrak and NOPB have the requisite agreement to name NOPB as a host rail carrier—if Amtrak, wanted, of course. (Continued) gamesmanship has a chilling effect on communications and trust; this distrust will not exist if it’s clear who the “host” railroad is.

C. To Identify the Single Host, NOPB’s “But for” and “Compensation” Questions are Consistent with the Statute as a Whole.

To resolve any outstanding issues of who the “host” rail carrier is, the Board should—as necessary—ask two more questions: “but for whose” involvement is Amtrak on a line and “whom” does Amtrak pay?

1. *A “But-for” Inquiry Serves the Statute’s Meaning.*

Amtrak somewhat correctly describes its Section 24308(a) access rights as a “public bargain.” In legislating that bargain, Congress provided that Amtrak could enter singular separate “Basic Agreements” necessary and sufficient for Amtrak to operate a route, or at least on a specific segment. Rail Passenger Service Act §§ 401–402, 84 Stat. at 1334–35. After all, if an identifiable passenger service was operated by a specific carrier, that rail carrier could convey necessary and sufficient rights to Amtrak through the Basic Agreement. *Nat’l R.R. Passenger Corp*, 470 U.S. at 455. So in finding who the host rail carrier is, it makes sense to

⁸ Exhibit B, October 27, 2023 email from Alex S. Trepp, counsel for Amtrak to undersigned.

⁹ Exhibit C, Excerpt from City of New Orleans New Orleans Public Belt Railroad Positive Train Control Implementation Plan.

focus on which rail carrier’s obligations are both necessary and sufficient (“but for”) for the service on a given stretch of track.

That yields a plain answer for NOPB’s-leased segment from Southport Junction to East Bridge Junction and NOPB’s-owned segment between East Bridge Junction to Avondale. NOPB has no agreement with Amtrak. Without Amtrak’s Southern Pacific granted trackage rights, Amtrak would have no right to operate over NOPB’s leased track from Southport Junction to East Bridge Junction or on NOPB’s owned track from East Bridge Junction to Avondale. This “but-for” necessary and sufficient test winnows down the field of rail carriers to identify “the” single “host” rail carrier consistent with the Statute’s text and history. That utility merits adoption of this “but for” inquiry—if not going forward in future investigations, then to this circumstance.

2. *If It Is Not Clear Whose Rights Amtrak Uses, the Host is the Rail Carrier Amtrak Pays for Access*

Should there be a tie or dispute—where multiple carriers’ obligations to Amtrak might be necessary and sufficient—it is resolved by reading the Statute as a consistent whole.¹⁰ Recall that the Act amends certain sections of the Rail Passenger Service Act codified in Section 24308. *See* Pub. L. No. 110-432, Div. B §§ 2 and 213. *See also* House of Representatives Office of Law Revision Counsel, 49 U.S.C. § 24308 “Amendments” (“Subsec.f: Pub. L. 110-432 § 213(a) added subsec.f.”) (2018). Accordingly, the Act codified at subsection (f) must be read against the Rail Passenger Service Act at subsection (a) under the rule that enactments within the same statute must be construed together. *Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972) (“The rule is but a logical extension of the principle that individual

¹⁰ If there is not a tie, consider that the Statute’s subsection (a) is a logical corollary; it reënforces that the host rail carrier is the one from whom Amtrak’s takes sufficient rights in return for valuable consideration.

sections of a single statute should be construed together for it necessarily assumes that whenever Congress passes a new statute, it acts aware of all previous statutes on the same subject.”) (internal citations omitted).

Applying this principle provides consistency within the Statute that the Federal Railroad Administration has recognized. It was under § 402(b) of the Rail Passenger Service Act—now codified with modern language at § 24308(a)(2)(A)—that Amtrak could force agreements for the use of a rail carrier’s track if or when the Basic Agreement expired. *Compare* Rail Passenger Service Act § 401(a)(1) (providing for a 3-year period under the Basic Agreement) with *id.* § 402(a)(2) (providing for agreements beyond 3-year period). But Congress did require Amtrak to pay rail carriers for the access. *Id.* § 402(a) (conditioning access rights on payment). The mutual understanding and consideration (access from the host, money from Amtrak) is an “agreement.” *Black’s Law Dictionary* 78 (Bryan A. Garner, ed., 9th ed. 2009). (“agreement: 1. A mutual understanding between two or more persons about their relative rights and duties . . . 2. The parties’ actual bargain . . .”). In interpreting subsection (f) the Federal Railroad Administration adopted this “agreement” framework to define a “host” as a rail carrier “directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.” 49 C.F.R. § 273.3.

Thus the Statute itself and one federal agency’s interpretation thereof provides that an agreement under Section 24308(a) confirms who a host rail carrier is under Section 24308(f). Rail carriers “host” Amtrak via agreements. Within the overall context of Section 24308, there is no textual nor logical distinction between the rail carrier whom Amtrak pays (subsection (a)) and who a “host” is (subsection (f)). Congress, statutory construction principles, common sense, and the Federal

Railroad Administration all say the host rail carrier is the one Amtrak pays for access under Section 24308(a).

D. NOPB is Not a Host Rail Carrier.

Under any plausible standard, NOPB is not a host rail carrier. There is no “but for NOPB” that permits Amtrak to operate from Southport Junction to Avondale. Likewise, NOPB has no “agreement”—let alone one under Section 24308 under which it is paid for access—with Amtrak. And even if NOPB had some relationship with Amtrak, there is nothing in the record that NOPB is “directly” accountable to Amtrak that meets the Federal Railroad Administration definition. Finally, even under the vague standard Amtrak proposes—that it has wide discretion to designate who a “host” is—Amtrak has not claimed that NOPB is a one. As far as the *Sunset Ltd.*’s operating rights, Amtrak and NOPB were and are strangers to one another.

II. The STB Should Abstain from Defining Preference

As discussed above, Congress enacted Amtrak’s statutory preference as a separate and later duty from those that attached to hosting under a Basic Agreement or its successor. *Compare* Rail Passenger Service Act, 84 Stat 1328 et seq. *with* Amtrak Improvement Act § 9, 87 Stat. 548 at 552 (establishing preference and making it applicable to all rail carriers). Likewise, Congress reserved enforcement powers to the Attorney General and implicated federal courts as the first-in-time interpreters of what “preference” is. 49 U.S.C. § 24103. To that end,

Congress has repeatedly refused to grant Amtrak independent litigating authority for its preference. Thus “preference” has been undefined.¹¹

That is on track to change. The Attorney General is suing Norfolk Southern Railway Company under its Section 24103 powers. The complaint in that suit raises the question of what a “preference” is. Complaint ¶¶1-2, *United States v. Norfolk Southern Corp.*, (D.D.C.). Case No. 24-cv-0226.

The worst possible outcome for national rail policy would be for the federal district court and the Board to define preference differently. Given that a “preference” question is pending in court, it would be imprudent for the Board to get ahead of litigation on the same question. *Loper Bright Enterpr.* 144 S. Ct. at 2266. (“In an agency case as in any other . . . there is a best reading all the same—‘the reading the court would have reached’ if no agency were involved.”). If the judiciary will decide this question, the Board should let the judiciary decide this question. Accordingly, the Board would serve all stakeholders best by abstaining from defining “preference” in this proceeding alone. In this interim, the *Norfolk Southern* court may well refer the “preference” question to the Board under 28 U.S.C. § 1336 or the Board itself could intervene to address it under Federal Rule of Civil Procedure 24(b)(2). Either course would help towards uniformly defining what “preference” is—a wise investment of time now to avoid needless litigation and ambiguity.¹²

¹¹ David J. Konarske “*Amtrak: The Failure of Passenger Preference and Politics of Nonenforcement*,” 53 Loy. U. Chi. L. J. 583, 595 at n. 86 (2022).

¹² If the two-track litigation of “preference” is the result of Amtrak forum-shopping, coordinating an outcome with the *Norfolk Southern* litigation would mitigate that pernicious practice.

III. Amtrak's Preference Does Not Extend to NOPB's Maintenance Activities.

If the Board does undertake to define “preference,” the statutory text instructs how far the “preference” extends. Congress wrote that Amtrak should have “preference” “in using a rail line, junction, or crossing” over “freight transportation.” 49 U.S.C. § 24308(c). Put another way, when an Amtrak train is to “us[e]” a specific “rail line, junction, or crossing” it should be afforded the next reasonable available opportunity—a “preference” relative to the competing use of “freight transportation.” 49 U.S.C. § 24308(c). Preference arises at a specific time—when Amtrak will “use” it—and a specific place—a particular “rail line, junction, or crossing”—and relative to a specific activity—“freight” train movements.

That reflects a more than century-long industry understanding of “preference” as a term of art. Opening Statement, 66 (citing Santa Fe Railway President’s characterization of historic preference 50 years ago). To Amtrak’s point, “preference” is well-defined in analogs to Amtrak’s Basic and existing agreements: rail industry joint facility and trackage rights agreements. Consider the 1904 Agreement for the Southport Junction diamond between CPKC-predecessor Louisiana Railway and the Illinois Central Railroad Company. It provides that “In the passage of the respective trains of the parties . . . over the aforesaid crossing . . . if passenger trains of each said parties arrive *simultaneously*, the passenger trains of the [Illinois] Central Company shall have *preference* in passing over such crossing . . . but in all cases passenger trains shall have *preference* over freight trains.” September 15, 1904 Agreement between Illinois Central R.R. Co. and Louisiana Railway & Navigation Company (Exhibit D, 5) (emphasis supplied). Consistent with Amtrak’s urging for a historical understanding, “preference” governs relative traffic movements (freight and passenger service converging) at a specific time and a specific place (Southport Junction).

That the Statute incorporates a term of art undercuts what Amtrak elsewhere says is an “absolute” preference (Opening Statement, 68)¹³ requiring a wholesale revision of both broad policies (Opening Statement, 65) and operational changes including changing crew schedules, avoiding train meets or follows at all costs, and limiting maintenance activities (Opening Statement, 76-96)—all of which are detached from specific conflicts at specific places at specific times.

That view is detached from the Statute’s text. All Congress said was that Amtrak trains should be given a “preference” in the “use” of specific rail assets relative to “freight transportation” when a conflict occurs. 49 U.S.C. § 24308(c). This is not a national “passenger” rail transportation policy codified into statute—which, incidentally, Congress does know how to pass. *Cf.* The Rail Transportation Policy, 49 U.S.C. § 10101.

Of interest to NOPB, Congress did not instruct rail carriers to perform maintenance around Amtrak train arrivals—regardless of whether Amtrak was arriving as scheduled—or manage any of its other rail activities around Amtrak schedules or other movements (e.g., those Amtrak movements outside a schedule). *Cf.* Opening Statement, 87. The Statute addresses freight traffic relative to passenger traffic. It says nothing about scheduling maintenance of way, imposing slow orders for track conditions, or operating an entire network in a way that “favors” Amtrak beyond a “line, junction, or crossing.” *Compare* 49 U.S.C. § 24308 (c) *with* Opening Statement, 65. The Act does not even address velocity; the Statute addresses that issue separately and Amtrak could seek relief if slow orders or track bulletins not covered by its hosting agreements were a concern. 49 U.S.C.

¹³ The illogic is particularly plain in Amtrak’s word choice here, where Amtrak says Congress “strengthened” its already “absolute” preference.

§ 24308(d); *See, e.g., Adequacy of Intercity Passenger Service — Track*, 344 I.C.C. 518 (1976). Problems and remedies Congress separated or omitted cannot be read into the Act.

To that end, neither text nor historical context suggest “preference” has anything to do with any activity beyond the actual movement of freight and passenger trains relative to one another. Indeed, by its nature maintenance is not a preference or an exclusive “use” of the line. It supports *all transportation* and does not distinguish or “prefer” one type to another. That leaves Amtrak’s attempt to influence when a rail carrier can perform maintenance activities and impose slow orders *necessary for safe Amtrak operations* outside of 49 U.S.C. § 24308(c).

Even if “preference” did include maintenance-of-way, NOPB’s work is not a systemic, repeated threat that Amtrak says violates preference. Opening Statement, 87. The most sensitive asset on NOPB’s track—the Huey P. Long Bridge—is double tracked and bi-directionally signaled. *Bryant V.S.*, 2. Work always takes place on Tuesdays and Thursdays. *Id.* NOPB’s maintenance of this asset has ample allowance for Amtrak’s movements and by itself does not impair preference. Outside of the Bridge—the 2.2 miles NOPB leases from Illinois Central—NOPB schedules its work 2 weeks in advance with notice. *Bryant V.S.*, 2. And, for that work that does arise on an as-needed basis, not only does Amtrak allow that it is not a preference violation (Opening Statement 59), but NOPB undertakes all possible efforts to keep trains moving. *Bryant V.S.*, 2–3. If preference does extent to maintenance of way, NOPB’s maintenance is not in issue.

IV. Congress Gave the Board Power to Remedy Specific Delays It has Investigated.

The Board can award damages for the delays, but not beyond the delays themselves which caused 2 quarters of substandard on time performance. 49 U.S.C. § 24308(f)(2).

Two parts of the statute's text support that understanding: Congress's incorporation of "delays or failures to achieve minimum standards investigated under paragraph 1" as a limiting phrase and its use of the word "attributable." *Id.* The limiting phrase does just that: it limits potential damages to on time performance failures that were established under "paragraph 1"—triggering the investigation. "Attributable" further supports that meaning; damages are available only if the "investigated" on time performance was "attributable" to preference violations. 49 U.S.C. § 24308(f)(2). These are the two "if" conditions under which damages can be awarded. *Id.*

Amtrak stretches the statute beyond the "delays or failures" the Board "investigated" within the 2 quarters and the cause-and-effect nature of damages. Amtrak does this with creative ellipse use that violate Amtrak's own authority that "the Board is obliged to give each word some operative effect" and by ignoring the plain meaning of "if." Opening Statement, 99, citing *Walters v. Metro Educ. Enters., Inc.* 519 U.S. 202, 209, (1997) and *Nat'l Ass'n of Manufacturers v. Department of Def.*, 583 U.S. 109, 128-29 (2018).

Here is the text of the statute with operative language underlined:

If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages.

49 U.S.C. § 24308(f)

Taking the key underlined terms in order, the text says that “delays or failures” that the Board has “investigated” from the 2 quarters under paragraph 1 of the subsection attributable to a preference failure can be compensated by the award of damages. Reading the operative language in sequence, unedited, shows that Congress created a 2-quarter time-specific universe for the Board’s investigation and identification of preference violations and empowers the Board to award damages for the same.

Yet here is how Amtrak reads the same text:

~~If~~ *When* the Board determines that delays or failures to achieve minimum standards ~~investigated under paragraph (1)~~ are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages.

Opening Statement, 99 (using ellipse to ignore “under paragraph 1”).

Amtrak’s reading guts the phrase “investigated under paragraph 1.” Because this time limitation—the 2 quarters “investigated under paragraph 1” is inconvenient for Amtrak’s desired meaning, Amtrak deletes the offending phrase in its re-phrasing. A need to delete text to achieve a desired understanding is not a “clear” meaning—let alone a supportable one. *Cf.* at 96-99 (repeatedly asserting Amtrak’s construction is “clear.”)

The rewriting is also apparent in that Amtrak says Congress used the 2 quarters only as a trigger, and that Congress did not limit the damages to the investigated delays., Opening Statement 98-99. But for that to be true, the conditional word “if” would have to be stricken and replaced with “when.” “If” is a conditional, subjunctive word that creates a cause and effect between the condition and the related outcome (“if . . . [then] the Board may award damages.”). *The New*

Oxford American Dictionary 845 (2001) (“if: 1. Introducing a conditional clause . . .”); *American Heritage Dictionary of the English Language* “Usage Note.” (describing if/then usage; “If Kevin was out sick yesterday, [then] he will probably work late today.”)¹⁴ “When” describes a certain time that *does not have* a cause and effect meaning. *New Oxford American Dictionary*. at 1921 (“when: . . . *relative adv.* . . . (referring to a time or circumstance); *American Heritage Dictionary of the English Language* “Usage Note.” *Id.*¹⁵ “When” would support ongoing damages devoid of cause—and its insertion is necessary to support Amtrak’s understanding that damages do not need stem from any harm “investigated.” Amtrak Opening Statement, *id.* But that is not how Congress wrote the statute. Rather, it conditioned damages “if” the on-time failures the Board reviewed from the 2 quarters were because of preference violations. “If” the Board has investigated neither a given quarter’s on time performance, nor the underlying preference violations, then it cannot award damages.

CONCLUSION

Section 24308, particularly subsection (f) from the Act, is not well-written. But taking each piece of text by itself—placed in the context of the Section and history—leads to singular, best meanings that: (1) a host rail carrier under subsection (f)(2) is the railroad but-for which Amtrak would not otherwise be on the line, and who is eligible for payment from Amtrak under subsection (a); (2) a “preference” for Amtrak is relative to freight train movements and does not include

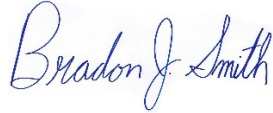
¹⁴ Ahdictionary.com available at <https://www.ahdictionary.com/word/search.html?q=If> (last accessed Dec. 17, 2024).

¹⁵ Ahdictionary.com available at <https://www.ahdictionary.com/word/search.html?q=when> (last accessed Dec. 17, 2024).

maintenance of way activities; and (3) damages are limited to those quarters and delays that triggered the investigation and that the Board has investigated.

Dated: December 23, 2024

Submitted,



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**Attorneys for the New Orleans Public
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of New Orleans**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOR 42175

NATIONAL RAILROAD PASSENGER CORP. — COMPLAINT AND PETITION
FOR INVESTIGATION — SUBSTANDARD PERFORMANCE OF *SUNSET*
LIMITED TRAINS 1 AND 2

New Orleans Public Belt Railroad Commission for the Port of New Orleans
Reply to National Railroad Passenger Corporation Opening Statement

Exhibit A

“The Truth About Amtrak’s Legal Right to Preference.”

Mythbusters

The Truth About Amtrak's Legal Right to Preference

The leading cause of delay to Amtrak passengers is “freight train interference” – when an Amtrak train, traveling on freight railroad tracks, is delayed by slower freight trains. For nearly 50 years, Federal law has required that passengers be given preference over freight, but some freight railroads ignore the law, and passengers suffer as a result, missing family milestones and time spent with loved ones, important business meetings, and travel connections.

We know how to fix this: allow Amtrak to bring an action in federal court to enforce the law and protect passengers.

Myth “Amtrak already has the highest priority of all trains on freight rail lines.”

Truth **Freight trains represent the largest cause of delay to passengers.**

- Freight trains caused **more than 1 million minutes of delay** to Amtrak passengers in 2019 – equivalent to two years of waiting while railroads dispatched freight trains first.
- Passengers are often forced to endure hours of delay, following a single freight train for hundreds of miles.
- Just take a look at some recent Customer On-Time Performance figures from May 2021:

Route	On-Time Performance	Route	On-Time Performance
Crescent (New York-New Orleans)	33%	Empire Builder (Chicago-Seattle/Portland)	43%
Silver Star (New York-Miami)	18%	Southwest Chief (Chicago-Los Angeles)	27%
Capitol Limited (Chicago-Washington, DC)	34%	Sunset Limited (New Orleans-Los Angeles)	21%

Myth “Amtrak trains are delayed only when freight traffic volumes are high.”

Truth **There is no correlation between on-time performance and freight rail volumes.**

- Data proves that on-time performance is not correlated with freight rail volumes, which decreased over 10% from 2006 to 2019 even as Amtrak on-time performance worsened.
- The truth is that when freight railroad leadership decides to dispatch Amtrak trains according to the law, on-time performance has improved, literally overnight.
- During those times, there was no evidence of negative impacts to the fluidity of America's rail network, on which Amtrak trains account for only about 4% of train-miles.

Myth “Preference enforcement creates an inconsistent patchwork of law.”

Truth **Preference is already the law!**

- Preference has been the law for nearly 50 years. The problem is that only the Department of Justice can enforce it, which it has done only once, in 1979.
- Freight railroads can obtain an exception to providing preference if they demonstrate preference would “materially lessen the quality of freight service provided to shippers” – but no railroad has ever sought an exception.

Myth “Amtrak already has options for legal recourse to enforce its right of preference.”

Truth **AAR has systematically tried to eliminate Amtrak's options for preference enforcement.**

- The Association of American Railroads spent nearly a decade and millions of dollars thwarting Congress' efforts to establish metrics and minimum standards for intercity passenger rail service, and the STB's efforts to define an acceptable level of on-time performance, and will continue to fight enforcement of Amtrak's preference rights.
- The statutory preference requirement exists independently of the contracts with host railroads: the word “preference” does not even appear in the contracts.

Haven't passengers waited long enough?

Support the Rail Passenger Fairness Act: S.1500 and H.R.2937

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**New Orleans Public Belt Railroad Commission for the Port of New Orleans
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Exhibit B

October 27, 2023 Amtrak Counsel Email

From: [Trepp, Alex S.](#)
To: [Bradon J. Smith](#); [Amunson, Jessica Ring](#)
Subject: RE: NOR 41275; NOPB as non-host; Follow-up from last week's discussion
Date: Friday, October 27, 2023 9:04:37 AM
Attachments: [image001.png](#)
[NOPB 1988 Bulletins re Amtrak Preference Rights.pdf](#)
[New Orleans Public Belt Railroad - Positive Train Control Implementation Plan.pdf](#)

Bradon:

Thanks again for raising this issue and for your efforts to avoid unnecessary discovery.

You asked if Amtrak could agree to the following stipulation: “Amtrak has no agreement or other privity with NOPB for the rail line co-extensive with the Sunset route from milepost A-908.7 (Southport Junction) to milepost B-J8.3 (Avondale). NOPB is not a ‘host’ railroad under 49 U.S.C. § 24308(f).”

Upon investigating, we identified the attached bulletins, which were issued by NOPB and reflect agreement that: “Amtrak passenger train movements over the Mississippi River Bridge and approaches (Huey P. Long Bridge) must be given preference over any other train movements, in accordance with Section 402(e) of the Rail Passenger Service Act, 45 U.S.C. 542(e) and New Orleans Public Belt Operating Rule 637.” As recently as January 30, 2023, NOPB personnel confirmed in correspondence to Amtrak that those bulletins remain in effect and operative. Moreover, in its PTC Implementation Plan, NOPB acknowledged that Amtrak is NOPB’s “tenant railroad[] which operate[s] between East Bridge Junction and West Bridge Junction over the Huey P. Long Bridge.” That document is also attached. Accordingly, Amtrak cannot agree to the stipulation as drafted.

We are, however, willing to confirm for the Board that Amtrak and NOPB do not have an operating agreement with penalties for untimely performance as contemplated by 49 U.S.C. § 24308(a)(1). Moreover, consistent with the Complaint and Petition, we can confirm that for purposes of the metrics and standards codified at 49 C.F.R. Part 273, Amtrak does not view NOPB as the appropriate host railroad for track segments between milepost A-908.7 (Southport Junction) to milepost B-J8.3 (Avondale). As we have made clear, Amtrak continues to believe—and will continue to advocate—that the Board’s investigation should be focused primarily on UP as the host railroad that is responsible for the vast majority of the track over which the Sunset Limited operates.

We would be happy to discuss.

Thanks,
Alex

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LIMITED TRAINS 1 AND 2

New Orleans Public Belt Railroad Commission for the Port of New Orleans
Reply to National Railroad Passenger Corporation Opening Statement

Exhibit C

**[City of] New Orleans Public Belt Positive Train Control
Implementation Plan**



NEW ORLEANS PUBLIC BELT RAILROAD

**VITAL – ELECTRONIC TRAIN MANAGEMENT SYSTEM
(V-ETMS)**

**POSITIVE TRAIN CONTROL
IMPLEMENTATION PLAN
(PTCIP)**

**May 30, 2011
(Revision 3)**

Submitted in fulfillment of 49 CFR Part 236, Subpart I, 236.1011

8. Rolling Stock § 236.1011(a)(6)

This section will contain information related to the rolling stock that will be equipped with the PTC technology.

8.1 Rolling Stock to be Equipped § 236.1011(a)(6)(i)

NOPB owns and maintains 11 locomotives. NOPB plans to equip five (5) locomotives with PTC technology. Our current estimate is to equip the following locomotives:

	<u>Locomotive</u>	<u>Horsepower</u>
1.	2001	2000
2.	2008	1500
3.	3000	3000
4.	3001	3000
5.	3002	3000

8.2 Schedule § 236.1011(a)(6)(ii)

It is anticipated that NOPB will equip all five locomotives by July 1, 2015, or earlier. The actual schedule will be coordinated with UPRR, to ensure that all five NOPB locomotives are equipped and tested for operability and PTC compliance in advance of the UPRR's PTC Implementation Plan over the Huey P. Long Bridge.

8.3 Tenant Railroads § 236.1011(a)(6)(iii)(A) and (B)

The tenant railroads which operate between East Bridge Junction and West Bridge Junction over the Huey P. Long Bridge, inclusive, are:

- Amtrak
- Burlington Northern Santa Fe
- Union Pacific Railroad

NOPB has provided a copy of its original PTCIP submission to the following railroads and agencies in April 2010:

- Federal Railroad Administration
- Amtrak
- Burlington Northern Santa Fe
- CN
- CSX
- Kansas City Southern
- Norfolk Southern
- Union Pacific

NOPB has received copies of the following PTCIPs from the following railroads:

- Union Pacific, Version 1.2, dated June 25, 2010.
- NOPB will request a copy of the PTCIP from the remaining six railroads.

9 Wayside Devices § 236.1011(a)(7)

Wayside Devices

The following describes the required wayside devices for implementation of the V-ETMS PTC system.

- Wayside Interface Unit – The WIU is the network of data interfaces that collect and transmit data to the Base Radio Station Servers. These WIUs capture discrete information from the wayside systems such as:
 - Interlocking signal aspects
 - Switch position
 - Grade crossing status
 - Electric lock switch position
 - Wayside signal aspects

The information is collected through a serial format. The WIU also has direct Ethernet ports for communication to the Base Radio Station Servers using the TCP/IP. WIUs are located at all wayside signal locations, interlockings and grade crossings. The following are the major components of the WIUs:

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Exhibit D

Southport Junction Interlocking Agreement

part hereof, and thereafter maintain the same in proper repair and condition.

2. The Central Company shall keep accurate account of all moneys expended by it in and about the construction and maintenance of said station building, and shall, on or about the fifteenth day of each month, render to the Louisville Company a statement of such account for the month next preceding, and the Louisville Company shall, and hereby agrees that it will, within fifteen (15) days after the receipt of such statement, repay to the Central Company one-half of all moneys expended by the Central Company in and about the construction and maintenance of said station building.

3. It is further understood and agreed that each party hereto shall be the owner of an undivided one-half interest in said station building.

4. Each party hereto shall provide its own force for the handling of its business, but all other expenses of operating said station, such as heat, light, water and janitor work, shall be borne two-thirds by the Central Company and one-third by the Louisville Company.

5. This agreement shall continue in force until terminated by agreement between the parties hereto, and shall be binding upon their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, by their duly authorized officers, the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY,

By J. C. WELLING,
Vice-President.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

By G. E. EVANS,
Fourth Vice-President.

ILLINOIS CENTRAL R. R. CO.

AND

LOUISIANA RAILWAY & NAVIGATION CO.

AGREEMENT RELATING TO CROSSING NEAR SOUTHPORT, LA.

Sept. 15, 1904.

THIS INDENTURE, made this fifteenth day of September, A. D. 1904, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called the Central Company, and the LOUISIANA RAILWAY & NAVIGATION COMPANY, party of the second part, hereinafter called the Louisiana Company, WITNESSETH:

That the Central Company, for and in consideration of the covenants and agreements of the Louisiana Company herein contained, has granted, and by these presents does grant, unto the Louisiana Company, upon the conditions and for the purposes hereinafter set forth, the right to lay, maintain and operate a single track railway of standard gauge, over and across the lands, right of way and railroad track of the

Central Company, near what is known as Southport, west of the limits of the City of New Orleans, Louisiana. On the plat hereto attached, the tracks of the Central Company are shown by the red lines and the tracks of the Louisiana Company by the black lines and the said crossing is indicated by the letter "A."

The foregoing grant is expressly conditioned upon the performance by the Louisiana Company of all and singular the covenants and agreements hereinafter set forth, to be by it kept and performed, and a default in or failure to perform any of said covenants and agreements shall work an absolute forfeiture of said grant. The Louisiana Company covenants and agrees as follows, to-wit:

1. The Central Company, notwithstanding the aforesaid grant, shall have the right to retain the track now owned and operated by it at said crossing, and shall also have the right, at any and all times hereafter, to lay, maintain and operate over the track of the Louisiana Company herein authorized to be laid, such additional tracks as it may from time to time see fit, and shall also have the right at any and all times, to change the grade of its roadbed and tracks at such crossing, as it may think proper; that the Louisiana Company, at its own cost and expense, upon reasonable notice of the desire of the Central Company to lay additional tracks or to change the grade of its roadbed and tracks, will provide the material for and properly construct and put in the crossings for such additional track or tracks, according to such plans and specifications as the Central Company may prescribe, and will also make such changes in the grade of its roadbed and tracks as may be necessary to conform to any changes made in the grade of

the roadbed and tracks of the Central Company; that nothing shall be done or suffered to be done by the Louisiana Company that shall in any manner materially impair the usefulness or safety of the track of the Central Company, or of such tracks as it may hereafter lay at said crossing.

2. The Louisiana Company will furnish the materials for and construct and put in all crossing frogs, foundations and other fixtures necessary to make the crossing at the point aforesaid, in accordance with such plans and specifications as the Central Company may prescribe, and will, at its sole cost and charge, and to the satisfaction of the Central Company, forever maintain and keep in good repair, and renew from time to time when necessary, all crossing frogs, foundations and other fixtures provided for in this indenture for said crossing with existing tracks and for crossings with any additional tracks that may be laid as above provided, and will maintain the grade, ties and roadbed at said crossing, and keep blocked and protected the frogs and guard rails at said crossing, so as to make it as free as possible from danger to the employes of the Central Company.

3. Whenever either of the parties hereto, or the laws of the State of Louisiana, or the ordinances of any municipal corporation thereof, or any other lawful authorities, shall require a flagman or flagmen to be stationed at said crossing, or shall require said crossing to be protected by signals or gates, or by an interlocking and derailing system, or any other safety appliance, in any such case the Central Company shall employ, as hereinafter provided, and pay the wages of such flagmen, and shall employ as hereinafter provided, and pay the wages of all persons required for the operation of any such signals,

gates, interlocking and derailing plant, or other safety appliances, and shall furnish all supplies and pay all other expense of operating the same, and after the construction of such signals, gates, interlocking and derailing plant, or other safety appliance, shall repair, maintain and renew the same from time to time as may be necessary, and the Louisiana Company hereby agrees within fifteen (15) days after the presentation of bills therefor, to repay to the Central Company one-half of all expense incurred by the Central Company for the purposes mentioned in this paragraph.

And the Louisiana Company shall also, at its own cost and expense, provide and put in place in accordance with plans and specifications prescribed by the Chief Engineer of the Central Company, and approved by the Railroad Commissioners or Crossing Board, or other legal authority having jurisdiction over railroad crossings in said State, all such signals, gates, interlocking and derailing plant or other safety appliance which may be so required at said crossing. Such plans and specifications shall include the preparation and change in the tracks of both parties incident to the application and use of any such signals, gates, interlocking and derailing plant, or other safety appliance, the connection of the tracks of both parties therewith and all other things necessary to the proper working of such appliance, and to provide for the protection and operation of the railroads of both parties in connection therewith.

4. Between the parties hereto all persons employed for the protection of the said crossing, in or about the construction, maintenance or operation of any such signals, gates, interlocking devices or safety appliances, shall be deemed the joint employees

of the parties hereto and the Louisiana Company shall have the right to require the discharge of such joint employees upon written request to the Central Company.

5. In case of any suit brought against either party hereto the liability for which has in this agreement been assumed by, or imposed upon, the other party, the party against whom such suit is brought shall at once give the other party notice in writing thereof in order that the other party may make such defense thereto as it may deem proper, and in such case the party who has assumed the liability shall pay all attorneys' fees, costs and expenses incurred in defending such suit, as well as all damages that may be recovered therein.

Each party hereto hereby agrees to pay for all death, damage, loss or injury to its employees or property, or to persons or property in its care, arising from the fault or negligence of any of the said joint employees, and agrees to indemnify the other party hereto and save it harmless therefrom.

Each party hereto hereby agrees to pay for all death, damage, loss or injury occurring at the said crossing by reason of the fault or negligence of its sole employees, and agrees to indemnify the other party hereto and save it harmless therefrom.

6. The Louisiana Company hereby agrees, whenever requested in writing by the Central Company to do so, to construct and maintain proper cattle guards at the intersection of its track with the boundary lines of the waylands of the Central Company at the said crossing.

7. In the passage of the respective trains of the parties hereto over the aforesaid crossing, if passenger trains of each of said parties arrive at the said crossing simultaneously, the passenger trains of the Central Company shall have preference

in passing over such crossing, over the passenger trains of the Louisiana Company, and in like manner freight trains of the Central Company shall have preference over freight trains of the Louisiana Company, but in all cases passenger trains shall have preference over freight trains.

8. In case of failure on the part of the Louisiana Company to perform promptly and fully any obligation imposed upon it under and by virtue of the provisions of this agreement, the Central Company may perform such obligation and the Louisiana Company will promptly repay to the Central Company, upon presentation of proper bills therefor, the entire amount by it expended in the performance thereof.

9. It is expressly stipulated and agreed between the parties hereto that any waiver at any time by the Central Company of a breach of any condition of this agreement shall extend only to the particular breach so waived, and shall in no manner impair or affect the existence of such condition or the right of the Central Company, its successors or assigns, to thereafter avail itself of such condition, and any subsequent breach thereof.

10. The grants, covenants and stipulations hereof shall extend to and be binding upon the respective successors and assigns of the parties hereto, and so far as they lawfully may, shall pass with the railroads of the respective parties; provided, however, that all the rights and privileges hereinabove granted shall cease and become void unless the same are exercised by the Louisiana Company within two (2) years from the date hereof.

IN TESTIMONY WHEREOF, the parties hereto have caused these

presents to be executed in duplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By J. T. HARAHAH,
Second Vice-President.

Witnesses:

R. P. SCHUYLER,
J. CANNON.

[SEAL]

Attest:
W. G. BRUEN,
Asst. Secretary.

LOUISIANA RAILWAY AND NAVIGATION COMPANY,

By WM. EDENBORN,
President.

Witnesses:

J. J. TIPPIN,
H. W. BECHTELL.

[SEAL]

Attest:
H. B. HELM,
Secretary.

State of Illinois, }
County of Cook. } ss.

I, Andrew P. Humburg, a Notary Public in and for said State and County, certify that J. T. Harahan, Second Vice-President of the aforesaid Illinois Central Railroad Company, who is personally known to me and known to me to be such

Second Vice-President of said corporation and the same person whose name is subscribed to the above instrument as such Second Vice-President, appeared before me this day in person in said State and County, and being by me duly sworn did say that he was the Second Vice-President of the said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he signed the above instrument before me and in the presence of the two subscribing legal witnesses, and in their presence he acknowledged that he signed, sealed and delivered the said instrument as the free and voluntary act and deed of the said Railroad Company and as his own free and voluntary act as such Second Vice-President for the uses and purposes therein set forth.

Given under my hand and official seal this 19th day of December, A. D. 1904.

ANDREW P. HUMBURG,
Notary Public.

[SEAL]

State of Louisiana, }
Parish of Caddo. } ss.

I, Allen Rendall, a Notary Public in and for said State and Parish, certify that Wm. Edenborn, President of the aforesaid Louisiana Railway and Navigation Company, who is personally known to me and known to me to be such President of said corporation, and the same person whose name is subscribed to the above instrument as such President, appeared before me this day in person in said Parish and State, and being by me duly sworn did say that he was President of the said

corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he signed the above instrument before me and in the presence of the two subscribing legal witnesses, and in their presence he acknowledged that he signed, sealed and delivered the said instrument as the free and voluntary act and deed of the said Louisiana Railway and Navigation Company and as his own free and voluntary act as such President for the uses and purposes therein set forth.

Given under my hand and official seal this 11th day of November, A. D. 1904.

ALLEN RENDALL,
Notary Public.

[SEAL]

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOR 42175

**NATIONAL RAILROAD PASSENGER CORP. — COMPLAINT AND PETITION
FOR INVESTIGATION — SUBSTANDARD PERFORMANCE OF *SUNSET*
LIMITED TRAINS 1 AND 2**

**VERIFIED STATEMENT OF **TOMEKA WATSON BRYANT, GENERAL MANAGER OF THE
NEW ORLEANS PUBLIC BELT RAILROAD COMMISSION FOR THE PORT OF NEW
ORLEANS****

Submitted: December 23, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOR 42175

**NATIONAL RAILROAD PASSENGER CORP. — COMPLAINT AND PETITION
FOR INVESTIGATION — SUBSTANDARD PERFORMANCE OF SUNSET
LIMITED TRAINS 1 AND 2**

VERIFIED STATEMENT OF TOMEKA WATSON BRYANT

My name is Tomeka Watson Bryant. I am the General Manager of the New Orleans Public Belt Railroad Commission for the Port of New Orleans (NOPB). In that role I am responsible for overseeing all NOPB railroad operations, including scheduling locomotive and train movements, maintenance of way activities, and bulletins that NOPB issues.

I entered the industry as a management trainee for CSX Transportation, Inc. I joined NOPB as a trainmaster in 2017. Since then, I have been honored to undertake positions of increasing responsibility up to my current post. During this time I gained experience in operations, safety and training, and sales and marketing.

NOPB owns the Huey P. Long Bridge and its approaches (from East Bridge Junction to West Bridge Junction, collectively, the “Bridge”) across the Mississippi River in New Orleans. The Bridge is a critical asset for access to the New Orleans terminal and for safe and efficient rail operations for the rail transportation network. With this in mind, NOPB has a scheduled “maintenance of

way” (MOW) program with the goal of keeping the Bridge in a state of good repair. To support this program and ensure fluid operations in the terminal, NOPB endeavors to perform Bridge MOW work only on Tuesdays and Thursdays. The predictability of this schedule allows all rail carriers in the terminal to coordinate and plan their own movements—and those of any other carrier they control.

The Bridge is double-tracked and also bi-directionally signaled, permitting trains to operate in both directions, regardless of which track they are on. When working on the Bridge, NOPB always leaves one track “in service” so that rail carriers who dispatch or operate traffic on the Bridge retain access for all necessary and scheduled movements. Per NOPB’s September 25, 2023 responses to questions from the Board that I verified, our work on Tuesday is designed to avoid conflict with Amtrak’s *Sunset Limited*.

Besides the bridge, NOPB’s rail assets on the *Sunset Limited* route consist of a short single-track segment NOPB leases from Illinois Central Railroad Company east of the East Bridge interlocker. This track does not require the same scheduled level of maintenance as the Bridge. As described in NOPB’s September 25, 2023 response to the Board, we perform maintenance work on this track on 14-days notice to Illinois Central. On the odd occasion when immediate repair is necessary, NOPB makes a safe, temporary fix to allow train movements to resume as quickly as possible. As necessary, NOPB will provide onsite supervision and assistance to “walk” the train over the track at issue to minimize the disruption to pending movements. Then, during non-peak periods, NOPB undertakes the work

necessary for a sustainable, permanent repair. But when needed, it is important that NOPB have unimpeded, immediate access both to perform maintenance and repairs and to implement any necessary measures (including slow orders or speed reductions) to keep traffic in the terminal moving.

To assure that fluidity, communication among rail carries is of critical importance. Teleconferences among the rail carriers in the New Orleans terminal are held 3 times per day to schedule train movements, and I receive dozens of emails about movements and track conditions. I try and answer promptly and with the amount of consideration necessary. So when Amtrak sent an email (Attachment 1 to this Statement) asking about a track bulletin—an important, but entirely routine document providing information on train movements and track availability (the bulletin is Attachment 2)—I checked with the requisite NOPB staff to see if it was still in place and confirmed to Amtrak that it was. I was very surprised to see that Amtrak’s lawyers then cited this as a potential “agreement” that might make NOPB a host railroad.

VERIFICATION

I, Tomeka Watson Bryant, General Manager of the New Orleans Public Belt Railroad Commission for the Port of New Orleans, verify under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Dated: December 23, 2024

A handwritten signature in black ink, reading "Tomeka Watson Bryant", written over a horizontal line.

Tomeka Watson Bryant

V.S. Bryant Attachment 1

From: [Troy Banks](#)
To: [Brubeck, Lizabeth S](#)
Cc: [Tomeka Bryant](#); [Carl Kocur](#)
Subject: Re: NOPB Bulletin 13811 - Amtrak Preference
Date: Monday, January 30, 2023 9:49:40 AM

ATTENTION: This email originated outside of Amtrak. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Yes, absolutely does bulletins still applies.

Get [Outlook for iOS](#)

From: Troy Banks <troy.banks@railnola.com>
Sent: Monday, January 30, 2023 8:28:56 AM
To: Carl Kocur <carl.kocur@railnola.com>
Subject: Fwd: NOPB Bulletin 13811 - Amtrak Preference

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From: Tomeka Bryant <tomeka.bryant@railnola.com>
Sent: Friday, January 27, 2023 11:02:03 AM
To: Troy Banks <troy.banks@railnola.com>
Subject: Fwd: NOPB Bulletin 13811 - Amtrak Preference

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From: Brubeck, Lizabeth S <Lizabeth.Brubeck@amtrak.com>
Sent: Friday, January 27, 2023 10:39:18 AM
To: Tomeka Bryant <tomeka.bryant@railnola.com>
Subject: NOPB Bulletin 13811 - Amtrak Preference

Good morning Ms. Bryant,

I work for Amtrak's Host Railroad Group and found the attached New Orleans Public Belt Bulletin in our records regarding Amtrak's preference in operation over the Huey P. Long Bridge.

Could you kindly advise whether NOPB Bulletins #13811 and #13765 remain in effect?

Thank you.

Lizbeth Brubeck

Director Host Railroads

Amtrak | 1 Massachusetts Ave. NW | Washington, DC 20001

Email: Lizbeth.Brubeck@amtrak.com | cell: 678.488.5361

NEW ORLEANS PUBLIC BELT RAILROAD

NEW ORLEANS, LA
JANUARY 1, 1988
FILE 512.6

cc: JLL
PAC

BULLETIN # 13911

REISSUE OF BULLETIN #13765 , DATED JANUARY 1, 1987.

It has been called to our attention that Amtrak passenger trains have not been given preference crossing the Mississippi River Bridge (Huey P. Long Bridge).

Amtrak passenger train movements over the Mississippi River Bridge and approaches (Huey P. Long Bridge) must be given preference over any other train movements, in accordance with Section 402 (e) of the Rail Passenger Service Act, 45 U.S.C. 542 (e) and New Orleans Public Belt Operating Rule 637.

All concerned must be governed accordingly

wc

C. J. Dugas,
General Superintendent

cc: Engine Terminal

France Yard B. Brd.

Cotton Warehouse B. Brd

West Bridge Tower B. Brd.

East Bridge Tower B. Brd.

Messrs: G. Hutchison

J. Cantrell

J. Riolo

H. Fisher, Supt. SP Transpt. Co.

R. Duplechain, Term'l. Supt. SP Transpt. Co.

P. Crabtree, Supt. UP-MP RR

M. Sanders, Asst. Supt, UP-MP RR

P. Mickey, V.P. Gen'l. Counsel, Amtrak-

RECEIVED

JAN 15 1988

J. L. LARSON

JAN 1 1988

RECEIVED
V.P. Mickey

CERTIFICATE OF SERVICE

I certify that on December 23, 2024 the **New Orleans Public Belt Railroad Commission for the Port of New Orleans Reply to the National Railroad Passenger Corporation Opening Statement and Verified Statement of Tomeka Watson Bryant** was served according to 49 C.F.R. § 1104.12(a).

