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January 21, 2025

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

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Office of Proceedings
January 21, 2025
Part of
Public Record

RE: Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(f)—For Substandard Performance of Amtrak’s Sunset Limited Trains 1 and 2, Docket No. NOR 42175

Dear Ms. Brown:

The Southeastern Pennsylvania Transportation Authority (“SEPTA”) submits this Reply in response to the order issued by the Board in this proceeding on August 19, 2024, and hereby provides a response to the Opening Statement filed by the National Railroad Passenger Corp. (“Amtrak”) on October 8, 2024, and the replies filed by the railroad parties on December 23, 2024, in the above-captioned proceeding.¹

While this proceeding is about Amtrak’s statutory preference over freight transportation pursuant to 49 U.S.C. § 24308, some of Amtrak’s recommendations in its Opening Statement cast so wide a net that they could harm SEPTA and its commuter rail operations. The purpose of Section 24308, and the focus of the parties’ arguments in this proceeding, is to establish and define Amtrak’s preference over freight transportation alone. But Amtrak’s recommendations go further. The Board should not allow the relief granted to Amtrak to stray beyond the statutory limits of Section 24308 and impact SEPTA’s commuter rail operations.

Section 24308 is designed to affect and address the priority as between Amtrak and freight railroads and SEPTA should not be at risk from any orders issued by the Board in this proceeding given the statutory bounds on Amtrak’s preference and on the Board’s remedial authority. With specified exceptions, “Amtrak has preference over *freight transportation* in using a rail line, junction, or crossing.” 49 U.S.C. § 24308(c) (emphasis added). The Board’s remedial authority under section 24308(f) reflects that general rule: “If the Board determines that delays or failures to achieve minimum standards . . . are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation . . . the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable appropriate.” *Id.* § 24308(f)(2).

¹ SEPTA is not responding to any of the Host Railroad Parties’ Replies individually unless there is a specific reference to one of those Replies in the text of this Reply.

That grant of authority contains two important limits. First, damages may only be awarded because a rail carrier has failed to provide preference to Amtrak over freight transportation. Logically, that means that the damages must remedy that failure to provide preference, and, accordingly, must only address freight transportation. Congress would not have granted the Board authority to issue orders regarding Amtrak's relationship with passenger transportation in order to address the wrongful conduct of freight railroads. Second, remedies must be "against the host rail carrier." Remedies therefore cannot apply to carriers who are not host rail carriers for a particular Amtrak route.

Amtrak's recommendations appear to try to expand the Board's authority beyond both of those limits by imposing obligations and limitations on "rail carriers" without specifying that they apply only to host or freight rail carriers. For example, under Amtrak's Recommendation 13, "[r]ail carriers should minimize slow orders that impact Amtrak trains." If interpreted to apply to SEPTA's commuter rail service, that recommendation could have substantial effects throughout SEPTA's entire network. The recommendation's use of the word "impact" gives it a broad scope, causing it to reach slow orders on SEPTA routes on which Amtrak largely does not run. Multiple SEPTA Regional Rail lines briefly share track with Amtrak trains near 30th Street Station, but otherwise run entirely separately from Amtrak. This recommendation could govern slow orders on the portions of those lines that SEPTA does not share because changes in when SEPTA trains reach key interlockings near 30th Street Station could "impact Amtrak trains."

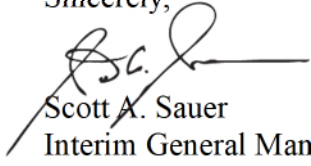
Similarly, the language in Recommendations 5, 8, 16, 17, 18, and 19 all place various obligations on "rail carriers" that might be inappropriately interpreted to apply to SEPTA and its commuter rail service, notwithstanding the Board's limited remedial authority and the narrow applicability of Section 24308 to Amtrak's preference over freight transportation. As currently worded, these recommendations are not consistent with the language or intent of Section 24308 and its focus on the impacts of freight rail transportation on Amtrak's service. Additionally, Recommendations 16 and 17 refer to "federal statutory regulatory obligations to Amtrak" rather than Amtrak's statutory preference over freight rail specifically. And Recommendation 19 speaks broadly about decisions resulting in delays to Amtrak, again without limiting itself to decisions connected to Amtrak's preference over freight transportation.

SEPTA therefore requests that the Board make clear that its decision does not—and cannot—provide remedies with respect to SEPTA or otherwise limit SEPTA's ability to run its commuter rail operation in a manner that is consistent with its preexisting rights and obligations. The Board should state expressly that its recommendations apply only to freight transportation and the railroads that dispatch it and that none of the recommendations govern the interaction between Amtrak and other passenger trains. The Board should be explicit that these recommendations are grounded in Amtrak's statutory preference over freight transportation, and therefore it would be inappropriate to use them to regulate Amtrak's relationship with other passenger railroads.

Additionally, the Board should make clear that its recommendations are based on the specific facts before it and do not set forth a nationwide standard that Amtrak may apply

to other routes in its system or inappropriately leverage in other proceedings or negotiations. In particular, the Board should make clear that it has no authority to issue any recommendations or relief for Amtrak trains on portions of those trains' routes where they are unaffected by freight train interference—including the portions of the Northeast Corridor and Keystone Service routes within SEPTA's operating territory.

Sincerely,



Scott A. Sauer
Interim General Manager

cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Reply of the Southeastern Pennsylvania Transportation Authority to be served by e-mail upon all parties of record to this proceeding.

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Dated: January 21, 2025