

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

**UNION PACIFIC RAILROAD COMPANY'S REBUTTAL
TO NON-PARTY REPLIES**

CRAIG V. RICHARDSON
JAMES B. BOLES
JOSEPHINE JORDAN
DOMINIQUE JOHNSON
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

MICHAEL L. ROSENTHAL
WENTAO YANG
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

February 21, 2025

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

**UNION PACIFIC RAILROAD COMPANY’S REBUTTAL
TO NON-PARTY REPLIES**

In accordance with the Board’s Order served August 19, 2024, Union Pacific Railroad Company submits this rebuttal addressing non-party replies filed in this proceeding.

None of the non-parties support Amtrak’s claim that 49 U.S.C. § 24308(c) requires host carriers to resolve all dispatching conflicts in Amtrak’s favor and to design and operate their networks to ensure Amtrak trains are always on time. In their replies, the Association of American Railroads, the Association for Innovative Passenger Rail Operations, and the Reason Foundation agree that Amtrak’s position is contrary to law and contrary to public policy. Even the Rail Passengers’ Association recognizes that a “maximalist, absolutist interpretation of ‘preference’”¹ would “risk materially lessening the quality of freight transportation.”²

Union Pacific understands the Rail Passengers’ Association’s desire for improved on-time performance. Union Pacific’s evidence shows Amtrak’s schedules are the problem, at least regarding the *Sunset Limited*: even when Union Pacific meets its

¹ Non-Party Reply of the Rail Passengers’ Association at 6.

² *Id.* at 9.

contractual on-time obligations to Amtrak, Amtrak cannot provide the performance demanded by passengers and Congress.³ Union Pacific is willing to help Amtrak address its performance issue by modifying the *Sunset Limited*'s schedules so Amtrak can achieve the consistent performance passengers want.⁴ The Board should address the concerns raised by the Rail Passengers' Association by recommending that Amtrak agree to the schedule extensions Union Pacific has proposed for the *Sunset Limited*.⁵

The non-party replies filed by the Commuter Rail Coalition and other commuter railroads also reject Amtrak's claim that its statutory preference is absolute. The commuter rail interests primarily focus on whether Amtrak has a statutory preference over commuter railroads (which it does not).⁶ However, the Board should not lose sight of a more basic issue: adopting Amtrak's absolutist interpretation of preference, even if only in relation to freight carriers, would substantially harm commuter interests in circumstances where

³ See Union Pacific Reply, Verified Statement of Katherine N. Novak at 4–6.

⁴ See *id.* at 16–21; Union Pacific Reply Workpaper “Novak workpapers.xlsx,” Tabs “Train 1 MoWeSa” & “Train 2 SuWeFr.”

⁵ See 49 U.S.C. § 24308(f)(1) (“[T]he Board shall . . . make recommendations to improve the service, quality, and on-time performance of the train.”).

⁶ Several of the non-party filings by commuter railroad interests appear to confuse the Board's authority to award damages if it finds an Amtrak train's failure to achieve minimum standards was attributable to preference violations, *see* 49 U.S.C. § 24308(f)(2), with the Board's role in making “recommendations to improve the service, quality, and on-time performance of the train,” *id.* § 24308(f)(1). By definition, “recommendations” are not binding. Further, § 24308(f) does not give the Board authority to regulate rail operations to improve passenger on-time performance. The Board's remedial authority is limited to awarding monetary damages, *see* BNSF's Reply to Amtrak's Opening Statement at 48–50, though due process principles preclude damages awards in this proceeding, *see* Union Pacific Reply at 119–24; Non-Party Reply of Washington Legal Foundation at 3–4.

freight, commuter, and Amtrak trains share facilities by denying dispatchers “the flexibility they need to avoid and minimize cascading delays.”⁷

In sum, the non-party replies reject Amtrak’s absolutist interpretation of preference and do not support any of Amtrak’s specific claims of preference violations. The non-party replies do, however, support a Board recommendation that Amtrak agree to extend *Sunset Limited* schedules.

CRAIG V. RICHARDSON
JAMES B. BOLES
JOSEPHINE JORDAN
DOMINIQUE JOHNSON
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Respectfully submitted,

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
WENTAO YANG
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

February 21, 2025

⁷ Brief of the Association of American Railroads, Verified Statement of Paul B. Duncan at 13; *see also id.*, Verified Statement of John H. Friedmann at 6 (explaining how commuter passenger service would be affected by reducing dispatcher’s options for efficiently resolving train meets).

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2025, 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