

May 8, 2025

BY E-FILING

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

Re: ***Application of the National Railroad Passenger Corporation under 49 U.S.C.
§ 24308(a) — Canadian National Railway Company (Docket No. FD 35743)***

Dear Ms. Brown:

Attached for filing in the above-referenced docket are (1) the Highly Confidential version of the Responses of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to April 8, 2025 Requests Due May 8, 2025; and (2) the Public version of the Responses, which has been redacted in accordance with the Protective Order entered in this proceeding on December 16, 2013.

The Highly Confidential version of the Responses is designated as such under the Protective Order and is therefore being filed under seal. The Public version is submitted for the public record.

Accompanying this submission are documents responsive to Request No. 6 of the Board's decision served April 8, 2025. These documents have been designated in their entirety as Highly Confidential under the Protective Order and are therefore also being filed under seal.

Sincerely,

/s/ David A. Hirsh

David A. Hirsh

*Counsel for Illinois Central Railroad Company and
Grand Trunk Western Railroad*

Attachments

cc: All Parties of Record

PUBLIC VERSION – REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**RESPONSES OF ILLINOIS CENTRAL RAILROAD COMPANY
TO APRIL 8, 2025 REQUESTS DUE MAY 8, 2025**

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May 8, 2025

PUBLIC VERSION – REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**RESPONSES OF ILLINOIS CENTRAL RAILROAD COMPANY
AND GRAND TRUNK WESTERN RAILROAD COMPANY
TO APRIL 8, 2025 REQUESTS DUE MAY 8, 2025**

Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (together, “CN”) hereby submit additional information requested by the Board in its decision served April 8, 2025 (the “Decision”).¹

On-Time Performance and Schedules

1. Tolerances: CN is ordered to explain why the additional tolerances in Section A.1.f of its proposed OA are justified. (See CN Opening Ex. 2 at App. V-3, Nov. 30, 2022 [refiling of May 27, 2022 submission].)

In addition to basic tolerance, Section A.1.f. of Appendix V of CN’s proposal provides added tolerance for any Amtrak train that operates with more cars or locomotives than its “Base Consist” specified in the Operating Agreement (“OA”).² The existing OA includes added

¹ The Decision directed that responses to Requests 1, 4 through 10, 13, and 14 be submitted by May 8, 2025, and that responses to the remaining requests (Nos. 2, 3, 11, and 12) be submitted by July 22, 2025. CN’s July 22 submission will also address the concerns raised by Board Member Hedlund in her concurring opinion.

² See CN Proposed OA, App. V, Tbl. 2. (Citations to CN’s proposed OA, showing changes from the current OA and submitted as Tab E, Exhibit 1 to CN’s Post-Interim Decision Reply Submission (filed July 26, 2022), are in the form “CN Proposed OA (Redline), Sec. [#] or

tolerances for this purpose for IC trains to account for the fact that, all other things being equal, adding cars to a train's Basic Consist will make it heavier and cause it to take more time to traverse a given segment than a train limited to its Base Consist.³

CN proposed in Section A.1.f. to retain this provision, while extending it to trains operating on the GTW lines (consistent with the position of both parties that the IC compensation system should be extended to the GTW trains) and simplifying the added number of minutes of tolerance for additional cars. CN's proposed simplification is conservative –

{ [REDACTED]

[REDACTED]

[REDACTED]}. In essence, this adopts the smallest additions of tolerance minutes from the existing OA, which were those applicable to the Texas Eagle and Lincoln services.⁴ By comparison, under the existing OA, additional tolerance { [REDACTED]

[REDACTED]

[REDACTED]}.⁵

CN's proposal is also conservative in another respect. While tolerance generally applies at every checkpoint, recognizing that some segments of the Wolverine service are relatively short, CN proposed an exception to limit its application.⁶ CN's proposal excludes the application

"CN Proposed OA (Redline), App. [#], Sec. [#]." Citations to the clean version of the same proposal, submitted as Tab E, Exhibit 2 to CN's Post-Interim Decision Reply Submission, are in the form "CN Proposed OA, Sec. [#]" or "CN Proposed OA, App. [#], Sec. [#]."

³ See VS (PID) Matteucci/Kuxmann (PID) at 25 (corrected and refiled Nov. 30, 2022).

⁴ 2011 OA, App. V, Tbl. 4.

⁵ *Id.*

⁶ See CN Proposed OA, App. V, Section A.1.f.

of the additional tolerance to the short Battle Creek/Gord, MI segment on CN altogether, and for the longer segment on CN (between West Detroit and Pontiac, MI), it limits its application to its final checkpoint (i.e., West Detroit for southbound trains; Pontiac, MI for northbound trains).⁷

The focus of Amtrak's argument related to Section A.1.f. was not the specific number of minutes of tolerance minutes/additional car(s), but rather its suggestion { [REDACTED] }.⁸ While there is some potential for overlap between OTH relief and additional tolerance, they are not redundant. In CN's proposal, as in the existing OA, added tolerance based on excess cars over Base Consist provides a clear, fair, and easily administrable rule to address a recurring source of delay arising directly from a business decision by Amtrak to run longer trains. By contrast, as CN's evidence has shown, the recording of OTH delays can be unreliable and contentious, and its basis unclear.⁹

OTH relief is also no substitute for additional tolerance because OTH relief is subject to reduction or elimination by the Recovery Time Base ("RTB") (i.e., relief for OTH and certain other non-CN delays in a segment can only be taken insofar as it exceeds the share of recovery time allocated to Amtrak in the segment).¹⁰ Additional tolerance for delays due to Amtrak

⁷ *Id.*

⁸ Amtrak Opening Br. at App. A-16 n.396 (filed Jan. 19, 2018). If Amtrak wishes to do so, CN would be agreeable to future testing and, if necessary, adjusting the additional tolerances based on joint field tests or Train Performance Calculator simulations.

⁹ See *Surrebuttal VS Ladue/Kuxmann* at 27 (filed Oct. 30, 2017); *RVS Ladue/Kuxmann* at 22 n.29 (filed Sept. 14, 2017). OTH (miscellaneous delays) is often a code of last resort for delays that an Amtrak conductor cannot otherwise explain. Amtrak conductors have an incentive not to code delays as OTH insofar as that may suggest they operate their train sub-optimally (i.e., an unexplained "failure to make run time," which is covered by OTH), and may fail to attribute delay minutes to OTH when multiple causes of delay are present (e.g., a heavy train operating within a slow order area).

¹⁰ See CN Proposed OA, App. V, Sec. A.1.e.(1).

running longer than standard consists is not subject to the RTB under the existing OA,¹¹ nor is it under CN's proposal.¹² That is proper and reflects the fact that the parties did not regard such extraordinary delays as factored into recovery time. It is thus appropriate for CN's proposed OA, like the existing agreement,¹³ to provide tolerance for excessive Amtrak cars while separately providing for OTH (or OTH-type relief) for "heavy train[s]" and the like.

While additional tolerance based on excess cars over Base Consist is therefore justified, notwithstanding the existence of the OTH code, CN recognizes that there could be circumstances in which delays due to excess cars over Base Consist could be double-counted by both allowing additional tolerance and recording OTH delays. That concern can be readily addressed, however, by denying OTH relief insofar as it is duplicative of additional tolerance. That is essentially the approach taken by App. V, Sec. A.1.e.(11) in the existing OA. Accordingly, if the Board wishes to address this potential overlap, CN would propose a similar anti-double-counting provision be added at the end of Section A.1.f. in CN's proposed OA, as follows:

For any train qualifying for additional tolerance under Section A.1.f., if an OTH delay is recorded by Amtrak based on that train being "heavy," or "non-standard," or a similar variant, then relief may be taken for such OTH delay only insofar as the minutes of such OTH delay exceed the additional tolerance.

¹¹ Compare 2011 OA, App. V, Sec. A.1.e. (items subject to the RTB) with Sec. A.1.f.

¹² Compare CN Proposed OA, App. V, Sec. A.1.e. (items subject to the RTB) with Sec. A.1.f.

¹³ See 2011 OA, App. V, Secs. A.1.e.(11), A.1.f.

Incentives and Penalties

4. Performance rates and multipliers: CN is ordered to explain how the performance rates and timeliness and lateness multipliers were derived and explain why its methodology is appropriate. (See CN Opening Ex. 2 at App. V-9 to V-11, Nov. 30, 2022.)

In its proposed OA, CN adopted without change the performance rates in the existing OA, which are set out in the table in Section C of Appendix V of the existing OA (“Performance Rate Table”).¹⁴ Leaving the existing performance rates unchanged was consistent with Amtrak’s own comments and proposal for a checkpoint based system.¹⁵

In response to the Board’s Interim Decision, CN added rates for the on-time performance (“OTP”) range between 70% and 79.9%, which had formerly been a neutral zone (i.e., no applicable rates for penalties or incentives).¹⁶ CN calibrated those new penalty rates incrementally in accordance with the structure of the existing Performance Rate Table.¹⁷

The existing rates reflect many years of past agreements and indexing by the parties, rather than a clear algorithm, so CN could not simply extrapolate an appropriate progression of rates for the 70-79.9% performance range. CN therefore took the practical approach of reducing penalty rates incrementally between the existing penalty rate for performance immediately below the neutral zone (i.e., the rate at 69.9%) to the upper end of the neutral zone (i.e., the rate at

¹⁴ See Proposed OA, App. V, Table 1.

¹⁵ See Rebuttal VS Vilter/Maga (filed Sep. 14, 2017), Exhibit 28, at App. V-13, Table 1. The rates are higher in the existing OA (as compared to Exhibit 28) only because they reflect increases due to indexing, as provided for in the existing OA, through January 1, 2022.

¹⁶ In its Interim Decision, the Board concluded that using an 80% OTP standard for incentives is reasonable, but it suggested “the parties should eliminate the current neutral performance zone.” Interim Decision at 14.

¹⁷ Amtrak, by contrast, simply { [REDACTED] } (Rebuttal VS Vilter/Maga (Sep. 14, 2017), at Exhibit 28 at App. V-13, Table 1), which is inconsistent with the incremental approach of Table 1 and fails to recognize improved performance within the range.

79.9%). CN also recognized that any incremental downward progression would have to be less steep than in the existing OA, otherwise the penalty rate would reach zero at the higher levels of performance in the neutral zone. Accordingly, whereas in the existing OA the smallest incremental decrease in performance rates per 1% Contract OTP increment was {█}, CN used a smaller progression of decreases in penalty rates for each 1% Contract OTP increment – reducing the rate from {█} for 69.0-69.9% performance, to {█} at 70.0-70.9% (a {█} drop), to {█} at 71.0-71.9% (a drop of just {█}), and thereafter decreasing rates in increments of {█} per 1% Contract OTP increment. This allowed CN to retain a penalty in the table for performance through the full neutral zone, ending with a penalty rate of \$0.10 for on time performance in the 79.0-79.9% range

CN proposed its lateness multiplier specifically in response to the Board’s Interim Decision, which stated “the parties should incorporate the degree of lateness into their penalty calculation in some manner, perhaps through a degree-of-lateness multiplier in the penalty provision.”¹⁸ CN adopted Amtrak’s (pre-Interim Decision) proposal for a lateness penalty multiplier, including both its ranges of minutes and corresponding lateness index.¹⁹ The penalty multiplier is based on the monthly average number of minutes *above* tolerance at all checkpoints.

CN also proposed a timeliness performance multiplier based on the monthly average number of minutes *below* tolerance at all checkpoints.²⁰ The provision increases incentive

¹⁸ Interim Decision at 14.

¹⁹ See Rebuttal VS Vilter/Maga (filed Sep. 14, 2017), Exhibit 28, at App. V-11. See also *id.* at 42.

²⁰ See generally CN’s Post-Interim Decision Opening Submission at 23-24 (corrected and refiled Nov. 30, 2022); CN Proposed OA, App. V, Sec. B. In reviewing its proposed OA, CN has identified an error in the timeliness performance multiplier table. The ranges of minutes in

payments for trains that are regularly on time with low minutes of delay. Amtrak has stated that it wants to provide incentives for CN to avoid delays to all trains, not just those that are late,²¹ and Amtrak has complained that the existing OA “does not reward CN for minimizing” delays “but only for doing ‘good enough’ to arrive at a checkpoint within tolerance.”²²

CN’s timeliness performance multiplier is responsive to those concerns, and it mirrors Amtrak’s { [REDACTED] [REDACTED] }. CN also maintained the approach of using equal increments for the average variation from tolerance, but used smaller, 5-minute increments versus 15-minute increments. That difference is justified by the fundamental differences between incurring CN-responsible delays above tolerance (for which there is no practical limit) and maintaining CN-responsible delays below tolerance (for which there is an obvious practical limit). Earning a timeliness performance multiplier requires CN-responsible delays for a segment be less than assigned tolerances, which are just { [REDACTED] } minutes for the Texas Eagle, Lincoln, Lincoln Missouri River Runner, and Wolverine services and { [REDACTED] } minutes for the other services. In accordance with the

the table were accidentally reversed in order. The smaller numbers of minutes should, of course, receive smaller multipliers (or no multiplier). The corrected table follows:

{

[REDACTED]

}

²¹ Amtrak Opening Evidence at 3 (filed Sept. 4, 2015) (Amtrak’s proposal designed “to motivate CN to minimize delays to Amtrak trains”).

²² *Id.* at 8.

scale CN proposes, trains would have to arrive at least { } minutes below those tolerances to qualify for any multiplier. In order to earn higher level multipliers, CN-responsible delays would have to be below the recovery time allocated to CN (i.e., recovery time less the RTB) and/or relief minutes would have had to be carried forward from prior segments (which are not allowed to exceed the late departure of the train from its prior checkpoint).²³

Given the number of significant changes proposed to the incentive/penalty provisions of the OA by both parties and the uncertainty of what changes the Board might adopt, CN has had no practical opportunity to test empirically the potential impacts of the proposed additional penalties in the former neutral zone (i.e., the performance range of 70%-79.9%) or the proposed additions of penalty or performance multipliers. If it is practicable, and time permitting, CN will attempt as part of its filing on July 22, 2025 to isolate the impacts of the rates added to the former neutral performance zone and of the proposed multipliers.

5. Sunset Limited route: The parties are each ordered to address whether the new OA should cover Amtrak service on the CN-owned portion of the Sunset Limited route and to explain the basis of their positions. If a party does not believe the new OA should apply to this route segment, that party is ordered to explain how accountability for delays on this segment will be accomplished.

As CN has explained in the Sunset Limited Section 213 case, current and prior CN-Amtrak OAs do not cover and have not covered the Sunset Limited service.²⁴ The Sunset

²³ See Proposed OA, App. V., Sec. A.1 (relief carry forward).

²⁴ Response of Illinois Central Railroad Company to Amtrak's Complaint and Proposed Procedures at 8-9 (filed Jan. 27, 2023); Response of Illinois Central Railroad Company to Surface Transportation Board's Interrogatories and Document Requirements at 4-5 (filed Sept. 25, 2023); Response of Illinois Central Railroad Company to Appendix—Part I (Train 1) of the Surface Transportation Board's February 13, 2024 Decision at 5 (filed June 4, 2024); Reply of Illinois Central Railroad Company to Opening Statement of National Railroad Passenger Corporation at 3 (filed Dec. 23, 2024). (All the preceding documents were filed in *Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(f) – For*

Limited service is not mentioned anywhere in the existing OA, and the existing OA provides no schedule, base compensation, incentives, penalties, or other terms respecting the Sunset Limited service. Given the history of the service, that is not surprising.

Just 2.2 miles of the Sunset Limited's 1,193-mile route, the segment between East Bridge Junction and Southport Junction near New Orleans, Louisiana ("the Segment"), are owned by CN (IC). Before the creation of Amtrak, the Sunset Limited service was operated by Southern Pacific Transportation Company ("SP") under its trackage rights agreement with IC (which continues in force between Union Pacific Railroad Company ("UP" (SP's successor)) and IC). When Amtrak began operations in 1971, it stepped into SP's shoes and continued operating over the Segment as SP had done, by means of SP's trackage rights. To this day Amtrak's Sunset Limited service continues to traverse CN's property only pursuant to UP's trackage rights.

CN believes there is no compelling need for it to become a host of the Sunset Limited service. CN's involvement with and responsibility for the service is minimal. The 2.2-mile CN-owned Segment accounts for only a tiny portion of delays for the Sunset Limited service.²⁵ There are no station stops on the Segment and CN operates no trains over the Segment. And while CN dispatches the portion of the Segment east of the interlocking at East Bridge Junction (the interlocking itself is dispatched by UP), CN leased the Segment in 2019 to the predecessor

Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2, Docket No. NOR 42175. That proceeding was brought under 49 U.S.C. § 24308(f), as enacted by Section 213 of the Passenger Rail Infrastructure and Investment Act. Proceedings and investigations under that subsection are therefore commonly referred to as Section 213 proceedings and investigations.)

²⁵ Amtrak has attributed approximately 1% of delay minutes on the Sunset Limited to CN. See Response of Illinois Central Railroad Company to Appendix—Part I (Train 1) of the STB's February 13, 2024 Decision, *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 at 5 (filed June 4, 2024).

of the New Orleans Public Belt Railroad Commission for the Port of New Orleans (“NOPB”), and NOPB maintains it. Not surprisingly, operations on the Segment have little or no impact on the Sunset Limited’s OTP, and during the Board’s investigation of that service, Amtrak made no specific complaints about CN’s operations or service.

In any event, even as a non-host, CN has legal accountability with respect to the Sunset Limited service. Under 49 U.S.C. § 24308(c), Amtrak is entitled to “preference over freight transportation in using a rail line.” That right is enforceable by the Attorney General under 49 U.S.C. § 24103(a)(1), without regard to whether CN is a host for the service or has an OA with Amtrak. In the event of a Section 213 investigation, including the current Section 213 proceeding involving the Sunset Limited, CN’s conduct as owner of a segment traversed by the Sunset Limited can also be a subject of Board investigation and recommendations under 49 U.S.C. § 24308(f)(1).²⁶

CN does not seek to change this status quo. CN and Amtrak could potentially negotiate a new OA or an addition to the existing OA whereby, in exchange for new base and incentive compensation, CN would undertake contractual performance standards and the responsibilities and potential liabilities of a “host rail carrier” with respect to the Sunset Limited. However, given the short length and operational details of the Segment, as elaborated above, CN believes that establishing a contractual host relationship would be of little benefit to either party.

That said, both the Rail Passenger Service Act²⁷ and the existing CN-Amtrak OA provide that it is Amtrak’s prerogative and responsibility – not CN’s – to initiate any effort to reach a

²⁶ In the absence of an applicable OA, however, CN has no contractual liability, and it is not a “host rail carrier” within in the meaning of 49 U.S.C. § 24308(f)(2).

²⁷ Codified at 49 U.S.C. §§ 24101 *et seq.*

new OA or to extend an existing OA to trains it does not yet cover.²⁸ CN is always willing to respond to Amtrak requests for new agreements on reasonable terms, but Amtrak has made no such request with respect to the Sunset Limited. Therefore, the prerequisite for Board action under 49 U.S.C. § 24308(a)(1) and (e) has not occurred, and there is no basis or need for Board action regarding the Sunset Limited service in this proceeding.²⁹

Host Responsible Delays (HRDs)

6. Relief item covering interlockings not controlled by CN: CN is ordered to provide an inventory of interlockings that are not controlled by CN on the portions of the Amtrak routes governed by the current OA and copies of the joint facility agreements covering each of these interlockings. (See CN Opening 46-47, Nov. 30, 2022.) CN is also ordered to provide an inventory of interlockings on these Amtrak routes that are controlled by CN but where the signals are activated automatically by approaching trains and to provide copies of any joint facility agreements covering these interlockings.

Table 1 below lists all rail crossings on the portion of Amtrak's routes governed by the current OA, grouped by CN subdivision, that are controlled by other carriers or activated

²⁸ See 49 U.S.C. § 24308(a), (e); 2011 OA, Sec. 3.2 (Modified or Additional Services).

²⁹ The prospect of possibly adding to the OA a service running over such a short CN-owned segment highlights one of the many problems with Amtrak's proposal for an incentive/penalty regime based on host-responsible delays ("HRD") per 10,000 train-miles. The Sunset Limited currently runs on CN-owned lines for a maximum of 171.6 train-miles per quarter (2.2 miles x 78 trips), so just 16 minutes per quarter of HRD on the Segment (slightly more than a single minute on every fifth train) would exceed Amtrak's "neutral" value of 924 minutes of HRD per 10,000 miles and subject CN to penalties under Amtrak's proposal. To put that in further context, Amtrak attributed to freight train interference ("FTI") a 30-minute delay to Train 1 on June 3, 2022. See Response of Illinois Central Railroad Company to Appendix—Part I (Train 1) of the Surface Transportation Board's February 13, 2024 Decision, *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 at 9-10 (filed June 4, 2024). Even assuming zero delay for the rest of the quarter – i.e., an unambiguously positive contribution by the CN-owned portion of the route to Amtrak's Customer On-Time Performance ("COTP") on 77 of the 78 Sunset Limited trains operated per quarter – that one delay would, under Amtrak's proposal, subject CN to substantial penalties for the quarter.

automatically.³⁰ As requested by the Board, CN is producing the agreements for each interlocking, Bates numbered as shown in the last column of this table.³¹

TABLE 1 Interlockings on CN Lines Used by Amtrak				
Interlocking	Crossing railroad(s)	Milepost	Controlled by	Bates Numbers of Interlocking Agreements
Chicago Subdivision				
16th Street	Metra	1.5	Metra	CN_Supp_000001_HC - CN_Supp_000060_HC
Kensington	Chicago South Shore/ NICTD	14.5	Metra	CN_Supp_000061_HC - CN_Supp_000101_HC
Champaign Subdivision				
Tuscola	UP-CSX	149.8	Automatic	CN_Supp_000102_HC - CN_Supp_000115_HC
Kinmundy	UP	229.4	Automatic	CN_Supp_000116_HC - CN_Supp_000135_HC
Centralia Subdivision				
Ashley	EVWRR	266.3	Automatic	CN_Supp_000136_HC - CN_Supp_000185_HC
Memphis Subdivision				
Pyramid	Memphis Area Transit	389.8	Automatic	CN_Supp_000186_HC - CN_Supp_000210_HC
CN Jct.	BNSF, CSX, UP	393	BNSF	CN_Supp_000211_HC - CN_Supp_000225_HC

³⁰ CN does not believe that there are any “interlockings . . . that are controlled by CN but where the signals are activated automatically by approaching trains,” as it regards crossings “controlled” by CN to be those for which CN dispatchers make decisions regarding whether and when a train may move over it. Crossings that operate automatically are thus not “controlled,” in that sense, by CN. CN nevertheless observes that Table 1 includes all automatically controlled interlockings located on CN lines used by Amtrak trains and that the signal equipment at the Tuscola interlocking is owned and maintained by Union Pacific Railroad Company, and those at the Kinmundy, Ashley, and Pyramid interlockings are owned and maintained by CN.

³¹ The agreements contain competitively sensitive or proprietary information and are therefore being submitted under seal, designated as HIGHLY CONFIDENTIAL under the Protective Order in this case.

TABLE 1 Interlockings on CN Lines Used by Amtrak				
Interlocking	Crossing railroad(s)	Milepost	Controlled by	Bates Numbers of Interlocking Agreements
McComb Subdivision				
East Bridge Jct.	NS/UP	906.4	UP	CN_Supp_000226_HC - CN_Supp_000322_HC
ShoreLine Subdivision				
Beaubien St.	Conrail	54.7	Conrail	CN_Supp_000323_HC - CN_Supp_000346_HC
Holly Subdivision				
Milwaukee Jct.	Conrail	4.2	Conrail	CN_Supp_000347_HC - CN_Supp_000357_HC
Freeport Subdivision				
21st Street	Amtrak	2.7	Amtrak	CN_Supp_000358_HC - CN_Supp_000416_HC
Joliet Subdivision				
Brighton	NS/CSX	5.1	NS	CN_Supp_000417_HC - CN_Supp_000444_HC
Corwith	BNSF	6.6	BNSF	CN_Supp_000445_HC - CN_Supp_000577_HC
LeMoynes	BRC	7.9	BRC	CN_Supp_000578_HC - CN_Supp_000601_HC
CP Canal	IHB/CSX	13.1	IHB	CN_Supp_000602_HC - CN_Supp_000612_HC

7. Relief for freight train interference (FTI) when an Amtrak train arrives late to CN's line: CN proposes that it should get relief for FTI delays in situations where Amtrak arrives late to CN's line without sufficient notice. (See CN Opening 51-54, Nov. 30, 2022.) CN is ordered to clarify what information it believes Amtrak would be required to provide in a notice to CN in such situations.

CN would require only a simple email notification from Amtrak when Amtrak believes one of its trains is going to reach the entry point for CN dispatching more than 15 minutes late, including an estimated time of arrival. As an example, Amtrak's notice could be an email in the following basic form:

Amtrak anticipates that Train #_____ will arrive at [CN entry point] more than 15 minutes late, at approximately [time].

CN has created three email groups for Amtrak’s use that will assure the appropriate dispatching desks and managers are notified about a late-arriving Amtrak train. The addresses and the Amtrak services and train entry points associated with them are as follows:

{ [REDACTED] } – All Illini/Saluki, Texas Eagle, Lincoln, and Lincoln Missouri River Runner trains arriving late to CN entry points; the southbound City of New Orleans train (#59) arriving late to CN entry points

{ [REDACTED] } - All Wolverine and Blue Water trains arriving late at CN entry points

{ [REDACTED] } -- The northbound City of New Orleans train (#58) arriving late at CN Southport Junction, LA

It is important that Amtrak’s communication be in the form of an email in order to create a written, auditable record.

8. Relief for slow orders imposed to address safety issues related to Amtrak’s equipment: Each party is ordered to address whether it believes the short shunt issue has been resolved. (See CN Opening 56, Nov. 30, 2022.) In addition, each party is ordered to explain whether there are any other situations where CN imposes slow orders due to Amtrak’s choice of equipment. (See *id.*)

As explained in prior filings,³² the so-called “short shunt” issue involves the failure of Amtrak’s single-level Horizon/Amfleet equipment in Amtrak’s Illini/Saluki service to reliably “shunt” the electric track circuit that activates crossing signals for at-grade crossings (i.e., vehicular crossings of the railroad lines), and consequent delays to the Illini/Saluki trains due to slow orders imposed by CN to address the serious safety concerns it raises.

The Board’s question asking if the short shunt issue has been “resolved” potentially touches on several issues: Does there appear to be a technical solution to the issue? Are there

³² See, e.g., CN’s Post-Interim Decision Opening Submission at 57 (corrected and refiled Nov. 30, 2022).

ongoing operational restrictions due to the issue? Do there remain contractual issues relating to the short shunt issue under the OA? CN addresses these questions below.

After observing a series of unexplained activation failures involving Amtrak's trains, in 2009 CN invested approximately \$2 million to upgrade its crossing hardware (including enhanced detection cards and event log recorders) and to lengthen crossing approaches.³³ Despite these upgrades, unexplained short shunt incidents involving Amtrak's single-level Horizon/Amfleet equipment continued. In an effort to address the safety issue, beginning in August 2010, CN progressively imposed operating restrictions designed to improve the shunting of Amtrak equipment, including minimal axle requirements and speed restrictions.

Amtrak initially disavowed any responsibility for short shunt events, incorrectly claiming that they were specific to CN's lines and to CN's signal system, and cancelling its participation in a planned independent study when CN sought to include Amtrak's equipment within its scope.³⁴ In 2016 CN hired an independent engineering firm at its own expense to investigate and report on the short shunt issue and shared the results with FRA and Amtrak.

In 2017, CN began organizing meetings that eventually led to the creation of a National Loss of Shunt Committee ("LOS Committee"), which, in addition to CN, included representatives of UP, BNSF, NS, CSX, FRA, Illinois DOT, Amtrak, Metra, CalTrans, and others. Working in tandem with these other parties, CN purchased and installed at its own expense PICO scopes to monitor shunting, and proceeded to conduct extensive testing to isolate

³³ This early history of the short shunt issue is recounted from the Verified Statement of Thomas Hilliard at 2 (filed Nov. 20, 2017, as part of CN's Motion to Strike or, in the Alternative, Supplement the Record). The statement was accepted into the record by the Board in the Interim Decision (at 7).

³⁴ *Id.*

the causes and identify possible solutions to the shunting issues with Amtrak equipment. Based on data and analysis of this and other testing and literature, in November 2024, the LOS Committee released a white paper report that recognized the short shunt issue is widespread for various types of passenger equipment in the United States and abroad, and recommended as a solution the adoption of Onboard Shunt Enhancement (“OSE”) devices for passenger trains.

After that finding, Amtrak sought and was awarded an FRA grant to procure and install OSE devices designed to ensure that Amtrak’s trains reliably activate grade-crossing signals.³⁵ CN understands that Amtrak has ordered OSE devices for installation on its latest generation of Siemens’ Charger locomotives. If Amtrak follows through and installs the OSE devices as expected, those devices should resolve future concerns regarding the short shunt issue that results from the inherent deficiency of Amtrak’s single-level Horizon/Amfleet equipment for reliable shunting of FRA-compliant grade-crossing signal equipment. This means that slow orders would not apply to any Amtrak trains equipped with OSE devices, which CN will be requiring in the future for all Amtrak trains operating on CN.³⁶

It will take many months before the Amtrak locomotive shunt enhancers are procured, installed, tested, and fully deployed. Nonetheless, because Amtrak has in recent years been running its Illini/Saluki service with heavier double-level Superliner equipment, that service is

³⁵ Federal Railroad Administration, U.S. Department of Transportation, FY 2023-2024 Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant Program: Project Summaries at 9 (last updated Oct. 29, 2024), <https://railroads.dot.gov/elibrary/fy-2023-24-crisi-program-project-summaries>. State departments of transportation, including that for Illinois (which includes the entire route of the Illini/Saluki trains), are contributing a 20% non-federal match.

³⁶ As requested by Amtrak, the OSE device was tested for consists with a minimum of 16 axles (1 locomotive and 3 cars). Accordingly, absent further testing, trains operating with the OSE will still have to meet that minimum requirement.

not currently being affected by the short-shunt safety slow order. Without delays due to the short shunt slow order, and with the redistribution of recovery time completed for the Illini/Saluki schedules in January 2023, COTP for the Illini/Saluki trains has been exemplary.³⁷

Finally, with respect to the OA, there remains a significant unresolved incentive compensation issue for the Illini/Saluki service based on the disputed treatment of past delays due to the slow order imposed for safety reasons in light of the short shunt issue. CN contends that Amtrak wrongly attributed those slow order delays to CN under the OA and consequently wrongly refused to pay CN incentives and instead claimed penalties, resulting in an underpayment to CN of millions of dollars.³⁸

Although this past compensation issue remains unresolved, Board action is not required. The dispute turns on interpretation of the existing OA and is thus subject to the dispute resolution provisions of that Agreement; CN will soon be initiating an arbitration against Amtrak under those provisions.

The Board has also asked if there are any other situations where CN imposes slow orders due to Amtrak's choice of equipment. There are not.

³⁷ For the past two calendar quarters (Q4 2024 and Q1 2025), COTP for Train 391 was 89% and 87%, respectively, while for Trains 390, 392, and 393, COTP for each quarter exceeded 90%.

³⁸ As discussed in response to Question #13, below, at least since 2011, Amtrak's contested treatment of the short-shunt slow orders as CN's responsibility is the only basis on which CN has incurred penalties over a sustained period, and the only circumstance in which the lookback provision has come into play under the OA.

9. Commuter train interference when Amtrak train arrives late: CN is ordered to explain whether there are any terms in any agreement it has with the Northeast Illinois Regional Commuter Railroad Corporation (Metra) that relate to whether Metra should be given preference over Amtrak by CN and, if so, what those terms state. (See CN Opening 54, Nov. 30, 2022.)

There are no terms in CN's agreement with Metra relating to whether Metra should be given preference by CN over Amtrak.

10. Do Not Counts (DNCs):

- a. CN is ordered to clarify Section A.5.b of CN's proposed OA. (See CN Opening Ex. 2 at App. V-5, Nov. 30, 2022.) CN should explain (1) how Section A.5.b—which states that under certain circumstances, when a train fails to operate to a checkpoint, it “will be considered late at such [c]heckpoint, regardless of the actual arrival time”—would work with CN's proposed incentive/penalty system, which depends not only on whether a train is late but also on the degree of lateness; (2) why under Section A.5.b, a train is considered late on the first trip where it fails to operate to a checkpoint but is not counted “as late or operated at such [c]heckpoints” on subsequent trips; and (3) how Section A.5.b relates to Section A.5.c., (see id. at App. V-6 to App. V-7), including whether both sections could potentially apply to the same Amtrak trip.

Question 10.a.(1): This DNC category includes train trips for any Amtrak service that are detoured, re-routed, terminated, or annulled due to a condition on the Rail Line. The provision has long been a part of the OA, and CN proposed no substantive change to it. It deals with the possibility of a major event, such as a flood or significant accident, that requires shutting down CN's lines. This covers the circumstance when, as a result of the line outage, the Amtrak train trip could not be completed on CN's lines. In accordance with Section A.5.b. of Appendix V, the first trip of an Amtrak train detoured, re-routed, terminated, or annulled due to that condition would be treated as late. This means that train trip would be counted against CN for purposes of determining the Contract OTP of the relevant service, which dictates the incentive or penalty applicable to that service. Such a train trip, however, would necessarily have no actual arrival time to measure against scheduled arrival time, and therefore, as suggested by the Board's

question, no difference between those times to which the proposed degree of lateness factor could be applied. In sum, such a trip would be counted against CN for purposes of determining on-time performance, but it would not (and could not) be factored into the performance multiplier.

Question 10.a.(2): CN has every incentive to keep its lines open and operating, both for its own traffic and Amtrak's. Nonetheless, events that may be beyond CN's control can occur (e.g., flooding) that require temporarily shutting down CN's lines. It would be unfair to hold CN responsible for events it cannot avoid or control. On the other hand, as Section A.5.b. covers trips that were diverted or not completed "because of conditions on the Rail Lines," there may be circumstances in which CN can be viewed as bearing some responsibility either for the line condition itself or for its response to an event.

As the Board notes, Section A.5.b. effectively holds CN responsible for the first Amtrak trip impacted by a line closure, but not for subsequent Amtrak trips. CN views this longstanding provision of successive CN-Amtrak OAs as striking a reasonable, negotiated balance regarding CN responsibility for any such trips diverted or cancelled because of conditions on its rail lines.

Question 10.a.(3): Sections A.5.b. and A.5.c. of Appendix V do not apply to the same trips. Section A.5.b. deals with the unusual situation where a trip could not be completed on CN's lines, whereas Section A.5.c. deals with the situation where a trip has been delayed but completed.

- b. Certain DNC provisions proposed by CN involve events that would not necessarily result in a significant delay. (See CN Opening 59, Nov. 30, 2022.) CN is ordered to propose a minimum delay threshold for all DNC categories or some other mechanism to ensure short delays do not result in DNCs. Amtrak may submit its own proposal for the Board’s consideration, but it is not required to do so.

The DNC provision in Section A.5.c. of Appendix V is intended to address delays to Amtrak trains that are beyond CN’s reasonable control and result in cascading downline delays that are difficult or impossible (or at least would be highly contentious) to accurately attribute to Amtrak, a third party, or CN under Amtrak’s coding system (which relies primarily on a “windshield view” to determine the causes of delay). Such an upstream delay need not be extremely lengthy in order to cause significant cascading effects, although, in fact, the delays listed in Section A.5.c. as potential bases for a DNC are the types that would themselves generally result in an initial non-trivial delay. One indication of a minimum length of delay that the parties deemed sufficient for a DNC claim under the existing OA may be found in Section A.4.c.(6) (corresponding with Section A.5.c.(6) of CN’s proposal), which requires that vandalism on the Rail Lines must cause a delay of greater than 10 minutes to be a basis for a DNC.

Amtrak has provided no evidence of a pattern of the DNC provision having been wrongly invoked for relatively short or trivial delays (e.g., 5 minutes, as theorized by Amtrak), much less any evidence of Amtrak having contested any DNCs on that basis.³⁹ To the contrary, the evidence shows the DNC provision has rarely been invoked (i.e., on fewer than 2.2% of trips), underscoring that it has not been overused for trivial delays.⁴⁰

³⁹ *See* Amtrak Reply Br. (PID) at 19-20 (filed July 26, 2022).

⁴⁰ CN Rebuttal Submission (PID) at 23 (filed Aug. 25, 2022).

Nonetheless, CN recognizes, as observed by the Board, that some of the delay types listed as a potential basis for a DNC in Section A.5.c. might not result in a delay that seems sufficiently “significant” that it should serve as the basis for a DNC. Accordingly, CN does not object to the adoption of a minimum duration for the delays listed in Section A.5.c. Any minimum duration should balance the largely theoretical concern about overuse of the DNC provision against the threat of adopting an overly restrictive minimum delay duration that would prevent the appropriate use of the DNC provision to avoid wasteful fights over downstream delays. Taking the current agreed-upon minimum 10-minute threshold of Section A.4.c.(6) in the existing OA as a guide, if the Board wishes to adopt a general minimum threshold, then CN proposes that it use no more than 10 minutes. This could be implemented by adding the following sentence to the end of Section A.5.c. of the proposed OA: “This provision may not be invoked based on an initial delay of less than 10 minutes duration.” If that change is made, then as a conforming change, the redundant words “by more than 10 minutes” should be stricken from Section A.5.c.(6) of the proposed OA.

Miscellaneous Items

13. Lookback: CN is ordered to address how, if at all, a lookback provision increases or decreases incentives for CN non-management or management staff to meet performance goals. As part of its response, CN should address whether management compensation or non-management compensation is tied to CN earning incentives under the OA. CN should also explain in what situations, if any, a lookback provision eliminates or reduces incentives for non-management or management employees to achieve on-time performance.

A “lookback” provision, such as that incorporated in the existing OA at Appendix V, Section D, is an essential component of an OA. It limits the deduction of performance penalties to the amount of net performance incentives earned over the preceding 12 calendar months. As the Board explained on page 16 of its 2019 Interim Decision, an OA “without a lookback

provision might place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN's own network," contrary to the incremental cost baseline for compensation set by 49 U.S.C. § 24308(a)(2)(B) and the constitutional takings/due process principles underlying that provision. A lookback provision should, however, come into play (i.e., limit the payment of penalties) as a fallback only under exceptional circumstances if an OA is properly designed with schedules and incentive and penalty provisions that offer a host a realistic opportunity to earn positive net incentives by prioritizing avoiding delays to Amtrak trains as part of the sound, safe, and efficient operation of a dual-use (freight and passenger) railroad. And insofar as the lookback comes into play only in those exceptional circumstances, it will have negligible effect on the incentives of the host and its officers and employees.

That is how the lookback provisions that have been included in CN-Amtrak OAs since their inception have worked. At least since the last major contract renegotiation in 2011, the lookback provision has come into play only for one Amtrak service hosted by CN, the Illini/Saluki service. Further, it only came into play because of the position adopted by Amtrak regarding slow orders imposed for safety because of the short shunt issue experienced with Amtrak's single-level Horizon/Amfleet equipment that was used for that service. Amtrak treated those slow-order delays as caused by CN and claimed penalties on that basis. Had Amtrak not wrongly (in CN's view) attributed these delays to CN, the lookback provision would never have come into play.⁴¹ If the OA continues to be properly designed going forward, as per CN's

⁴¹ As discussed in response to Question #8, above, it is now evident that the loss of shunt issues were not, as Amtrak originally claimed, limited to CN's lines or caused by any failure of CN's signal equipment (which meets or exceeds FRA and industry standards). To the contrary, loss of shunt events have been experienced on the lines of other Amtrak Class I hosts, and also world-wide, when passenger rail operators choose to run light passenger equipment, such as Amtrak's single-level Horizon/Amfleet equipment, that is inherently deficient for the reliable

proposed terms, the lookback will continue to be a rarely-if-ever-used fallback and, as such, to have negligible effect on CN's incentives.

In addition to appropriate performance incentives and penalties, there are two other aspects of the OA (one already in the existing OA; the other in CN's proposed OA) that would assure that any invocation of the lookback provision would be quite limited.

First, as reflected in the existing OA, the parties long ago agreed to group different services separately for purposes of determining performance payments and penalties. The purpose of doing so was to assure that even if CN fell into a situation where it could not earn incentives for one set of trains, it would still retain a positive and efficient incentive for other trains in the form of an opportunity to earn performance payments for those trains.⁴² This siloing of different services means that application of the lookback would likewise be specific to a category of train, insulating other categories of trains from any overbroad application.⁴³

Second, under CN's proposed OA, any period during which the lookback might preclude the deduction of performance penalties should be relatively brief. A key function of the reopener

shunting of FRA compliant grade-crossing signal equipment. Based on the recommendation of the National Loss of Shunt Committee (which was organized by CN, and includes Amtrak, FRA, representatives of Amtrak's other Class I hosts, Metra, CalTrans and others), Amtrak is now procuring Onboard Shunt Enhancers that would be installed on the undercarriage of its Siemens' Charger locomotives.

⁴² In the case of the short shunt issue discussed above, for example, the use of separate categories of trains for application of performance payments under the existing OA meant that when the lookback provision temporarily limited the deduction of some performance penalties for the Illini/Saluki service, it did not affect the performance incentive/penalties for other services.

⁴³ With the integration of the GTW trains into the IC performance payments and incentive provision (as agreed upon by the parties), CN's proposed OA would add { [REDACTED] }. See CN Proposed OA (Redline) App. V, Sec. D, at App. V-14.

provision proposed by CN, as discussed below, would be to promptly identify and fix whatever problems triggered the application of the lookback provision.⁴⁴

Importantly, even if the rare and limited situation were to arise in which CN could plausibly fail to earn over the course of a year sufficient performance incentives to offset new performance penalties for a category of trains, CN would still not lack the motivation to provide strong support for Amtrak's services.

CN's management closely monitors CN's performance under the OA and its earnings from Amtrak incentives.⁴⁵ The CN employees charged with dispatching Amtrak's trains, and thus perhaps most directly responsible for assisting Amtrak with meeting its OTP goals, have ample motivation to help Amtrak to try to achieve its goals. First, as described in prior testimony in this case, CN instructs its dispatchers to provide Amtrak's trains with the highest priority for dispatching and CN managers continuously monitor their performance, reviewing Amtrak delays with them and rewarding good performance and imposing disciplinary action upon bad performance.⁴⁶ Second, { [REDACTED]

[REDACTED]

⁴⁴ This contrasts sharply with Amtrak's proposed terms, which are designed to impose substantial net penalties on CN if there is any congestion or operational issues on CN's lines, and which fails to include a reopener designed to investigate and address various potential underlying problems with operations, schedules, or the agreement itself. Under Amtrak's proposal the lookback provision could well be in effect almost continuously to prevent CN from being compelled to pay Amtrak for the "privilege" of hosting it. In that scenario, CN would have no realistic opportunity to even approach the minimum incremental cost compensation to which it is entitled.

⁴⁵ Under union agreements, the compensation for CN's non-management employees is not directly dependent on CN's revenues and profits – from Amtrak or otherwise.

⁴⁶ See RVS (PID) Taylor ¶¶ 16, 20 (filed July 26, 2022); RVS Taylor at 2, 12-16 (filed Sept. 14, 2017).

[REDACTED]

[REDACTED] }}. The managers in charge of overseeing the dispatching of Amtrak's trains would {{ [REDACTED]

[REDACTED]

[REDACTED] }}

Further, other managers, including Scott Kuxmann (Manager Passenger Operations, who is the designated "Amtrak Operations Officer" under the existing OA), and Rachel Klumpp (Assistant Manager, Contract Compliance – Passenger) {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}.

In addition to these explicit incentives and goals, and the performance payments CN strives to earn (and the penalties it seeks to avoid), there are important additional reasons that CN can be relied upon to continue working to assist Amtrak in seeking to meet its performance goals. By performing well as a host, CN avoids disputes with Amtrak, public criticism, and potential legal proceedings and liability related to its preference obligation. Further, maintaining Amtrak fluidity is in CN's interest because it minimizes disruptions due to late, out-of-slot Amtrak trains.

These various incentives persisted when the lookback applied to limit the payment of penalties for the Illini/Saluki service in the past, and they would persist if the lookback applied in the future to limit the payment of penalties for an Amtrak service hosted by CN in the future.

14. Reopener: The Board generally agrees with each party that the other’s reopener is unreasonable. In the Board’s view, the process proposed by CN would take too long and may not result in any concrete action likely to improve on-time performance, while Amtrak’s proposal involves changes that would be far too intrusive on CN operations. Accordingly, each party is ordered to submit an alternative reopener consistent [with] the Board’s previous guidance on the issue, see Application of the Nat’l Passenger R.R. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry., FD 35743, slip op. at 17 (STB served Aug. 9, 2019) (a reopener should “result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance”). Each party should also consider and comment on a reopener provision that, in response to a given period of poor on-time performance, would either (1) remove the lookback provision entirely, or (2) replace it with one having terms less favorable to CN (e.g., a longer lookback term and/or the ability to offset incentives earned on one route with penalties incurred on other routes). However, the parties’ newly submitted reopener provisions do not have to be linked to the lookback provision.

CN strongly agrees with the Board that Amtrak’s initial reopener proposal “involves changes that would be far too intrusive on CN’s operations.” In addition, as CN explained in prior briefing, Amtrak’s reopener proposal is not a true reopener, but instead a punitive prescription for an Amtrak takeover of CN’s railroad that would violate the RPSA and CN’s constitutional rights and that would improperly assume, without any factual investigation and analysis, that all delays Amtrak codes as HRD are entirely CN’s fault.⁴⁷

CN understands that the Board is concerned that CN’s initial proposed reopener may (1) “take too long,” and (2) “not result in any concrete action likely to improve on-time performance.” CN has revised its reopener to address those concerns; CN’s revised proposal is attached as a redline against CN’s prior proposal (Attachments A) and in clean form (Attachment B).

CN continues to believe that it is appropriate, and consistent with the Board’s Interim Decision, for the reopener provision (1) to be triggered only by deficient performance in the

⁴⁷ CN (PID) Reply Submission at 59-61 (filed July 26, 2022); CN (PID) Rebuttal Submission at 36-39 (filed Aug. 25, 2022).

sense of sustained failures to achieve the performance standards set by the incentives and penalties provisions of the OA, i.e., performance that, if sustained, would lead to triggering of the lookback provision; (2) to provide for a period of information sharing and discussion between the Parties to identify causes and solutions, aided as appropriate by the Board's Rail Customer and Public Assistance ("RCPA") service; (3) to allow for consideration of all potential causes of deficient performance, rather than assuming (as Amtrak has proposed) that they are solely CN's fault; and (4) to include a mandatory mechanism – CN believes binding, mandatory contractual arbitration is the most efficient – for resolving disputes and, as necessary and as justified by the facts, imposing new or revised obligations under the OA on either party, subject to respecting CN's baseline statutory and constitutional right to compensation for its incremental costs.

It is particularly important that any mandatory remedies for deficient performance be based on either agreement or neutral factual investigation. Deficient performance may reflect failures by CN, failures by Amtrak, defective schedules, or unanticipated circumstances that make the expectations reflected in the OA terms unrealistic. As CN has explained, and as the history of the Illini/Saluki short shunt issue reflects, Amtrak's coding of certain delays as HRD or treatment of them as CN-responsible for purpose of the OA cannot be taken as conclusive proof that they are CN's fault or that CN should be solely responsible to take measures to prevent them. Indeed, such an approach would be anathema to the RPSA, which, in 49 U.S.C. § 24308(f)(1), requires a factual investigation by the Board, including a review of the accuracy of performance data, to determine the actual causes of, and best solutions for, delays to Amtrak trains. While the reopener applies in a different context from § 24308(f)(1) and contractual arbitration may allow for a more streamlined fact-finding process, the same fundamental

principle should apply: there should be a fact-based determination of responsibility and identification of solutions.

That said, CN appreciates the need for a reopener process that is both efficient and effective. To that end, CN has modified its proposed reopener (1) so that it is triggered more easily and further in advance of any potential need to invoke lookback; (2) to provide for an accelerated process, under which the RCPA service can be called upon to assist after just 30 days and either Party may initiate a mandatory contractual arbitration just 70 days after the notice of Deficient Performance if it concludes that negotiations will not lead to a satisfactory conclusion; (3) to provide for a swift (90-day maximum) arbitration process, recognizing that the Parties should have undertaken substantial factual development during the pre-arbitration consultation; (4) to clarify that in any such arbitration, the arbitrators shall have the power to impose as new contract terms concrete interim or permanent new obligations to improve and monitor performance, subject to the rule reaffirmed by the Board's Interim Decision that CN is entitled to full compensation for its specific, verifiable, and quantifiable incremental capital or operating costs; and (5) to authorize the arbitrators to revise the lookback period from 12 months to 24 months if factual investigation shows such a change is appropriate.

The arbitrators' power under CN's proposal to impose new contract terms provides an opportunity for concrete, mandatory, specific relief (not just recommendations as authorized under 49 U.S.C. § 24308(f)(1)). That power should be exercised cautiously, and any concrete relief should be tailored to and justified by specific factual findings. For example, if the arbitrators were to find that a major cause of poor performance was an unreasonable failure by CN to prevent overflows from work at a particular yard from regularly blocking the main line and delaying Amtrak trains, they could add a contractual obligation for CN to clear the main line

at that point, subject to safety requirements; if they were to find that a major cause of poor Contract OTP was a failure by Amtrak to properly code a type of delay, they could order Amtrak to correct its coding for purposes of the OA; if they were to find that the train schedule was unrealistic, they could order the parties to negotiate a revision to the schedule.

CONCLUSION

CN appreciates the opportunity to provide additional information that it hopes will assist the Board in resolving the issues in this proceeding.

Respectfully submitted,

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ATTACHMENT A

CN's Revised Reopener Proposal (Redline)

OA Appx. V.

G. Remedial Measures for Deficient Contractual Performance

If the Net Performance Charges calculated by CN for any category of trains pursuant to Part D of this Appendix V are less than zero for any ~~three (3)-six (6)~~ consecutive months ~~or for any two (2) consecutive quarters~~ (“Deficient Performance”), then the Parties shall, in accordance with this Section G, work jointly to investigate and determine the causes of that Deficient Performance, and to adopt measures to prevent it from continuing or recurring (the “Remedial Process”). Either Party may initiate the Remedial Process by written notice to the other Party within 60 days of Deficient Performance. Within 10 days of such notice, each Party shall appoint a representative to lead the Remedial Process, which shall proceed as follows:

1. The Parties shall work together to investigate the causes of Deficient Performance, including as may be applicable: (i) CN’s dispatching; (ii) Amtrak’s operation of its trains; (iii) rail line infrastructure and capacity issues; (iv) Amtrak’s equipment; (v) Amtrak train schedules; (vi) freight schedules; (vii) structural issues with the incentive or penalty provisions of Appendix V; (viii) issues with the levels of performance payments and penalties provided under Appendix V; (ix) other issues with the terms of the Operating Agreement; or (x) other causes (the “Investigation”). Within ~~30~~45 days of the notice of Deficient Performance the Parties shall meet to discuss the causes of Deficient Performance each has identified. The Parties shall retain and make available to each other on a confidential basis the records reasonably necessary to conduct the Investigation.

2. At any time after the initial meeting to discuss the causes of Deficient Performance described in paragraph 1 above, either Party may request the informal assistance of the Surface Transportation Board's Rail Customer and Public Assistance (RCPA) service (or any successor to the RCPA).
3. Within 20 days of the meeting to discuss the causes of Deficient Performance, the Parties shall exchange a list of concrete steps intended to reasonably address the specific issues identified as causing Deficient Performance. The Parties shall promptly meet thereafter to discuss implementation of steps to address Deficient Performance, including, as applicable, estimating the costs for such steps. If the Parties agree that steps should be implemented that would increase or impose new **specific, verifiable, and quantifiable** incremental costs on CN, then they shall estimate those costs and agree on Amtrak's compensation to CN for such costs before implementation of such steps. If the Parties agree that an investment in infrastructure or equipment should be made, and Amtrak requires additional funding for such an investment, then the Parties shall work together to seek third-party funding. Insofar as such an investment would directly benefit CN financially, the Parties shall confer and CN shall consider contributing to such funding. Further, if the Parties agree to amend Appendix V in a manner that causes Net Performance Charges to increase for a given overall level of performance, then they shall consider applying all or a portion of such increased Net Performance Charges to such funding. The Parties' discussions shall be overseen, and include, as necessary to make progress, CN's Vice President, Eastern Region, and Amtrak's Vice President of Operations; **the RCPA (or its successor) may**

be included in those discussions and related communications if either Party has requested its assistance.

~~3. If the Parties have not reached agreement within 30 days of exchanging lists of concrete steps intended to address Deficient Performance (or such extended period as the Parties may agree upon), then either Party may submit the dispute to the Surface Transportation Board's Rail Customer and Public Assistance Program (RCPA) (or any successor to the RCPA) for informal assistance.~~

4. If 70 days after the notice of Deficient Performance ~~after working in good faith with the RCPA (or successor)~~ the Parties have still not reached agreement on the concrete steps, then either Party may initiate mandatory arbitration under Article VI of this Agreement to seek modification of the Operating Agreement to address the Deficient Performance. The arbitrator(s) in such arbitration shall have the power to modify the Operating Agreement (including Appendices, ~~subject to the limitation in Subsection G.4.(iv), below, other than Appendix V, Part D~~) insofar as necessary to address the Deficient Performance and to require the Parties to: (i) produce reasonable material information, conduct additional investigations, modeling, or experiments, (ii) undertake interim ~~or permanent~~ measures to improve performance and monitor the effectiveness of such measures, ~~and~~ (iii) implement additional employee training and/or monitoring of employee performance, ~~and (iv) modify Appendix V, Part D (the lookback provision), but only to increase the lookback period from 12 months to up to 24 months, insofar as may be determined to be necessary and appropriate.~~

Absent CN's written consent, the arbitrator(s) shall not exercise their authority in a

manner that imposes or would impose additional **specific, verifiable, and quantifiable** incremental **capital or operating** costs on CN without assuring that CN will be fully compensated for those incremental costs by Amtrak. At the request of either Party, the arbitrator(s) may invite **the State sponsor of any Amtrak service with Deficient Performance** ~~appropriate third parties (e.g., State sponsors)~~ to participate in the arbitration as **an** intervenor (while protecting confidential information of all parties).

5. Any arbitration conducted under this Part G shall be conducted expeditiously. Unless otherwise agreed by the Parties or ordered by the arbitrator(s), the Parties shall file simultaneous opening statements within 30 days after initiation of the arbitration; the Parties shall file simultaneous reply statements within 20 days thereafter; any hearing shall be held promptly thereafter; and the arbitrator(s) shall issue their decision within 90 days of the initiation of arbitration.

ATTACHMENT B

CN's Revised Reopener Proposal (Clean)

OA Appx. V.

G. Remedial Measures for Deficient Contractual Performance

If the Net Performance Charges calculated by CN for any category of trains pursuant to Part D of this Appendix V are less than zero for any three (3) consecutive months or for any two (2) consecutive quarters (“Deficient Performance”), then the Parties shall, in accordance with this Section G, work jointly to investigate and determine the causes of that Deficient Performance, and to adopt measures to prevent it from continuing or recurring (the “Remedial Process”). Either Party may initiate the Remedial Process by written notice to the other Party within 60 days of Deficient Performance. Within 10 days of such notice, each Party shall appoint a representative to lead the Remedial Process, which shall proceed as follows:

1. The Parties shall work together to investigate the causes of Deficient Performance, including as may be applicable: (i) CN’s dispatching; (ii) Amtrak’s operation of its trains; (iii) rail line infrastructure and capacity issues; (iv) Amtrak’s equipment; (v) Amtrak train schedules; (vi) freight schedules; (vii) structural issues with the incentive or penalty provisions of Appendix V; (viii) issues with the levels of performance payments and penalties provided under Appendix V; (ix) other issues with the terms of the Operating Agreement; or (x) other causes (the “Investigation”). Within 30 days of the notice of Deficient Performance the Parties shall meet to discuss the causes of Deficient Performance each has identified. The Parties shall retain and make available to each other on a confidential basis the records reasonably necessary to conduct the Investigation.

2. At any time after the initial meeting to discuss the causes of Deficient Performance described in paragraph 1 above, either Party may request the informal assistance of the Surface Transportation Board's Rail Customer and Public Assistance (RCPA) service (or any successor to the RCPA).
3. Within 20 days of the meeting to discuss the causes of Deficient Performance, the Parties shall exchange a list of concrete steps intended to reasonably address the specific issues identified as causing Deficient Performance. The Parties shall promptly meet thereafter to discuss implementation of steps to address Deficient Performance, including, as applicable, estimating the costs for such steps. If the Parties agree that steps should be implemented that would increase or impose new specific, verifiable, and quantifiable incremental costs on CN, then they shall estimate those costs and agree on Amtrak's compensation to CN for such costs before implementation of such steps. If the Parties agree that an investment in infrastructure or equipment should be made, and Amtrak requires additional funding for such an investment, then the Parties shall work together to seek third-party funding. Insofar as such an investment would directly benefit CN financially, the Parties shall confer and CN shall consider contributing to such funding. Further, if the Parties agree to amend Appendix V in a manner that causes Net Performance Charges to increase for a given overall level of performance, then they shall consider applying all or a portion of such increased Net Performance Charges to such funding. The Parties' discussions shall be overseen, and include, as necessary to make progress, CN's Vice President, Eastern Region, and Amtrak's Vice President of Operations; the RCPA (or its successor) may

be included in those discussions and related communications if either Party has requested its assistance.

4. If 70 days after the notice of Deficient Performance the Parties have still not reached agreement on the concrete steps, then either Party may initiate mandatory arbitration under Article VI of this Agreement to seek modification of the Operating Agreement to address the Deficient Performance. The arbitrator(s) in such arbitration shall have the power to modify the Operating Agreement (including Appendices, subject to the limitation in Subsection G.4.(iv), below) insofar as necessary to address the Deficient Performance and to require the Parties to: (i) produce reasonable material information, conduct additional investigations, modeling, or experiments, (ii) undertake interim or permanent measures to improve performance and monitor the effectiveness of such measures, (iii) implement additional employee training and/or monitoring of employee performance, and (iv) modify Appendix V, Part D (the lookback provision), but only to increase the lookback period from 12 months to up to 24 months, insofar as may be determined to be necessary and appropriate. Absent CN's written consent, the arbitrator(s) shall not exercise their authority in a manner that imposes or would impose additional specific, verifiable, and quantifiable incremental capital or operating costs on CN without assuring that CN will be fully compensated for those incremental costs by Amtrak. At the request of either Party, the arbitrator(s) may invite the State sponsor of any Amtrak service with Deficient Performance to participate in the arbitration as an intervenor (while protecting confidential information of all parties).

5. Any arbitration conducted under this Part G shall be conducted expeditiously. Unless otherwise agreed by the Parties or ordered by the arbitrator(s), the Parties shall file simultaneous opening statements within 30 days after the initiation of arbitration; the Parties shall file simultaneous reply statements within 20 days thereafter; any hearing shall be held promptly thereafter; and the arbitrator(s) shall issue their decision within 90 days of the initiation of arbitration.

VERIFICATION

I, Michael A. Matteucci, certify under penalties of perjury that I am Senior Director – Interline Services for Canadian National Railway Company and its subsidiaries (including Illinois Central Railroad Company and Grand Trunk Western Railroad Company), that I have read the foregoing Responses of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to April 8, 2025 Requests Due May 8, 2025 and that the facts stated therein are true as stated. I further declare under penalties of perjury that I am qualified and authorized to make this certification on behalf of Illinois Central Railroad Company and Grand Trunk Western Railroad Company.

Executed on May 8, 2025.

A handwritten signature in blue ink, appearing to read 'M. A. Matteucci', written over a horizontal line.

Michael A. Matteucci

CERTIFICATE OF SERVICE

I, James M. Guinivan, hereby certify that I have, this 8th day of May, 2025, caused the Highly Confidential, Confidential, and Public versions of foregoing Responses of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to April 8, 2025 Requests Due May 8, 2025 to be served by email upon counsel for National Railroad Passenger Corporation and the Public version to be served on counsel for all other parties of record.

/s/ *James M. Guinivan*

James M. Guinivan