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July 22, 2025

VIA E-FILING

309802

PUBLIC VERSION

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E. Street, S.W., Room 1034
Washington, D.C. 20024

ENTER
Office of Proceedings
July 22, 2025
Part of
Public Record

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

Dear Ms. Brown:

We represent National Railroad Passenger Corporation (“Amtrak”) in the above-captioned proceeding.

Enclosed for e-filing is a public version of Amtrak’s Response to the Surface Transportation Board’s Decision Dated April 8, 2025 and supporting Verified Statements of James and Yoel Weiss (collectively, “Amtrak’s July 2025 Submission”), with appropriate redactions that the Board can place on its docket. Amtrak’s July 2025 Submission responds to the Board’s Requests for Information Nos. 2, 3, and 12. We are concurrently filing a CONFIDENTIAL version of Amtrak’s July 2025 Submission to be filed under seal.

Should you have any questions, please contact the undersigned. Thank you for your attention to this matter.

Respectfully submitted,

Jerry A. Cuomo
Jerry A. Cuomo

Enclosure.

cc: All Parties of Record

{CONTAINS CONFIDENTIAL INFORMATION – FILED UNDER SEAL}

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35743

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

**NATIONAL RAILROAD PASSENGER CORP.'S RESPONSE TO THE SURFACE
TRANSPORTATION BOARD'S DECISION DATED APRIL 8, 2025**

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July 22, 2025

PRELIMINARY STATEMENT

In this action pursuant to 49 U.S.C. § 24308(a)(2), the Surface Transportation Board (“the Board”) will establish the terms and conditions of a new operating agreement (“OA”) associated with National Railroad Passenger Corp.’s (“Amtrak”) access to the facilities of and receipt of services from certain subsidiaries of Canadian National Railway (“CN”) to operate Amtrak’s intercity passenger trains.

In its April 8, 2025 Decision, the Board issued requests for additional information (“the Requests”) to Amtrak and CN (collectively, “the Parties”). *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 1-5 (STB served April 8, 2025) (hereafter “4/8/25 Decision”). The Parties submitted responses to Request Nos. 1, 4-10, 13 and 14 on May 8, 2025. (*Id.* at 5).

Responses to the Board’s Request Nos. 2, 3, 11 and 12 are due by July 22, 2025. (*Id.*). Of those Requests, only Request No. 2 (as to the status of certain “uncertified” schedules related to Amtrak trains operating on CN’s system), No. 3 (as to the Parties’ respective calculations of penalties and incentives for 2024 under their proposed Operating Agreements), and No. 12 (concerning a “per-mile charge” for certain incremental costs that CN has sought to recover from Amtrak), require a response from Amtrak.

This submission (and the accompanying Verified Statements of James Blair and Yoel Weiss) provide Amtrak’s responses to Request Nos. 3 and 12. The Parties have agreed upon a joint statement to the Board addressing Request No. 2 concerning the uncertified schedules.

This submission also provides Amtrak’s response to the concurring opinion of Board Member Hedlund in the April 8, 2025 Decision, which expressed concern about reimbursement of Amtrak’s passengers (and Amtrak) when passengers incur expenses where Amtrak trains are

cancelled “due to circumstances that are legitimately characterized as the responsibility of the line owner (i.e., the freight railroad)” (4/8/25 Decision at 5).

Amtrak’s responses herein (including its calculations of the incentives due to and penalties that CN would have incurred for 2024 under Amtrak’s proposed terms), confirm that the Board should adopt Amtrak’s proposals for a new OA. Unlike CN’s proposed terms, Amtrak terms are straightforward to apply and consistent with the Board’s August 9, 2019 Interim Decision. (*See Application of the Nat’l Passenger R.R. Under 49 U.S.C. § 24308(a) - Canadian Nat’l Ry.*, FD 35743 (STB served August 9, 2019) (hereinafter, the “Interim Decision”)).

I. REQUEST # 3 – Incentives and Penalties for 2024 Under Amtrak’s Proposed Operating Agreement

The Board’s Request #3 in its April 8, 2025 Decision requires the Parties to:

[P]rovide the calculations and underlying data for incentive and penalty payments for calendar year 2024 based on their proposed methodologies. The information should be broken down by month and by Amtrak route.

(4/8/25 Decision at p. 2).

For the Board’s convenience, Amtrak briefly summarizes the core concepts of its proposed penalty and incentive terms and the mechanics of the calculations thereunder. Amtrak also discusses the trends evident in the data and the resulting incentive and penalty calculations, which support Amtrak’s request that the Board impose Amtrak’s proposed terms as part of a new OA. (*See Verified Statement of James Blair dated July 21, 2025, submitted herewith (herein after “Blair 7/21/25 VS”)*)).

A. Summary of Key Concepts in Amtrak’s Proposed Incentive and Penalty System

The terms of Amtrak’s proposed incentive and penalty system are discussed in detail in Amtrak’s prior submissions to the Board on May 27, 2022 and August 25, 2022. (*See Amtrak 5/27/2022 Opening Brief, at pp. 32-53; Amtrak 8/25/22 Rebuttal Brief, at pp. 7-30*). Among other

things, Amtrak's prior submissions explain why and how Amtrak's proposed incentive and penalty terms are consistent with: (1) the statutes and regulations governing the relationship between Amtrak and CN (including the Rail Passenger Service Act of 1970, the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"), and the Federal Railroad Administration's ("FRA") *Minimum Standards for Intercity Passenger Rail Service* codified at 49 C.F.R. 273.1 *et seq.*); and (2) the Board's Interim Decision.

Under Amtrak's proposed terms, the "customer on-time performance" ("COTP") metric measures on-time performance of Amtrak trains. (Blair 7/21/25 VS., ¶ 10). As the Board is aware, FRA has codified COTP as the metric to be utilized in determining the quality of Amtrak's on-time performance on a Host Railroad. (*See* 49 C.F.R. § 273.5(a)). FRA has defined COTP as "the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route." (49 C.F.R. § 273.5(a)(1)). The FRA established that the COTP "minimum standard is 80 percent for any 2 consecutive calendar quarters." (49 C.F.R. § 273.5(a)(2)).

In adopting the COTP metric, FRA also noted that PRIIA § 207(c) "provides that, to the extent practicable, Amtrak and its Host rail carriers shall incorporate the metrics and standards into their access and service agreements (the operating agreements)." (*See* 85 Fed. Reg. 72973, 72977-72978). The FRA also encouraged "Amtrak and the host railroads to work toward aligning the [OAs] with the COTP metric and standard to ensure performance is measured, and appropriately incentivized, in a consistent manner." (*Id.* at 72978). Indeed, the Parties' 2011 OA provides that: "[t]o the extent practicable, and as soon as possible, CN and Amtrak shall negotiate such amendments to this Agreement as may be necessary to reflect metrics and standards developed by the FRA under [PRIIA]" (*See* 2011 OA, § 3.4(D)).

In sum, under Amtrak's proposed terms, the better the COTP of Amtrak's trains on a route, the more likely CN is to earn incentives and avoid penalties on that route. But, the lower the COTP of Amtrak trains, the less likely CN is to earn an incentive (or it may earn less of an incentive or be penalized). (*See* Blair 7/21/25 VS., ¶ 11).

As Amtrak has previously acknowledged, because COTP is a route-level metric that is not Host Railroad-specific, it is not a perfect measure of CN's performance on any of the routes hosted by CN - - particularly on routes where other railroads host most of the track miles. (Blair 7/21/25 VS., ¶ 12). As such, Amtrak's calculations consider other of FRA's codified metrics, such as the train delays per 10,000 train-miles metric and a CN-specific customization of the average ridership metric.¹ (*Id.*). For example, under Amtrak's proposed system, the incentives CN can earn will increase as: (1) the number of passenger miles traveled on an Amtrak route on CN's system increase; and (2) the number of minutes of CN's Host Responsible Delays ("HRDs") per 10,000 train-miles decreases. (*Id.*).

Using CN's HRDs per 10,000 train miles as a metric - - and adjusting CN's potential incentives and penalties based on the amount of those CN-responsible HRDs - - has an added benefit of directly incorporating a "degree of lateness" into a contractual incentive and penalty system, as urged by the Board in its Interim Decision.² (Blair 7/21/25 VS., ¶ 13). Utilizing this

¹ FRA has adopted the average ridership metric, defined as "the number of passenger-miles divided by train-mile for each route." *See* 49 CFR 273.9(d). FRA has also adopted the "train delays per 10,000 train miles metric" to standardize the measurement of delays to Amtrak trains. *See* 49 C.F.R. § 273.5(e) (adopting metric and defining it as "the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route.").

² *See* the Interim Decision at p. 14 ("[b]y incorporating the degree of lateness" into an incentive and penalty system, "CN would have an incentive to help deliver a late train more expeditiously and not allow the duration of the delay to increase.").

metric as part of an incentive and penalty system, when an Amtrak train is delayed on CN's system, CN is financially incentivized to reduce the length of that delay to: (1) minimize its own HRDs; and (2) cooperate with Amtrak and other Host Railroads to improve COTP on the route. (*Id.*).

Lastly, under Amtrak's proposed system, CN has the opportunity to earn incentives on routes where COTP is below 80%, but its own HRDs are below 900 minutes per 10,000 train miles (indicating that CN is not significantly contributing to delays which impact Amtrak's trains on the route). (Blair 7/21/25 VS., ¶ 14). This serves to incentivize better performance by CN, while adding measures to protect CN for performance deficiencies outside of its control.

B. Summary of the Mechanics of Amtrak's Proposed Calculations

The mechanics of the calculations Amtrak proposes for determining whether CN earns incentives or incurs penalties on a given route (and the amount of same) are also explained in detail in Amtrak's prior submissions. (*See* Amtrak 5/27/2022 Opening Brief, at pp. 36-42). For the Board's convenience, those mechanics are summarized below.

For each CN-hosted Amtrak route subject to the proposed OA, Amtrak determined an initial quarterly "Ridership Factor" to be included in the OA. (*See* Amtrak 5/27/22 Submission, Redline of Proposed OA, App. V-7 (Table 1 to Appendix V). Those Initial Ridership Factors as proposed by Amtrak establish a baseline pool of incentives that CN may earn for each route during a calendar quarter. As explained in Amtrak's prior submissions, these Initial Ridership Factors are based on the incentives CN earned in 2019 (during which Amtrak's trains operated free of the limitations caused by the Covid-19 pandemic). (Blair 7/21/25 VS., ¶ 16). For all routes other than the Illini/Saluki, { [REDACTED]

[REDACTED] }³

³ { [REDACTED]

(*Id.*, ¶ 17). That amount was then adjusted for inflation. (*Id.*).

The quarterly Initial Ridership Factors included in Amtrak's proposed OA are as follows:

Amtrak Route	Quarterly Initial Ridership Factor
Illini/Saluki	{ [REDACTED] }
City of New Orleans	{ [REDACTED] }
Lincoln Service	{ [REDACTED] }
Texas Eagle	{ [REDACTED] }
Wolverine	{ [REDACTED] }
Blue Water	{ [REDACTED] }

(See Amtrak 5/27/22 Submission, Redline of Proposed OA, App. V-7 (Table 1 to Appendix V)).

Amtrak's proposed OA terms (including the Initial Ridership Factors) calculate incentives or penalties on a **quarterly** basis (rather than on a **monthly** basis) to align with FRA's codified metrics and standards. (Blair 7/21/25 VS., ¶ 19). Amtrak acknowledges that, in Request No. 3, the Board has asked Amtrak to provide incentive and penalty calculations for each **month** in 2024. (*Id.*). As such, in Amtrak's monthly calculations of incentives and penalties set forth per the Board's Request No. 3 herein, the monthly Initial Ridership Factors utilized are one-third of the quarterly Initial Ridership Factors Amtrak originally proposed for a given route. (*Id.*). So, for example, the **monthly** Initial Ridership Factors (as derived from the **quarterly** Initial Ridership Factors Amtrak proposed) are:

Amtrak Route	Monthly Initial Ridership Factor
Illini/Saluki	{ [REDACTED] }

[REDACTED] } As such, while data for 2019 was utilized for other routes, the data for 2020 and 2021 was used for the Illini/Saluki route in calculating the quarterly Initial Ridership Factor.

Amtrak Route	<i>Monthly Initial Ridership Factor</i>
City of New Orleans	{ [REDACTED] }
Lincoln Service	{ [REDACTED] }
Texas Eagle	{ [REDACTED] }
Wolverine	{ [REDACTED] }
Blue Water	{ [REDACTED] }

(*Id.*). The foregoing monthly Initial Ridership Factors represent the pool of incentives potentially available to CN on a *monthly* basis. (*Id.*).

Amtrak’s proposed system adjusts those Initial Ridership Factor starting on January 1, 2024, and applies an adjustment on January 1 for each subsequent year the OA is in effect. (Blair 7/21/25 VS, ¶ 20). The adjustment is based upon the passenger miles traveled for the route during the preceding two years. (*Id.*). This sets the Ridership Factor for the next year’s incentive and penalty calculations. (*Id.*).⁴

Specifically, annual adjustments of the quarterly Ridership Factors as of 2024 would be calculated as follows. Amtrak proposes to divide the then-current Ridership Factor by the total passenger miles for subject route for the fiscal year that is two years prior to the calculation. (Blair 7/21/25 VS, ¶ 21). So, for this part of the adjustment of the Initial Ridership Factor for 2024, the total passenger miles for the subject route in 2022 would be used. (*Id.*). This calculation yields a

⁴ As Amtrak explained in its prior submissions, utilizing actual passenger miles to calculate and adjust the Ridership Factor ties the incentives CN may earn to the most detailed (and accurate) customer-level measurement possible. (*See* Amtrak 5/27/2022 Opening Brief, at pp. 43-44). That is, Amtrak’s actual ridership on the route, both in terms of the total number of passengers and the miles each passenger travels. Every passenger - - no matter how short or long their trip on Amtrak route - - is accounted for in this metric. This is consistent with the FRA’s endorsement of metrics that account for the experience of every passenger (including COTP), and its rejection of metrics that do not. (*See id.*).

value per-passenger mile traveled on the subject route. (*Id.*).

Amtrak then proposes to multiply this per-passenger mile value by the total passenger miles traveled on the subject route for the fiscal year preceding the calculation. (Blair 7/21/25 VS, ¶ 22). So, for this part of the adjustment of the Initial Ridership Factor for 2024, the total passenger miles for the subject route in 2023 would be used. (*Id.*). This calculation (adjusted for inflation) yields the new Ridership Factor for the year during which the adjustment is performed. (*Id.*).

The incentives actually paid to CN (or the penalty CN incurs) is a percentage of dollars comprising the Ridership Factor, determined by multiplying: (1) the Ridership Factor; by (2) the COTP for the route for the quarter; and then by (3) the “Delay Adjustment Factor.” (Blair 7/21/25 VS, ¶ 23). The “Delay Adjustment Factor” is a variable adjustment based upon the number of minutes of CN-responsible HRDs per 10,000 train miles on the route during the month (as determined by Amtrak pursuant to its existing procedures for recording delays impacting its trains).⁵ (*Id.*, ¶ 24).

Based on the number of CN’s HRDs per 10,000 train miles, Amtrak proposes to apply a sliding scale to determine how the Delay Adjustment Factor impacts the amount of incentives CN will receive (or the penalty it will incur). (Blair 7/21/25 VS, ¶¶ 24-25). Under that sliding scale, CN will begin to earn incentives when its HRDs per 10,000 train miles for the route for the quarter are between 900 and 924. (Blair 7/21/25 VS, ¶ 25). When HRDs are within that range, the Delay Adjustment Factor will be 10%. (*Id.*).

As discussed in Amtrak’s prior submissions, where HRDs for an entire Amtrak route are

⁵ Utilizing HRDs as recorded by Amtrak is consistent with FRA’s definition of “Host-responsible delays” as “delays **recorded by Amtrak, in accordance with Amtrak procedures**, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.” 49 CFR 273.3 (emphasis added).

approximately 900 minutes per 10,000 train miles, the COTP for that route is likely to be approximately 80% (meeting the minimum COTP standard established in 49 C.F.R. 273.5(a)). (See Amtrak 5/27/2022 Opening Brief, at p. 52; Amtrak 8/25/22 Rebuttal Brief, at pp. 15-22). Amtrak has confirmed that correlation by studying COTP and HRD data for further Amtrak train trips from April 2022 through March 2025. (See Verified Statement of Yoel Weiss dated July 22, 2025, submitted herewith (hereinafter “Weiss 7/22/25 VS”), ¶¶ 13-16)).

On a route with multiple Hosts, COTP is likely to be approximately 80% if *all* Host Railroads are performing at 900 HRDs per 10,000 train miles. (Blair 7/21/25 VS, ¶ 26). If COTP on a route with multiple Hosts is performing at below 80% COTP, but CN’s own HRDs are 900 per 10,000 train miles or below, it is likely that CN is not causing the poor COTP on the route. (*Id.*).

As such, under Amtrak’s proposed terms, as CN’s HRDs per 10,000 train miles decrease below 900 (likely resulting in COTP above FRA’s 80% minimum standard), the incentives that CN can earn will increase. (Blair 7/21/25 VS, ¶ 27). Conversely, when CN’s HRDs per 10,000 train miles increase above 924 (likely resulting in COTP below FRA’s 80% minimum standard), then CN will begin to incur penalties and the amount of the penalty will increase as the number of CN’s HRDs increase. (*Id.*).

The Delay Adjustment Factors Amtrak proposed are set forth below for the Board’s convenience:

CN HRD per 10,000 Train Miles	Delay Adjustment Factor
0-449	125%
500-599	120%
600-649	115%
650-699	110%
700-749	105%
750-799	100%

CN HRD per 10,000 Train Miles	Delay Adjustment Factor
800-824	80%
825-849	60%
850-874	40%
875-899	20%
900-924	10%
925-949	-20%
950-974	-40%
975-999	-60%
1,000-1,049	-80%
1,050-1,099	-100%
1,100-1,149	-110%
1,150-1,199	-120%
1,200-1,299	-130%
1,300-1,399	-140%
1,400-1,499	-150%
1,500-1,599	-160%
1,600-1,699	-170%
1,700-1,799	-180%
1,800-1,999	-190%
2,000-2,199	-200%
2,200-2,399	-210%
2,400-2,599	-220%
2,600-2,799	-230%
2,800-2,999	-240%
3,000 or greater	-250%

(See Amtrak 5/27/22 Submission, Redline of Proposed OA, App. V-8 (Table 2 to Appendix V).

C. Calculations of Incentives and Penalties for 2024

1. The Ridership Factor for 2024

Applying the foregoing terms to the subject routes, the adjusted monthly Ridership Factors for 2024 for each route are as follows:

Illini/Saluki

For the Illini/Saluki route, the 2023 quarterly Initial Ridership Factor { [REDACTED] } (*i.e.*, the quarterly Initial Ridership Factor appearing in Amtrak's OA) divided by the passenger miles

for 2022 { } yields a per-passenger mile value of { }. (Blair 7/21/25 VS, ¶ 29(a)). When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor of { }. (*Id.*). When adjusted for inflation, the 2024 quarterly Ridership Factor is { } for the route. (*Id.*). The monthly 2024 Ridership Factor for the route is { }.

City of New Orleans

For the City of New Orleans route, the 2023 quarterly Initial Ridership Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }. (Blair 7/21/25 VS, ¶ 29(b)). When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor of { }. (*Id.*). When adjusted for inflation, the 2024 quarterly Ridership Factor is { } for the route. (*Id.*). The 2024 monthly Ridership Factor for the route is { }.

Lincoln Service

For the Lincoln Service route, the 2023 quarterly Initial Ridership Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }. (Blair 7/21/25 VS, ¶ 29(c)). When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor of { }. (*Id.*). When adjusted for inflation, the 2024 quarterly Ridership Factor is { } for the route. (*Id.*). The 2024 monthly Ridership Factor for the route is { }.

Texas Eagle

For the Texas Eagle route, the 2023 quarterly Initial Ridership Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }.

(Blair 7/21/25 VS, ¶ 29(d)). When that value is multiplied by the passenger miles for 2023 on the route { [REDACTED] }, it yields a quarterly Ridership Factor of { [REDACTED] }. (*Id.*). When adjusted for inflation, the 2024 quarterly Ridership Factor is { [REDACTED] } for the route. (*Id.*). The 2024 monthly Ridership Factor for the route is { [REDACTED] }. (*Id.*).

Wolverine

For the Wolverine route, the 2023 quarterly Initial Ridership Factor { [REDACTED] } divided by the passenger miles for 2022 { [REDACTED] } yields a per-passenger mile value of { [REDACTED] }. (Blair 7/21/25 VS, ¶ 29(e)). When that value is multiplied by the passenger miles for 2023 on the route { [REDACTED] }, it yields a quarterly Ridership Factor of { [REDACTED] }. (*Id.*). When adjusted for inflation, the 2024 quarterly Ridership Factor is { [REDACTED] } for the route. (*Id.*). The 2024 monthly Ridership Factor for the route is { [REDACTED] }. (*Id.*).

Blue Water

For the Blue Water route, the 2023 quarterly Initial Ridership Factor { [REDACTED] } divided by the passenger miles for 2022 { [REDACTED] } yields a per-passenger mile value of { [REDACTED] }. (Blair 7/21/25 VS, ¶ 29(f)). When that value is multiplied by the passenger miles for 2023 on the route { [REDACTED] }, that yields a quarterly Ridership Factor of { [REDACTED] }. (*Id.*). When adjusted for inflation, the 2024 quarterly Ridership Factor is { [REDACTED] } for the route. (*Id.*). The 2024 monthly Ridership Factor for the route is { [REDACTED] }. (*Id.*).

2. COTP, Delay Adjustment Factor and Resulting Incentive/Penalty Calculations

Applying the COTP and Delay Adjustment Factors to the route for 2024, the following are the incentive and penalty calculations (*see* Blair 7/21/25 VS, ¶¶ 30(a-f)):

Illini/Saluki

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	80.49%	626	115%	{ [REDACTED] }
February	{ [REDACTED] }	87.59%	598	120%	{ [REDACTED] }
March	{ [REDACTED] }	89.79%	606	115%	{ [REDACTED] }
April	{ [REDACTED] }	87.53%	693	110%	{ [REDACTED] }
May	{ [REDACTED] }	68.45%	1167	-120%	{ [REDACTED] }
June	{ [REDACTED] }	76.35%	844	60%	{ [REDACTED] }
July	{ [REDACTED] }	78.20%	678	110%	{ [REDACTED] }
August	{ [REDACTED] }	77.08%	791	100%	{ [REDACTED] }
September	{ [REDACTED] }	89.89%	565	120%	{ [REDACTED] }
October	{ [REDACTED] }	93.14%	486	125%	{ [REDACTED] }
November	{ [REDACTED] }	92.65%	502	120%	{ [REDACTED] }
December	{ [REDACTED] }	95.97%	504	120%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

City of New Orleans

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	67.90%	723	105%	{ [REDACTED] }
February	{ [REDACTED] }	84.01%	675	110%	{ [REDACTED] }
March	{ [REDACTED] }	83.29%	731	105%	{ [REDACTED] }
April	{ [REDACTED] }	83.81%	875	40%	{ [REDACTED] }
May	{ [REDACTED] }	74.09%	980	-60%	{ [REDACTED] }
June	{ [REDACTED] }	74.87%	859	40%	{ [REDACTED] }
July	{ [REDACTED] }	82.91%	734	105%	{ [REDACTED] }
August	{ [REDACTED] }	79.30%	729	105%	{ [REDACTED] }
September	{ [REDACTED] }	77.80%	1080	-80%	{ [REDACTED] }
October	{ [REDACTED] }	77.82%	842	60%	{ [REDACTED] }
November	{ [REDACTED] }	83.48%	953	-40%	{ [REDACTED] }
December	{ [REDACTED] }	83.69%	761	100%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

Lincoln Service

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	72.40%	2,414	-220%	{ [REDACTED] }
February	{ [REDACTED] }	71.16%	1,937	-190%	{ [REDACTED] }
March	{ [REDACTED] }	70.87%	1,909	-190%	{ [REDACTED] }
April	{ [REDACTED] }	76.45%	1,571	-160%	{ [REDACTED] }
May	{ [REDACTED] }	71.82%	1,694	-170%	{ [REDACTED] }
June	{ [REDACTED] }	60.74%	2,462	-220%	{ [REDACTED] }
July	{ [REDACTED] }	67.17%	2,556	-220%	{ [REDACTED] }
August	{ [REDACTED] }	63.24%	4,428	-250%	{ [REDACTED] }
September	{ [REDACTED] }	71.85%	2,511	-220%	{ [REDACTED] }
October	{ [REDACTED] }	68.45%	2,968	-240%	{ [REDACTED] }
November	{ [REDACTED] }	54.06%	2,440	-220%	{ [REDACTED] }
December	{ [REDACTED] }	61.46%	2,426	-220%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

Texas Eagle

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	70.59%	1,418	-150%	{ [REDACTED] }
February	{ [REDACTED] }	81.76%	965	-40%	{ [REDACTED] }
March	{ [REDACTED] }	70.65%	1,284	-120%	{ [REDACTED] }
April	{ [REDACTED] }	62.28%	1,397	-140%	{ [REDACTED] }
May	{ [REDACTED] }	41.89%	1,505	-160%	{ [REDACTED] }
June	{ [REDACTED] }	38.37%	2,177	-200%	{ [REDACTED] }
July	{ [REDACTED] }	51.24%	1,519	-160%	{ [REDACTED] }
August	{ [REDACTED] }	54.31%	3,917	-250%	{ [REDACTED] }
September	{ [REDACTED] }	63.60%	1,482	-150%	{ [REDACTED] }
October	{ [REDACTED] }	53.98%	1,721	-180%	{ [REDACTED] }
November	{ [REDACTED] }	49.19%	2,791	-230%	{ [REDACTED] }
December	{ [REDACTED] }	48.62%	1,418	-250%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

Wolverine

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	68.27%	863	40%	{ [REDACTED] }
February	{ [REDACTED] }	78.88%	1,090	-80%	{ [REDACTED] }
March	{ [REDACTED] }	84.09%	1,443	-150%	{ [REDACTED] }
April	{ [REDACTED] }	80.96%	1,716	-180%	{ [REDACTED] }
May	{ [REDACTED] }	70.33%	1,358	-140%	{ [REDACTED] }
June	{ [REDACTED] }	48.70%	1,257	-120%	{ [REDACTED] }
July	{ [REDACTED] }	61.66%	1,140	-110%	{ [REDACTED] }
August	{ [REDACTED] }	67.25%	3,036	-250%	{ [REDACTED] }
September	{ [REDACTED] }	75.75%	3,900	-250%	{ [REDACTED] }
October	{ [REDACTED] }	68.55%	2,634	-230%	{ [REDACTED] }
November	{ [REDACTED] }	67.40%	2,554	-220%	{ [REDACTED] }
December	{ [REDACTED] }	71.58%	2,121	-200%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

Blue Water

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	66.48%	576	120%	{ [REDACTED] }
February	{ [REDACTED] }	83.78%	563	120%	{ [REDACTED] }
March	{ [REDACTED] }	93.17%	525	120%	{ [REDACTED] }
April	{ [REDACTED] }	84.62%	389	125%	{ [REDACTED] }
May	{ [REDACTED] }	74.21%	277	125%	{ [REDACTED] }
June	{ [REDACTED] }	68.20%	539	120%	{ [REDACTED] }
July	{ [REDACTED] }	73.51%	445	125%	{ [REDACTED] }
August	{ [REDACTED] }	68.98%	500	125%	{ [REDACTED] }
September	{ [REDACTED] }	74.01%	811	80%	{ [REDACTED] }
October	{ [REDACTED] }	79.21%	379	125%	{ [REDACTED] }
November	{ [REDACTED] }	74.67%	707	105%	{ [REDACTED] }
December	{ [REDACTED] }	71.13%	856	40%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

D. The 2024 Incentive and Penalty Calculations Demonstrate that the Board Should Adopt Amtrak's Proposed Terms in a New OA

The incentives earned and penalties incurred by CN under Amtrak's system reveals trends that support the Board's inclusion of Amtrak's terms in a new OA.

First, the 2024 data demonstrates the correlation between 80% COTP and 900 CN responsible HRDs per 10,000 train miles with respect to these routes.⁶ Where a COTP on a route is 80% or greater, CN's HRDs per 10,000 train miles are below 900.

For example, on the Illini/Saluki Route in 2024: where COTP was above 80% from January 2024 through April 2024 and from September 2024 through December 2024, CN's HRDs per 10,000 train miles were under 700. (Blair 7/21/25 VS, ¶ 30(a)). On the City of New Orleans route, where COTP was over 80% during February 2024 through April 2024, CN's HRDs per 10,000 train miles were under 900. (*Id.*, ¶ 30(b)). On the Blue Water route, where COTP was over 80% from February 2024 through April 2024, CN's HRDs per 10,000 train miles were under 600. (*Id.*, ¶ 30(f)). Conversely, on the poorly performing Lincoln Service and Texas Eagle routes, where COTP was routinely below 80%, CN's HRDs per 10,000 train miles were far in excess of 900. (*Id.*, ¶¶ 30(c), 30(d)).

Second, Amtrak's proposed incentive and penalty system is yielding results that are reasonable and appropriate given FRA's 80% COTP standard. In general, CN would earn incentives under Amtrak's system on routes where the monthly COTP meets or exceeds 80%; and it would not earn incentives on routes where the COTP is below 80%. For example, on the Illini/Saluki route, CN would earn incentives during several months where COTP exceeded 80%. (Blair 7/21/25 VS, ¶ 30(a)). And, on that route, it would be penalized only during May 2024 when COTP was 68.45%. (*Id.*). On the poorly performing Lincoln Service, Texas Eagle, and Wolverine routes, where COTP was routinely below 80%, CN would incur frequent monthly penalties. (*Id.*,

⁶ As explained in detail in the Verified Statement of Yoel Weiss submitted herewith at ¶¶ 10 to 16, Amtrak had confirmed this correlation between 80% COTP and 900 HRDs per 10,000 train miles by assessing *all* Amtrak trains operating on the systems of its Host Railroads (including CN) from **October 2016 through March 2025**.

¶¶ 30(c), 30(d), 30(e)).

Third, on routes where COTP is below 80%, but CN's HRDs per 10,000 train miles are below 900 - - indicating that CN may not be contributing to poor performance on the route as a whole - - CN would not be penalized. In fact, CN would earn an incentive. This is illustrated on the City of New Orleans route where CN would earn incentives during January 2024 and June 2024 when COTP was 67.90% and 74.87% respectively, but CN's HRDs per 10,000 train miles were 723 and 859 respectively. (Blair 7/21/25 VS, ¶ 30(b)). This is also illustrated on the Blue Water route, where CN would earn incentives in January 2024 and from May 2024 through December 2024 where COTP was below 80%, but CN's HRDs per 10,000 train miles were under 900. (*Id.*, ¶ 30(f)).

For these reasons, the 2024 incentive and penalty calculations yielded by Amtrak's system are reasonable and appropriate. Accordingly, the Board should impose them as part of the Parties' new OA.

E. Amtrak's Underlying Data

In Request No. 3, in addition to requiring the Parties to calculate the incentives and penalties for 2024 on a per-month basis, the Board requested the Parties provide their "underlying data" for their monthly calculations. The data points involved in calculating the incentives due to and penalties incurred by CN under Amtrak's proposed terms are:

1. Passenger miles for a specified route (*i.e.*, the total miles traveled by all Amtrak passengers on the route), which is part of the calculation to adjust the Ridership Factor from year to year;
2. COTP for a route, which is part of the calculation of the amount of incentives and penalties; and
3. CN-responsible HRDs per 10,000 train miles for the route, which determines the

Delay Adjustment Factor used to calculate incentives and penalties.

(Blair 7/21/25 VS, ¶ 32).

Amtrak collects and maintains numerous data points in the normal course of its operations which enable it to compile each of the above for a given train or route. (Blair 7/21/25 VS, ¶ 33). That data includes: ridership on each Amtrak train and route; on-time performance on each Amtrak train and route; and minutes of delay impacting Amtrak's trains and the causes of those delays. (*Id.*). From that data, Amtrak can compile information specific to an Amtrak train or route over a specific period of time. (*Id.*, ¶ 34). For example, for a given train or route, Amtrak calculates: the number of passengers and passenger miles; COTP; total minutes of delay; and minutes of delay broken down by the party responsible for the delay (*e.g.*, Amtrak, the Host Railroad(s) or a third-party). (*Id.*).

Amtrak reports much of this data to FRA on a quarterly basis, based upon which FRA then publishes quarterly reports. (Blair 7/21/25 VS, ¶ 35; *see* FRA's Intercity Passenger Rail Service Quality and Performance Reports at FRA's Website (<https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and>)). This is the primary reason Amtrak has proposed to determine incentives and penalties on a quarterly basis, rather than a monthly basis. (Blair 7/21/25 VS, ¶ 35).

Amtrak is, however, able to compile the relevant data on a per-month basis and can calculate incentives and penalties during 2024 on a monthly basis, as requested by the Board. (Blair 7/21/25 VS, ¶ 36). Amtrak's monthly penalty and incentive calculations for the subject routes set forth herein in response to the Board's Request No. 3 are based upon data during 2024 for the subject routes gathered by Amtrak in the normal course of business. (*Id.*). That route-level monthly data (*e.g.*, 2022 and 2023 passenger miles, 2024 COTP, and 2024 CN-responsible HRDs

per 10,000 train miles) was gathered by Amtrak from its data maintained in the normal course of operations and the resulting calculations performed in accordance with the terms of Amtrak's proposed OA. (*Id.*). These various data points constitute Amtrak's "underlying data" for these calculations. (*Id.*, ¶ 37).

Because Amtrak reports this data to the FRA on a quarterly basis, in the event the Board adopts Amtrak's incentive and penalty terms in a new OA, Amtrak requests that the OA require that incentives and penalties be calculated on a quarterly basis, rather than a monthly basis.

II. REQUEST # 12 – Per-mile Charge for Incremental Costs

The Board's Request #12 in its April 8, 2025 Decision requires the Parties to:

[S]ubmit a per-Amtrak-train-mile charge to account for incremental freight delay costs that could be applied in lieu of requiring the calculation of actual incremental freight delay costs if the Board includes incremental freight delay costs in the OA. . . . Each party should document its methodology in plain language, including all assumptions, formulas, and calculations underlying their proposed per-mile charge. Parties may include proposals for adjustments that could be applied to the per-mile charge to account for changes, such as changes in costs or volume. If Amtrak believes it does not have sufficient information to calculate a specific per-mile charge, it may limit its response to a description of its preferred methodology.

As explained in Amtrak's July 26, 2022 reply submissions, CN is not entitled to recover any of the "incremental costs" it is seeking, including fuel costs, crew-related costs and alleged lost "opportunity costs" associated with its locomotives and cars. (*See* Amtrak 7/26/22 Reply Br. at pp. 3-5, 54-95). Among other things, CN is not entitled to recover any of these costs for the following reasons.

1. Even as CN itself describes these costs, they are being incurred because CN is required by statute to provide Amtrak with a preference over CN's own freight trains. (*See* 49 U.S.C. § 24308(c)). CN is not entitled to compensation for

complying with this statutory obligation. Further, CN has already received a valuable benefit in exchange for having to provide preference to Amtrak - - Congress has relieved it of its long-standing and expensive common carrier burden to provide passenger rail transportation.

2. These costs do not meet the definition of “incremental costs” set forth in 49 U.S.C. § 24308(a)(2)(B) because they are not incurred as a result of Amtrak “using the facilities” of CN or because CN is “providing . . . services” to Amtrak. Rather, these are costs associated with *CN’s use of its own locomotives* to transport its *own freight*.
3. Further, the costs CN seeks to recover do not meet the requirements established by the Board in the Interim Decision, because, among other things:
 - a. Amtrak is not the “but for” or proximate cause of CN incurring these costs (rather, CN’s own operational decisions related to, for example, infrastructure⁷ and scheduling,⁸ are the cause); and
 - b. CN’s alleged costs are not “specific, verifiable, and quantifiable,” but rather are the product of pure speculation. (*See* at the Interim Decision at pp. 18-23 (discussing requirements for CN to establish that alleged costs are recoverable from Amtrak).

⁷ For example, as discussed in Amtrak July 26, 2022 submissions, CN has removed infrastructure on its system reducing its capacity to accommodate its growing freight traffic. (*See* Amtrak 7/26/22 Reply Br., at 72).

⁸ CN is aware of Amtrak’s schedules and where, at any given time, Amtrak’s trains are operating. CN, therefore, can schedule and dispatch its trains in a manner to avoid meets with Amtrak trains. If it fails to do so, resulting in a meet with an Amtrak train, CN cannot reasonably argue that Amtrak somehow caused the resulting delay. (*See* Amtrak 7/26/22 Reply Br., at 72-73).

(Blair 7/21/25 VS, ¶¶ 39-40)

Amtrak also notes that, at least in part, a penalty and incentive system serves to compensate Host Railroads in connection with Amtrak's operation on its systems. (Blair 7/21/25 VS, ¶ 41). Host Railroads, such as CN, should not be compensated yet again, under the guise of a "per-Amtrak-train-mile" charge. (*Id.*).

As the Board is aware, Amtrak has previously argued, any use of a "per-mile" or other charge in lieu of requiring CN to meet the Board's previously established requirements for proving its costs are recoverable from Amtrak is contrary to the Board's Interim Decision. In her concurrence in the Board's April 8, 2025 decision, Board Member Hedlund expressed this same concern.⁹

For these reasons, Amtrak requests that the Board not impose any "per-mile" or other charge in lieu of requiring CN to meet the unambiguous requirements that the Board established in its Interim Decision - - which, as Amtrak has explained to the Board, CN cannot do.

Nonetheless, as requested by the Board in Request No. 12, Amtrak presents below its methodology for calculating a "per-Amtrak-train-mile charge to account for incremental freight delay costs that could be applied in lieu of requiring the calculation of actual incremental freight delay costs if the Board includes incremental freight delay costs in the OA."

The Board stated in Request No. 12 that "[i]f Amtrak believes it does not have sufficient information to calculate a specific per-mile charge, it may limit its response to a description of its

⁹ Board Member Hedlund stated: "I am concerned that today's decision at best sends mixed signals with respect to the issue of incremental costs." (4/8/25 Decision at p. 6). She continued that "this is plainly inconsistent with the Board's prior conclusion on this specific issue, and today's decision fails to address or even acknowledge the inconsistency. Absent a compelling explanation as to why the Board's prior conclusion on this point was incorrect, the imposition of any such charge would be utterly unwarranted." (*Id.*).

preferred methodology.” Indeed, Amtrak believes that nearly all of the information needed to calculate a specific per-mile charge is exclusively within CN’s possession, such as, for example, its actual fuel, crew, and locomotive costs. (Blair 7/21/25 VS, ¶ 45). As such, Amtrak is providing a proposed methodology and formula for calculating a per-mile charge, rather than a specific dollar-value per-mile charge. (*Id.*).

Amtrak’s proposed formula is intended to yield an annual “cost per-Amtrak-train-mile” that would be computed for each of the Amtrak routes and would remain in place for each calendar year. (Blair 7/21/25 VS, ¶ 46). This “cost per mile” would be adjusted effective January 1 for each year the OA in effect. (*Id.*).

Amtrak’s proposed formula is as follows:

$$\frac{\{ \text{[REDACTED]} \times \text{[REDACTED]} \}}{\text{[REDACTED]}}$$

(*Id.*). The following describes the variables included in this formula. (*See Id.* ¶¶ 47(a-d)).

1. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } If the Board determines that some or all of CN’s alleged costs are recoverable (and, again, Amtrak believes none of the costs are recoverable), the Board can establish a “cost per minute” for a given annual period or CN could share information required to enable Amtrak to provide such

an estimated cost per minute.

2. $\{$

a.

b.

3. $\{$

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. { [REDACTED]

[REDACTED]

[REDACTED] }

{A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (*Id.*).

The following example based upon hypothetical figures is set forth below for illustrative purposes only. This example pertains to a hypothetical cost per mile associated with { [REDACTED]

[REDACTED] } (Blair 7/21/25

VS, ¶ 49).

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (*Id.*).

{ [REDACTED]

[REDACTED] } (Blair 7/21/25 VS, ¶ 49(b)).

{ [REDACTED]

[REDACTED]

[REDACTED] } (Blair 7/21/25 VS, ¶ 49(c)).

{ [REDACTED]

[REDACTED]

[REDACTED]

(Blair 7/21/25 VS, ¶ 50).

III. REQUEST # 2: Status of “Uncertified” Schedules

The Board’s Request #2 in its April 8, 2025 Decision as follows:

The parties should seek to reach agreement on any uncertified schedules and provide the Board with the agreed-upon schedules by the time they file the second part of their responses to these information requests on July 22, 2025. If the parties cannot reach agreement by that date, they are each ordered to submit a response on July 22, 2025, explaining the remaining points of dispute and providing any additional information the party believes is relevant to its position. Based on this information, the Board will determine how to proceed. This may include making schedules for the parties and adopting those schedules as part of the new OA. If the parties want to engage in alternative dispute resolution (ADR) prior to July 22, 2025, to assist in the process of resolving the remaining schedule disputes they are free to do so. If ADR does not result in an agreement, either party may provide to the Board any written decision produced by the ADR process. See 49 C.F.R. § 273.3.

In response to Request #2, the Parties have agreed to the following joint statement to the Board:

In response to Request No. 2 in the Board's April 8, 2025 Decision, the Parties have been working together to reach agreement on their uncertified schedules to provide the Board with agreed-upon schedules to include in a revised Operating Agreement. The Parties have exchanged proposals and agreed in principle to redistribute recovery time for the City of New Orleans trains (Train ##58 & 59). They are also engaged in broader confidential settlement discussions, implicating other matters, that may result in an agreement encompassing other schedule changes. Based on their progress, the Parties have agreed, subject to the Board's further direction, to update the Board on their further progress on or before the due date for Replies pursuant to the April 8, 2025 Decision (*i.e.*, September 22, 2025). The Parties are committed to providing the Board within that time either a full agreement covering all uncertified schedules or, at a minimum, a focused explanation of what they expect to be narrow remaining differences.

IV. Amtrak's Responses to Board Member Hedlund's Concurrence

In Board Member Hedlund's concurrence to the Board's April 8, 2025 Decision, she stated the following concern:

[R]ecent reports have suggested that in the event of passenger train cancellations due to circumstances that are legitimately characterized as the responsibility of the line owner (*i.e.*, the freight railroad), reimbursement may not be provided to passenger customers for expenses necessitated by such cancellations (*e.g.*, more expensive alternative transportation options, the provision of temporary accommodations, etc.). I query whether such expenses should appropriately be borne by the party with ultimate responsibility for such cancellations. While today's decision requires neither CN nor Amtrak to affirmatively confront this issue, it is my sincere hope that each party will (a) address whether this concern is misplaced, and (b) if it is not, submit a proposed mechanism for reimbursing Amtrak specifically for passenger-related costs necessitated by train cancellations resulting from circumstances or activities outside of Amtrak's control (*e.g.*, freight derailments, other track closures, etc.).

Amtrak believes that cancellations caused by circumstances within the control of Host Railroads (including CN), and reimbursement of Amtrak for steps it takes to mitigate resulting delays or inconvenience to Amtrak's passengers, is a legitimate concern. (Blair 7/21/25 VS, ¶ 52).

{ [REDACTED]

[REDACTED]

In the event an Amtrak train is cancelled (regardless of the cause of the cancellation), Amtrak's take steps to ameliorate the inconveniences visited upon its passengers. (Blair 7/21/25 VS, ¶ 53). For example, in response to such cancellations, Amtrak has historically undertaken various measures to reaccommodate its passengers, including: (1) refunds and compensation (including Amtrak Guest Rewards points or vouchers for use on a later Amtrak trip); (2) arranging for and/or reimbursing the passengers' cost of alternative means of transportation (including provision of buses or car transportation); (3) arranging for and/or reimbursing the cost of temporary lodging for passengers; and (4) providing meal vouchers or otherwise reimbursing passengers' meal costs. (*Id.*, ¶53(a-d)).¹¹

Cancellations of Amtrak's trains often occur because of acts, omissions, or operational decisions of Host Railroads. (Blair 7/21/25 VS, ¶ 55). When such cancellations occur, and Amtrak takes steps to accommodate impacted passengers, the responsible Host Railroad generally does *not* reimburse Amtrak's costs. (*Id.*). In general, Amtrak's operating and other agreements with Host Railroads do not require reimbursement of Amtrak costs, even where the Host has caused the cancellation. (*Id.*). And, where Amtrak has proposed that such terms be included in its Operating Agreements, Host Railroads have not agreed. (*Id.*). For example, { [REDACTED]

[REDACTED]

[REDACTED] } (*Id.*).

In Amtrak's view, if a Host Railroad has caused a cancellation which requires Amtrak to

¹¹ The specific steps Amtrak takes in response to a cancellation depend on the surrounding circumstances. (Blair 7/22/25 VS, ¶ 54). For example, following derailment of Amtrak's Empire Builder train on September 25, 2021 near Joplin, Montana, Amtrak provided some passengers with alternative transportation via commercial airlines. (*Id.*).

take steps to reaccommodate passengers, the responsible Host Railroad should be obligated to reimburse Amtrak's costs. As a result, { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(See Amtrak 5/27/22 Submission, Redline of Proposed OA, § 5.1(F)).

Requiring CN to reimburse Amtrak's costs in the event CN caused a cancellation assures that Amtrak will be able to continue to provide assistance to inconvenienced passengers. (Blair 7/21/25 VS, ¶ 58). Absent such a term, CN has no accountability for delays to Amtrak's passengers - - or for the resulting costs for reaccommodating them - - necessitated by its own acts, omissions, and/or operational decisions. (*Id.*). Additionally, requiring CN to reimburse Amtrak also assures that Amtrak (and the American taxpayers) do not bear the costs of taking steps to mitigate the costs incurred by passengers due to cancellations for which Amtrak has no responsibility. (*Id.*).

Accordingly, Amtrak believes that its proposed term above is a "reasonable term" the Board should prescribe in relation to Amtrak's use of CN's facilities pursuant to 49 U.S.C. § 24308(a).

* * *

Should the Board require any further information concerning any of Amtrak's responses, Amtrak will be pleased to provide same.

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Respectfully submitted,

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{CONTAINS CONFIDENTIAL INFORMATION – FILED UNDER SEAL}

**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**

**VERIFIED STATEMENT OF JAMES A. BLAIR
ON BEHALF OF NATIONAL RAILROAD PASSENGER CORP.**

1. I am employed by the National Railroad Passenger Corporation (“Amtrak”) as Assistant Vice President - Host Railroads. My background and qualifications have been presented to the Surface Transportation Board (“the Board”) in my Verified Statement dated May 26, 2022, submitted in this matter.

2. In the Board’s Decision served on April 8, 2025, the Board posed several Requests for Information (“the Requests”) to Amtrak and Canadian National Railway Company (“CN”)¹ (collectively, “the Parties”). Amtrak previously responded to certain requests on May 8, 2025.

3. The Board’s April 8, 2025 Decision also requires the Parties to respond to Requests Nos. 2, 3, 11 and 12 on or before July 22, 2025. Of those Requests, only Request No. 2 (concerning the status of certain “uncertified” schedules related to Amtrak trains operating on CN’s system), No. 3 (concerning the Parties’ respective calculations of penalties and incentives for 2024 under their proposed Operating Agreements), and No. 12 (concerning a “per mile charge” for certain incremental costs that CN has sought to recover from Amtrak), require a response from Amtrak.

4. I submit this Verified Statement in connection with and to provide support for

¹ Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (subsidiaries of Canadian National Railway Company and direct parties to the operating agreement with Amtrak at issue in this proceeding) are two of Amtrak’s Host Railroads. In this Verified Statement, “CN” refers collectively to IC and GTW, but not their parent company.

Amtrak's responses to Request Nos. 3 and 12.

5. This Verified Statement will also address certain concerns raised by Board Member Hedlund in her concurrence to the Board's April 8, 2025 Decision related to Amtrak's accommodation of its passengers inconvenienced by train cancellations of Amtrak trains which are the responsibility of freight railroads (including CN) and reimbursement of Amtrak's associated costs.

I. REQUEST #3 – Incentives and Penalties for 2024 Under Amtrak's Proposed Operating Agreement

6. The Board's Request #3 in its April 8, 2025 Decision requires the Parties to:

[P]rovide the calculations and underlying data for incentive and penalty payments for calendar year 2024 based on their proposed methodologies. The information should be broken down by month and by Amtrak route.

(4/8/25 Decision at p. 2).

A. Summary of Key Concepts in Amtrak's Proposed System

7. The terms of Amtrak's proposed incentive and penalty system are discussed in Amtrak's prior submissions to the Board on May 27, 2022 and August 25, 2022, including my Verified Statements submitted therewith. (See Amtrak 5/27/2022 Opening Brief, at pp. 32-53; Amtrak 8/25/22 Rebuttal Brief, at pp. 7-30). Those submissions also explain in detail why Amtrak's proposed incentive and penalty terms as part of a new OA are consistent with:

a. the statutes and regulations governing the relationship between Amtrak and CN (including the Rail Passenger Service Act of 1970, the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"), and the Federal Railroad Administration's ("FRA") *Minimum Standards for Intercity Passenger Rail Service* codified at 49 C.F.R. 273.1 *et seq.*); and

b. the Board's August 9, 2019 Interim Decision. (See *Application of the Nat'l*

Passenger R.R. Under 49 U.S.C. § 24308(a) - Canadian Nat'l Ry., FD 35743 (STB served August 9, 2019) (hereinafter the “Interim Decision”).

8. For the Board’s convenience, a summary of Amtrak’s proposed terms is below.

9. As the Board is aware, FRA has codified “customer on-time performance” (“COTP”) as the metric for determining the on-time performance of Amtrak’s trains on a Host Railroad, such as CN. (*See* 49 C.F.R. § 273.5(a)). FRA defined the COTP as “the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.” (49 C.F.R. § 273.5(a)(1)). FRA established that “[t]he customer on-time performance minimum standard is 80 percent for any 2 consecutive calendar quarters.” (49 C.F.R. § 273.5(a)(2)).

10. In adopting the COTP metric, FRA also noted that PRIIA § 207(c) “provides that, the extent practicable, Amtrak and its Host rail carriers shall incorporate the metrics and standards into their access and service agreements (the operating agreements).” (*See* 85 Fed. Reg. 72973, 72977-72978). The FRA also encouraged “Amtrak and the host railroads to work toward aligning the [OAs] with the COTP metric and standard to ensure performance is measured, and appropriately incentivized, in a consistent manner.” (*Id.* at 72978). Indeed, the Parties’ 2011 OA provides that: “[t]o the extent practicable, and as soon as possible, CN and Amtrak shall negotiate such amendments to this Agreement as may be necessary to reflect metrics and standards developed by the FRA under [PRIIA]” (2011 OA, § 3.4(D)).

11. Consistent with this requirement, Amtrak’s proposed penalty and incentive system measures on-time performance of Amtrak’s trains on CN’s system using this codified COTP metric. In sum, the better the COTP of Amtrak’s trains on a route, the more likely CN is to earn incentives and avoid penalties on that route.

12. Because COTP, a route-level metric, is not a perfect measure of an individual Host

Railroad's performance on a portion of the routes (in this case, CN's) - - particularly those routes where other railroads host significant track miles - - Amtrak's proposed system considers other of FRA's codified metrics, such as the train delays per 10,000 train-miles metric and a CN-specific customization of the average ridership metric.² For example, under Amtrak's proposed system, the incentives CN can earn will increase as:

- a. the number of passenger miles traveled on an Amtrak route on CN's system increase; and
- b. the number of minutes of CN's Host Responsible Delays ("HRDs") per 10,000 train-miles decrease on the route.

13. Using CN's HRDs per 10,000 train miles as a performance metric has an added benefit of directly incorporating a "degree of lateness" into the contractual incentive and penalty system, as urged by the Board in its Interim Decision.³ Hence, where an Amtrak train is delayed on CN's system, CN is financially incentivized to reduce that delay to:

- a. minimize its own HRDs; and
- b. cooperate with Amtrak and other host railroads to improve COTP on the route.

14. Next, under Amtrak's proposed terms, CN can avoid penalties and, indeed, can *earn*

² FRA has adopted the average ridership metric, defined as "the number of passenger-miles divided by train-mile for each route." See 49 CFR 273.9(d). FRA has also adopted the "train delays per 10,000 train miles metric" to standardize the measurement of delays to Amtrak trains. See 49 C.F.R. § 273.5(e) (adopting metric and defining it as "the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route.").

³ See Interim Decision at p. 14 (stating that "[b]y incorporating the degree of lateness" into an incentive and penalty system, "CN would have an incentive to help deliver a late train more expeditiously and not allow the duration of the delay to increase.").

incentives, on routes where:

- a. COTP is below 80%; but
- b. CN's HRDs per 10,000 train miles are under 900 (indicating that CN is not significantly contributing to the delays which impact Amtrak's trains).

B. Summary of the Mechanics of Amtrak's Proposed Calculations

15. The mechanics of the calculations Amtrak proposes for determining whether CN earns incentives or incurs penalties (and the amount of same) are explained in detail in Amtrak's prior submissions. (*See, e.g.*, Amtrak 5/27/2022 Opening Brief, at pp. 36-42). Those mechanics are also summarized below for the Board's convenience.

16. For each CN-hosted Amtrak route subject to the proposed OA, Amtrak determined an initial quarterly "Ridership Factor." Those Initial Ridership Factors establish a baseline pool of incentives that CN may earn for each route during a calendar quarter. As explained in Amtrak's prior submissions, these Initial Ridership Factors are based on the incentives CN earned in 2019 (when Amtrak's trains operated free from the limitations caused by the Covid-19 pandemic).

17. For all routes other than the Illini/Saluki, { [REDACTED] }⁴ That amount was then adjusted for inflation.

18. The quarterly Initial Ridership Factors are set forth in Amtrak's proposed OA as follows:

Amtrak Route	Quarterly Initial Ridership Factor
Illini/Saluki	{ [REDACTED] }

⁴ { Because CN did not earn incentives on the Illini/Saluki route in 2019, Amtrak utilized the historical data for 2020 and 2021 for that route. CN earned incentives on the Illini/Saluki route in 2020 (\$1,256,359) and 2021 (\$1,545,594), for an average of \$1,400,976.50. }

Amtrak Route	<i>Quarterly Initial Ridership Factor</i>
City of New Orleans	{ [REDACTED] }
Lincoln Service	{ [REDACTED] }
Texas Eagle	{ [REDACTED] }
Wolverine	{ [REDACTED] }
Blue Water	{ [REDACTED] }

(See Amtrak 5/27/22 Submission, Redline of Proposed OA, App. V-7 (Table 1 to Appendix V).

19. Amtrak’s proposed OA terms (including the Initial Ridership Factors) calculate incentives or penalties on a ***quarterly*** basis (rather than monthly) to align with FRA’s codified metrics and standards. Amtrak acknowledges that, in Request No. 3, the Board has asked Amtrak to provide incentive and penalty calculations for each ***month*** in 2024. As such, in Amtrak’s monthly calculations of incentives and penalties herein, the monthly Initial Ridership Factors are one-third of the quarterly Ridership Factors Amtrak originally proposed for a given route. So, for example, the monthly Initial Ridership Factors (as derived from the quarterly Initial Ridership Factors Amtrak proposed) would be:

Amtrak Route	<i>Monthly Initial Ridership Factor</i>
Illini/Saluki	{ [REDACTED] }
City of New Orleans	{ [REDACTED] }
Lincoln Service	{ [REDACTED] }
Texas Eagle	{ [REDACTED] }
Wolverine	{ [REDACTED] }
Blue Water	{ [REDACTED] }

The foregoing monthly Initial Ridership Factors represent the pool of 2019 incentives potentially available to CN on a ***monthly*** basis.

20. Amtrak's proposed system adjusts the Initial Ridership Factors starting on January 1, 2024, and does so again on January 1 for each subsequent year the OA is in effect. The adjustment is based upon the passenger miles traveled for the route during the preceding two years. This adjustment sets the Ridership Factor (*i.e.*, the pool of incentive funds potentially available to CN) for the next year's incentive and penalty calculations.⁵

21. Specifically, annual adjustments of the quarterly Initial Ridership Factor as of 2024 would be calculated as follows. Amtrak proposes to divide the then-current Ridership Factor by the total passenger miles for subject route for the fiscal year that is two years prior to the calculation. So, for this part of the adjustment of the Ridership Factor for 2024, the total passenger miles for the subject route in 2022 would be used. This calculation yields a value per passenger mile traveled on the subject route.

22. Amtrak then proposes to multiply that per passenger mile value by the total passenger miles traveled on the subject route for the fiscal year preceding the calculation. So, for this part of the adjustment of the Ridership Factor for 2024, the total passenger miles for the subject route in 2023 would be used. This calculation (adjusted for inflation) yields the new Ridership Factor for the year during which the adjustment is performed.

23. The incentives actually paid to CN (or the penalty CN incurs) is a percentage of dollars comprising the Ridership Factor, determined by multiplying:

⁵ As Amtrak explained in its prior submissions, utilizing actual passenger miles to calculate and adjust the Ridership Factor ties the incentives CN may earn to the most detailed (and accurate) customer-level measurement possible. (*See* Amtrak 5/27/2022 Opening Brief, at pp. 43-44). That is, Amtrak's actual ridership on the route, both in terms of the total number of passengers and the miles each passenger travels. Every passenger - - no matter how short or long their trip on Amtrak route - - is accounted for in this metric. This is consistent with FRA's endorsement of metrics that account for the experience of every passenger (including COTP), and its rejection of metrics that do not. (*See id.*).

- a. the Ridership Factor; by
- b. the COTP for the route for the quarter;⁶ and then by
- c. the “Delay Adjustment Factor.”

24. The “Delay Adjustment Factor” is a variable and sliding adjustment based on the number of minutes of CN-responsible HRDs per 10,000 train miles on the route during the quarter⁷ (as determined by Amtrak pursuant to its existing procedures for recording delays impacting its trains).⁸ The Delay Adjustment Factor impacts the amount of incentives CN will receive (or the penalty it will incur).

25. Under that sliding scale, CN will begin to earn incentives when its HRDs per 10,000 train miles for the route for the quarter are between 900 and 924. When HRDs are within that range, the Delay Adjustment Factor is 10%.

26. As discussed in Amtrak’s prior submissions, where HRDs are approximately 900 minutes per 10,000 train miles for an entire route, the COTP for an Amtrak route is likely to be approximately 80% (meeting the minimum COTP standard established in 49 C.F.R. 273.5(a)). (See Amtrak 5/27/2022 Opening Brief, at p. 52; Amtrak 8/25/22 Rebuttal Brief, at pp. 15-22). On a route with multiple Hosts, COTP is likely to be approximately 80% if all Hosts are performing at 900 HRDs per 10,000 train miles. If COTP on a route with multiple Hosts is performing at

⁶ For purposes of responding to the Board’s Request No. 3 and calculating incentives and penalties for 2024, COTP for each *month* will be utilized.

⁷ Again, for purposes of calculating incentives and penalties for 2024 per the Board’s request, CN’s *monthly* HRDs per 10,000 train miles for 2024 will be used.

⁸ Utilizing HRDs as recorded by Amtrak is consistent with FRA’s definition of “Host-responsible delays” as “delays *recorded by Amtrak, in accordance with Amtrak procedures*, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.” 49 C.F.R. 273.3 (emphasis added).

below 80% COTP, but CN's own HRDs are 900 per 10,000 train miles or below, it is likely that CN is not causing the poor COTP on the route.

27. As such, under Amtrak's proposed terms, as CN's HRDs per 10,000 train miles decrease below 900 (likely resulting in COTP above FRA's 80% minimum standard), the incentives that CN can earn will increase. Conversely, when CN's HRDs per 10,000 train miles increase above 924 (likely resulting in COTP below FRA's 80% minimum standard), then CN will begin to incur penalties and the amount of the penalty will increase as the number of CN's HRDs increase.

28. The Delay Adjustment Factors Amtrak proposed are set forth below for the Board's convenience:

CN HRD per 10,000 Train Miles	Delay Adjustment Factor
0-449	125%
500-599	120%
600-649	115%
650-699	110%
700-749	105%
750-799	100%
800-824	80%
825-849	60%
850-874	40%
875-899	20%
900-924	10%
925-949	-20%
950-974	-40%
975-999	-60%
1,000-1,049	-80%
1,050-1,099	-100%
1,100-1,149	-110%
1,150-1,199	-120%
1,200-1,299	-130%
1,300-1,399	-140%
1,400-1,499	-150%
1,500-1,599	-160%
1,600-1,699	-170%

CN HRD per 10,000 Train Miles	Delay Adjustment Factor
1,700-1,799	-180%
1,800-1,999	-190%
2,000-2,199	-200%
2,200-2,399	-210%
2,400-2,599	-220%
2,600-2,799	-230%
2,800-2,999	-240%
3,000 or greater	-250%

(See Amtrak 5/27/22 Submission, Redline of Proposed OA, App. V-8 (Table 2 to Appendix V).

C. Calculations of Monthly Incentives and Penalties for 2024

29. Applying the foregoing terms to the subject routes, the first step in Amtrak’s system is to determine the adjusted 2024 Ridership Factors, which will dictate the pool of incentives potentially available to CN for each route. The adjusted monthly Ridership Factors for 2024 for each route are as follows:

a. For the Illini/Saluki route, the 2023 quarterly Initial Ridership Factor { [REDACTED] } (i.e., the quarterly Initial Ridership Factor appearing in Amtrak’s OA) divided by the passenger miles for 2022 { [REDACTED] } yields a per-passenger mile value of { [REDACTED] }. When that value is multiplied by the passenger miles for 2023 on the route { [REDACTED] }, it yields a quarterly Ridership Factor of { [REDACTED] }. When adjusted for inflation, the 2024 quarterly Ridership Factor is { [REDACTED] } for the route.⁹ The monthly 2024 Ridership Factor for the route is { [REDACTED] }.

b. For the City of New Orleans route, the 2023 quarterly Initial Ridership

⁹ These adjusted quarterly Ridership Factors are what Amtrak proposes to use in its OA. Amtrak has calculated the monthly Ridership Factors herein for purposes of presenting its incentives and penalty calculations on a monthly basis, per the Board’s request.

Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }. When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor of { }. When adjusted for inflation, the 2024 quarterly Ridership Factor is { } for the route. The 2024 monthly Ridership Factor for the route is { }.

c. For the Lincoln Service route, the 2023 quarterly Initial Ridership Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }. When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor of { }. When adjusted for inflation, the 2024 quarterly Ridership Factor is { } for the route. The 2024 monthly Ridership Factor for the route is { }.

d. For the Texas Eagle route, the 2023 quarterly Initial Ridership Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }. When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor of { }. When adjusted for inflation, the 2024 quarterly Ridership Factor is { } for the route. The 2024 monthly Ridership Factor for the route is { }.

e. For the Wolverine route, the 2023 quarterly Initial Ridership Factor { } divided by the passenger miles for 2022 { } yields a per-passenger mile value of { }. When that value is multiplied by the passenger miles for 2023 on the route { }, it yields a quarterly Ridership Factor

of { [REDACTED] }. When adjusted for inflation, the 2024 quarterly Ridership Factor is { [REDACTED] } for the route. The 2024 monthly Ridership Factor for the route is { [REDACTED] }.

f. For the Blue Water route, the 2023 quarterly Initial Ridership Factor { [REDACTED] } divided by the passenger miles for 2022 { [REDACTED] } yields a per-passenger mile value of { [REDACTED] }. When that value is multiplied by the passenger miles for 2023 on the route { [REDACTED] }, that yields a quarterly Ridership Factor of { [REDACTED] }. When adjusted for inflation, the 2024 quarterly Ridership Factor is { [REDACTED] } for the route. The 2024 monthly Ridership Factor for the route is { [REDACTED] }.

30. Applying COTP and Delay Adjustment Factors to the routes for 2024, the following are the monthly incentive and penalty calculations:

a. For the Illini/Saluki route:

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	80.49%	626	115%	{ [REDACTED] }
February	{ [REDACTED] }	87.59%	598	120%	{ [REDACTED] }
March	{ [REDACTED] }	89.79%	606	115%	{ [REDACTED] }
April	{ [REDACTED] }	87.53%	693	110%	{ [REDACTED] }
May	{ [REDACTED] }	68.45%	1167	-120%	{ [REDACTED] }
June	{ [REDACTED] }	76.35%	844	60%	{ [REDACTED] }

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
July	{ [REDACTED] }	78.20%	678	110%	{ [REDACTED] }
August	{ [REDACTED] }	77.08%	791	100%	{ [REDACTED] }
September	{ [REDACTED] }	89.89%	565	120%	{ [REDACTED] }
October	{ [REDACTED] }	93.14%	486	125%	{ [REDACTED] }
November	{ [REDACTED] }	92.65%	502	120%	{ [REDACTED] }
December	{ [REDACTED] }	95.97%	504	120%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

b. For the City of New Orleans route:

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	67.90%	723	105%	{ [REDACTED] }
February	{ [REDACTED] }	84.01%	675	110%	{ [REDACTED] }
March	{ [REDACTED] }	83.29%	731	105%	{ [REDACTED] }
April	{ [REDACTED] }	83.81%	875	40%	{ [REDACTED] }
May	{ [REDACTED] }	74.09%	980	-60%	{ [REDACTED] }
June	{ [REDACTED] }	74.87%	859	40%	{ [REDACTED] }

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
July	{ [REDACTED] }	82.91%	734	105%	{ [REDACTED] }
August	{ [REDACTED] }	79.30%	729	105%	{ [REDACTED] }
September	{ [REDACTED] }	77.80%	1080	-80%	{ [REDACTED] }
October	{ [REDACTED] }	77.82%	842	60%	{ [REDACTED] }
November	{ [REDACTED] }	83.48%	953	-40%	{ [REDACTED] }
December	{ [REDACTED] }	83.69%	761	100%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

c. For the Lincoln Service route:

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	72.40%	2,414	-220%	{ [REDACTED] }
February	{ [REDACTED] }	71.16%	1,937	-190%	{ [REDACTED] }
March	{ [REDACTED] }	70.87%	1,909	-190%	{ [REDACTED] }
April	{ [REDACTED] }	76.45%	1,571	-160%	{ [REDACTED] }
May	{ [REDACTED] }	71.82%	1,694	-170%	{ [REDACTED] }
June	{ [REDACTED] }	60.74%	2,462	-220%	{ [REDACTED] }

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
July	{ [REDACTED] }	67.17%	2,556	-220%	{ [REDACTED] }
August	{ [REDACTED] }	63.24%	4,428	-250%	{ [REDACTED] }
September	{ [REDACTED] }	71.85%	2,511	-220%	{ [REDACTED] }
October	{ [REDACTED] }	68.45%	2,968	-240%	{ [REDACTED] }
November	{ [REDACTED] }	54.06%	2,440	-220%	{ [REDACTED] }
December	{ [REDACTED] }	61.46%	2,426	-220%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

d. For the Texas Eagle route:

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	70.59%	1,418	-150%	{ [REDACTED] }
February	{ [REDACTED] }	81.76%	965	-40%	{ [REDACTED] }
March	{ [REDACTED] }	70.65%	1,284	-120%	{ [REDACTED] }
April	{ [REDACTED] }	62.28%	1,397	-140%	{ [REDACTED] }
May	{ [REDACTED] }	41.89%	1,505	-160%	{ [REDACTED] }
June	{ [REDACTED] }	38.37%	2,177	-200%	{ [REDACTED] }
July	{ [REDACTED] }	51.24%	1,519	-160%	{ [REDACTED] }

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
August	{ [REDACTED] }	54.31%	3,917	-250%	{ [REDACTED] }
September	{ [REDACTED] }	63.60%	1,482	-150%	{ [REDACTED] }
October	{ [REDACTED] }	53.98%	1,721	-180%	{ [REDACTED] }
November	{ [REDACTED] }	49.19%	2,791	-230%	{ [REDACTED] }
December	{ [REDACTED] }	48.62%	1,418	-250%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

e. For the Wolverine route:

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	68.27%	863	40%	{ [REDACTED] }
February	{ [REDACTED] }	78.88%	1,090	-80%	{ [REDACTED] }
March	{ [REDACTED] }	84.09%	1,443	-150%	{ [REDACTED] }
April	{ [REDACTED] }	80.96%	1,716	-180%	{ [REDACTED] }
May	{ [REDACTED] }	70.33%	1,358	-140%	{ [REDACTED] }
June	{ [REDACTED] }	48.70%	1,257	-120%	{ [REDACTED] }
July	{ [REDACTED] }	61.66%	1,140	-110%	{ [REDACTED] }

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
August	{ [REDACTED] }	67.25%	3,036	-250%	{ [REDACTED] }
September	{ [REDACTED] 5 }	75.75%	3,900	-250%	{ [REDACTED] }
October	{ [REDACTED] }	68.55%	2,634	-230%	{ [REDACTED] }
November	{ [REDACTED] }	67.40%	2,554	-220%	{ [REDACTED] }
December	{ [REDACTED] }	71.58%	2,121	-200%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

f. For the Blue Water Route:

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
January	{ [REDACTED] }	66.48%	576	120%	{ [REDACTED] }
February	{ [REDACTED] }	83.78%	563	120%	{ [REDACTED] }
March	{ [REDACTED] }	93.17%	525	120%	{ [REDACTED] }
April	{ [REDACTED] }	84.62%	389	125%	{ [REDACTED] }
May	{ [REDACTED] }	74.21%	277	125%	{ [REDACTED] }
June	{ [REDACTED] }	68.20%	539	120%	{ [REDACTED] }
July	{ [REDACTED] }	73.51%	445	125%	{ [REDACTED] }

2024 Month	Monthly Ridership Factor	COTP	CN HRDs per 10,000 Train Miles	Delay Adjustment Factor	2024 Monthly Incentive Earned (Penalty Incurred)
August	{ [REDACTED] }	68.98%	500	125%	{ [REDACTED] }
September	{ [REDACTED] }	74.01%	811	80%	{ [REDACTED] }
October	{ [REDACTED] }	79.21%	379	125%	{ [REDACTED] }
November	{ [REDACTED] }	74.67%	707	105%	{ [REDACTED] }
December	{ [REDACTED] }	71.13%	856	40%	{ [REDACTED] }
<u>Total</u>					{ [REDACTED] }

D. Amtrak's Underlying Data

31. In Request No. 3, in addition to requiring the Parties to calculate the incentives and penalties for 2024 on a per-month basis, the Board requested the Parties provide their “underlying data” for their monthly calculations.

32. As detailed in this Verified Statement, the data points involved in calculating the incentives due to and penalties incurred by CN under Amtrak’s proposed terms are:

- a. Passenger miles for a specified route (*i.e.*, the total miles traveled by all Amtrak passengers on the route), which is part of the calculation to adjust the Ridership Factor from year to year;
- b. COTP for a route, which is part of the calculation of the amount of incentives and penalties; and
- c. CN-responsible HRDs per 10,000 train miles for the route, which determines the Delay Adjustment Factor used to calculate incentives and penalties.

33. Amtrak collects and maintains numerous data points in the normal course of its

daily operations which enable it to compile each of the above for a given train or route. That data includes: ridership on each Amtrak train and route; on-time performance on each Amtrak train and route; and minutes of delay impacting Amtrak's trains and the causes of those delays.

34. From that data, Amtrak can compile information specific to an Amtrak train or route over a specific period of time. For example, for a given train or route, Amtrak calculates: the number of passengers and passenger miles; COTP; total minutes of delay; and minutes of delay broken down by the party responsible for the delay (*e.g.*, Amtrak, the Host Railroad(s) (HRDs) or a third-party).

35. Amtrak reports much of this data to FRA on a quarterly basis. FRA then publishes quarterly reports on this data. *See* FRA's Intercity Passenger Rail Service Quality and Performance Reports at FRA's Website (<https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and>).¹⁰ This is the primary reason Amtrak has proposed to determine incentives and penalties on a quarterly basis, rather than a monthly basis.

36. Amtrak is, however, able to compile the relevant data on a per-month basis and can calculate incentives and penalties during 2024 on a monthly basis, as requested by the Board. All of the calculations in this Verified Statement at ¶ 29 and ¶ 30 are based upon month-specific data during 2024 for the subject routes gathered by Amtrak in the normal course of business. That route-level monthly data (*e.g.*, 2022 and 2023 passenger miles, 2024 COTP, and 2024 CN-responsible HRDs per 10,000 train miles) was gathered by Amtrak from its data maintained in the normal course of operations and the resulting calculations performed in accordance with the terms of Amtrak's proposed OA.

¹⁰ Amtrak reports some performance data to FRA on a monthly basis. But, Amtrak's reporting of the mandated metrics that FRA publishes, occurs on a quarterly basis.

37. Each of those data points set forth in this Verified Statement are true, correct and accurate as maintained in the normal course of Amtrak's operations and constitute Amtrak "underlying data" for these calculations.

II. REQUEST #12 – Amtrak Per-Mile Charge for Incremental Costs

38. The Board's Request #12 in its April 8, 2025 Decision requires the Parties to:

[S]ubmit a per-Amtrak-train-mile charge to account for incremental freight delay costs that could be applied in lieu of requiring the calculation of actual incremental freight delay costs if the Board includes incremental freight delay costs in the OA. . . . Each party should document its methodology in plain language, including all assumptions, formulas, and calculations underlying their proposed per-mile charge. Parties may include proposals for adjustments that could be applied to the per-mile charge to account for changes, such as changes in costs or volume. If Amtrak believes it does not have sufficient information to calculate a specific per-mile charge, it may limit its response to a description of its preferred methodology.

39. As explained in Amtrak's July 26, 2022 reply submissions, CN is not entitled to recover any of the "incremental costs" it is seeking, including fuel costs, crew-related costs and alleged lost "opportunity costs" associated with its locomotives and cars. (*See* Amtrak 7/26/22 Reply Br. at pp. 3-5, 54-95). Among other things, CN is not entitled to recover any of these costs for the following reasons:

a. Even as CN itself describes these costs, they are being incurred because CN is required by statute to provide Amtrak with a preference over CN's own freight trains. (*See* 49 U.S.C. § 24308(c)). CN is not entitled to compensation for complying with this statutory obligation. Further, CN has already received a valuable benefit in exchange for having to provide preference to Amtrak - - Congress has relieved it of its long-standing and expensive common carrier burden to provide passenger rail transportation.

b. These costs do not meet the definition of "incremental costs" set forth in 49

U.S.C. § 24308(a)(2)(B) because they are not incurred as a result of Amtrak “using the facilities” of CN or because CN is “providing . . . services” to Amtrak (arguably other than by providing Amtrak with its Congressionally-mandated preference over freight traffic, for which CN is not entitled to compensation). Rather, these are costs associated with *CN’s use of its own locomotives to transport its own freight*.

40. Further, the costs CN seeks to recover do not meet the requirements established by the Board in the Interim Decision, because, among other things:

- a. Amtrak is not the “but for” or proximate cause of CN incurring these costs (rather CN’s own operational decisions related to, for example, infrastructure¹¹ and scheduling,¹² are the cause); and
- b. CN’s alleged costs are not “specific, verifiable, and quantifiable,” but rather are the product of pure speculation. (*See* the Interim Decision. at pp. 18-23 (discussing requirements for CN to establish that alleged costs are recoverable from Amtrak).

41. Amtrak also notes that, at least in part, a penalty and incentive system serves to compensate Host Railroads in connection with Amtrak’s operation on its systems. Hosts, such as CN, should not be compensated yet again, under the guise of a “per-Amtrak-train-mile” charge.

42. As the Board is aware, Amtrak has previously argued, any use of a “per-mile” or

¹¹ For example, as discussed in Amtrak July 26, 2022 submissions, CN has removed infrastructure on its system reducing its capacity to accommodate its growing freight traffic. (*See* Amtrak 7/26/22 Reply Br., at 72).

¹² CN is aware of Amtrak’s schedules and where, at any given time, Amtrak’s trains are operating. CN, therefore, can schedule and dispatch its trains in a manner to avoid meets with Amtrak trains. If it fails to do so, resulting in a meet with an Amtrak train, CN cannot reasonably argue that Amtrak somehow caused the resulting delay. (*See* Amtrak 7/26/22 Reply Br., at 72-73).

other charge in lieu of requiring CN to meet the Board's previously established requirements for proving its costs are recoverable from Amtrak is contrary to the Board's Interim Decision. In her concurrence in the Board's April 8, 2025 Decision, Board Member Hedlund expressed this very concern.¹³

43. For these reasons, Amtrak requests that the Board not impose any "per-mile" or other charge in lieu of requiring CN to meet the unambiguous requirements that the Board established in its Interim Decision - - which, as Amtrak previously explained to the Board, CN cannot do.

44. Nonetheless, as requested by the Board in Request No. 12, Amtrak presents below its methodology for calculating a "per-Amtrak-train-mile charge to account for incremental freight delay costs that could be applied in lieu of requiring the calculation of actual incremental freight delay costs if the Board includes incremental freight delay costs in the OA."

45. The Board stated in Request No. 12 that "[i]f Amtrak believes it does not have sufficient information to calculate a specific per mile charge, it may limit its response to a description of its preferred methodology." Indeed, Amtrak believes that nearly all of the information needed to calculate a specific per-mile charge is exclusively within CN's possession, such as, for example, its actual fuel, crew and locomotive costs. As such, Amtrak is providing a proposed methodology and formula for calculating a per-mile charge, rather than a specific dollar-value per mile charge.

¹³ Board Member Hedlund stated: "I am concerned that today's decision at best sends mixed signals with respect to the issue of incremental costs." (4/8/25 Decision at p. 6). She continued that "this is plainly inconsistent with the Board's prior conclusion on this specific issue, and today's decision fails to address or even acknowledge the inconsistency. Absent a compelling explanation as to why the Board's prior conclusion on this point was incorrect, the imposition of any such charge would be utterly unwarranted." (*Id.*).

46. Amtrak’s proposed methodology and formula is intended to yield an annual “cost per-Amtrak-train-mile” that would be computed for each of the Amtrak routes and would remain in place for each calendar year. This “cost per mile” would be adjusted effective January 1 for each year the OA in effect. Amtrak’s proposed formula is as follows:

$$\frac{\{ \text{[REDACTED]} \times \text{[REDACTED]} \}}{\text{[REDACTED]}}$$

47. The following is a description of the variables included in this formula.

- a. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

If the Board determines that some or all of CN’s alleged costs are recoverable (and, again, Amtrak believes none of the costs are recoverable), the Board can establish a “cost per minute” for a given annual period or CN could share information required to enable Amtrak to provide such an estimated cost per minute.

- b. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- i. [REDACTED]

[REDACTED]

ii. D [REDACTED]

c. { [REDACTED]

14 { [REDACTED]

[REDACTED]
[REDACTED] }

d. { [REDACTED]
[REDACTED]
[REDACTED] }

48. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

49. The following example based upon hypothetical figures is set forth below for illustrative purposes only. This example pertains to a hypothetical cost per mile associated with { [REDACTED] }

a. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

b. { [REDACTED]
[REDACTED] }

c. { [REDACTED]
[REDACTED]
[REDACTED] }

50. { [REDACTED]

r [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

III. Amtrak's Response to Board Member Hedlund's Concurrence

51. In Board Member Hedlund's concurrence to the Board's April 8, 2025 Decision, she stated her following concern:

[R]ecent reports have suggested that in the event of passenger train cancellations due to circumstances that are legitimately characterized as the responsibility of the line owner (*i.e.*, the freight railroad), reimbursement may not be provided to passenger customers for expenses necessitated by such cancellations (*e.g.*, more expensive alternative transportation options, the provision of temporary accommodations, etc.). I query whether such expenses should appropriately be borne by the party with ultimate responsibility for such cancellations. While today's decision requires neither CN nor Amtrak to affirmatively confront this issue, it is my sincere hope that each party will (a) address whether this concern is misplaced, and (b) if it is not, submit a proposed mechanism for reimbursing Amtrak specifically for passenger-related costs necessitated by train cancellations resulting from circumstances or activities outside of Amtrak's control (*e.g.*, freight derailments, other track closures, etc.).

52. Amtrak believes that cancellations caused by circumstances within the control of Host Railroads (including CN) and reimbursement of Amtrak for steps it takes to mitigate resulting delays or inconvenience to Amtrak's passengers, is a legitimate concern. { [REDACTED] }

[REDACTED]

53. In the event an Amtrak train is cancelled (regardless of the cause), Amtrak's efforts to ameliorate the inconveniences visited upon its passengers are critically important to the quality of the overall customer experience. In response to cancellations, Amtrak has historically undertaken various measures to reaccommodate its passengers, including:

- a. Refunds and compensation (including Amtrak Guest Rewards points or

vouchers for use on a later Amtrak trip);

b. Arranging for and/or reimbursing passengers' cost of alternative means of transportation (including provision of buses or car transportation);

c. Arranging for and/or reimbursing the cost of temporary lodging for passengers; and

d. Providing meal vouchers or otherwise reimbursing passengers' meal costs.¹⁵

54. Of course, the specific steps Amtrak takes in response to a cancellation depend on the surrounding circumstances. For example, following the derailment of Amtrak's Empire Builder train on September 25, 2021 near Joplin, Montana, Amtrak provided some passengers with alternative transportation via commercial airlines.

55. Cancellations of Amtrak's trains often occur because of acts, omissions or operational decisions of Host Railroads. When that occurs, and Amtrak takes steps to accommodate impacted passengers, the responsible Host Railroad generally does *not* reimburse Amtrak's costs. In general, Amtrak's operating and other agreements with Host Railroads do not require direct reimbursement of Amtrak costs, even where the Host has caused the cancellation. And, where Amtrak has proposed that such terms be included in its Operating Agreements, Host Railroads have not agreed. For example, { [REDACTED] [REDACTED] [REDACTED] }

¹⁵ See <https://www.amtrak.com/planning-booking/policies/amtrak-customer-service-commitments.html> (enumerating steps Amtrak undertakes, depending upon the circumstances, to address and minimize inconveniences to passengers when trains are cancelled or connections are missed).

56. Board Member Hedlund is right to “query whether such expenses should appropriately be borne by the party with ultimate responsibility for such cancellations.” In Amtrak’s view, if a Host Railroad has caused a cancellation which requires Amtrak to take steps to accommodate passengers, the responsible Host Railroad should be obligated to reimburse Amtrak’s costs.

57. As a result, {

[REDACTED]

[REDACTED]


[REDACTED]

(See Amtrak 5/27/22 Submission, Redline of Proposed OA, § 5.1(F)).

58. Requiring CN to reimburse Amtrak’s costs in the event CN caused a cancellation assures that Amtrak will be able to continue to provide assistance to inconvenienced passengers. Absent such a term, CN has no accountability for delays to Amtrak’s passengers - - or for the resulting costs for reaccommodating them - - necessitated by its acts, omissions and/or operational decisions. Additionally, requiring CN to reimburse Amtrak also assures that Amtrak (and the American taxpayers) do not bear the costs of taking steps to mitigate the costs incurred by passengers due to cancellations for which Amtrak has no responsibility. Accordingly, Amtrak believes that its proposed term above is a “reasonable term” the Board should prescribe in relation to Amtrak’s use of CN’s facilities pursuant to 49 U.S.C. § 24308(a).

I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that I am qualified and authorized to execute this Verified Statement.

Dated: **July 22, 2025**
 Philadelphia, PA



James A. Blair

**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

VERIFIED STATEMENT OF YOEL WEISS
ON BEHALF OF NATIONAL RAILROAD PASSENGER CORP.

1. I am employed by the National Railroad Passenger Corporation (“Amtrak”) as Director – Host Railroads.¹ My background and qualifications have been presented to the Surface Transportation Board (“the Board”) in my Verified Statement dated May 22, 2022 (“May 2022 VS”), submitted in this matter.

2. In the Board’s Decision served on April 8, 2025, the Board posed several Requests for Information (“the Requests”) to Amtrak and Canadian National Railway Company (“CN”)² (collectively, “the Parties”). Amtrak previously responded to certain requests on May 8, 2025.

3. The Board’s April 8, 2025 Decision also required the Parties to respond to Request Nos. 2, 3 11 and 12 by July 22, 2025. Of those Requests, only Request No. 2 (concerning the status of certain “uncertified” schedules related to Amtrak trains operating on CN’s system), No. 3 (concerning the parties’ respective calculations of penalty and incentives for 2024 under their proposed Operating Agreements), and No. 12 (concerning a “per mile charge”

¹ I was promoted to this position effective January 2024. Although I now have two other Amtrak-employees in the Host Railroads group reporting directly to me, my responsibilities remain largely consistent with those detailed in my previous Verified Statement.

² Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (subsidiaries of Canadian National Railway Company and direct parties to the operating agreement with Amtrak at issue in this proceeding) are two of Amtrak’s Host Railroads. In this Verified Statement, “CN” refers collectively to IC and GTW, but not their parent company.

for certain incremental costs that CN has sought to recover from Amtrak), require a response from Amtrak.

4. I submit this Verified Statement in connection with and to provide support for Amtrak's response to Request No. 3. Additional information related to Request No. 3, as well as details supporting Amtrak's response to Request No. 12, are contained in the Verified Statement of James Blair, separately submitted herewith. It is my understanding the Parties are submitting a joint response to Request No. 2.

I. Amtrak's Proposed Threshold of 900 Minutes of HRDs per 10,000 Train-Miles is Supported by Data Across Class-I Freight Railroads

A. Background

5. In November 2020, the FRA issued a Final Rule which established "metrics and minimum standards for measuring the performance and service quality of Amtrak's intercity passenger train operations." (*See Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72972 (Nov. 16, 2020) (codified at 49 C.F.R. 273.1 et seq.) ("the Final Rule"))

6. The Final Rule established, among other things, "a minimum standard for customer OTP of 80 percent for any 2 consecutive calendar quarters" (85 Fed. Reg. at 72975, codified at 49 C.F.R. § 273.5(a)(2)), and a train delays per 10,000 train miles metric which is "the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route." (85 Fed. Reg. at 72984, codified at 49 C.F.R. 273.5(e)).

7. Amtrak's published schedules³ serve as the basis against which Amtrak (and CN's) performance is ultimately measured by both the FRA's COTP metric (*see* 49 C.F.R. at § 273.3 *Definitions*; *see also* § 273.5(a)(1)) and the Parties Operating Agreement.

8. As part of my responsibilities at Amtrak, I assist in assessing the performance of Amtrak's Host Railroads (including CN) with respect to OTP of Amtrak passenger trains on the Host's system and any delays that may have impacted the Amtrak train.

9. In my experience, which is confirmed by the data in reports Amtrak sends to the FRA, STB and its Host Railroads - - and even publishes on its website - - HRDs typically account for 65-70% of the total delays an Amtrak train encounters daily on host railroads.⁴ In fact, during 2024, passengers traveling on services hosted by Class I railroads waited *over 850,000 minutes* for freight traffic to traverse the tracks first.⁵ In short, HRDs are a primary factor in whether an Amtrak will arrive at any specific station on-time, or if it will arrive late.

10. In my May 2022 VS, I presented historical data (*i.e.* COTP and HRDs) for every Amtrak train operating on the systems of its Host Railroads (including CN) from April 2019 through March 2022. (May 2022 VS at ¶¶ 82 – 85). In total, this review captured over 8,300 data points and confirmed a clear association between 80% COTP and approximately 900 miles

³ Amtrak's published schedules reflect the results of negotiations between Amtrak and the route's Host(s), as well as input from numerous stakeholders including: the states through which the route operates and the FRA.

⁴ *See, e.g.*, "Host Railroad Report: Amtrak Train Performance on Host Railroads" dated through April 2025, page 4, available at: <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/April-2022-Amtrak-Host-Railroad-Report.pdf>

⁵ "Amtrak Host Railroad Report Card CY 2024" at p. 2, available at: <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/Amtrak-2024-Host-Railroad-Report-Card.pdf>

of HRD per 10,000 train-miles. (*Id.* at ¶ 85).

11. Because CN claimed my May 2022 analysis was “not representative” of typical train performance due to Covid-19, in my August 2022 Rebuttal VS, I presented pre-Covid data (*i.e.* COTP and HRDs) for all Amtrak trains operating on the systems of its Host Railroads (including CN) from October 2016 through March 2019. (August 2022 Rebuttal VS at ¶¶ 39 – 46).

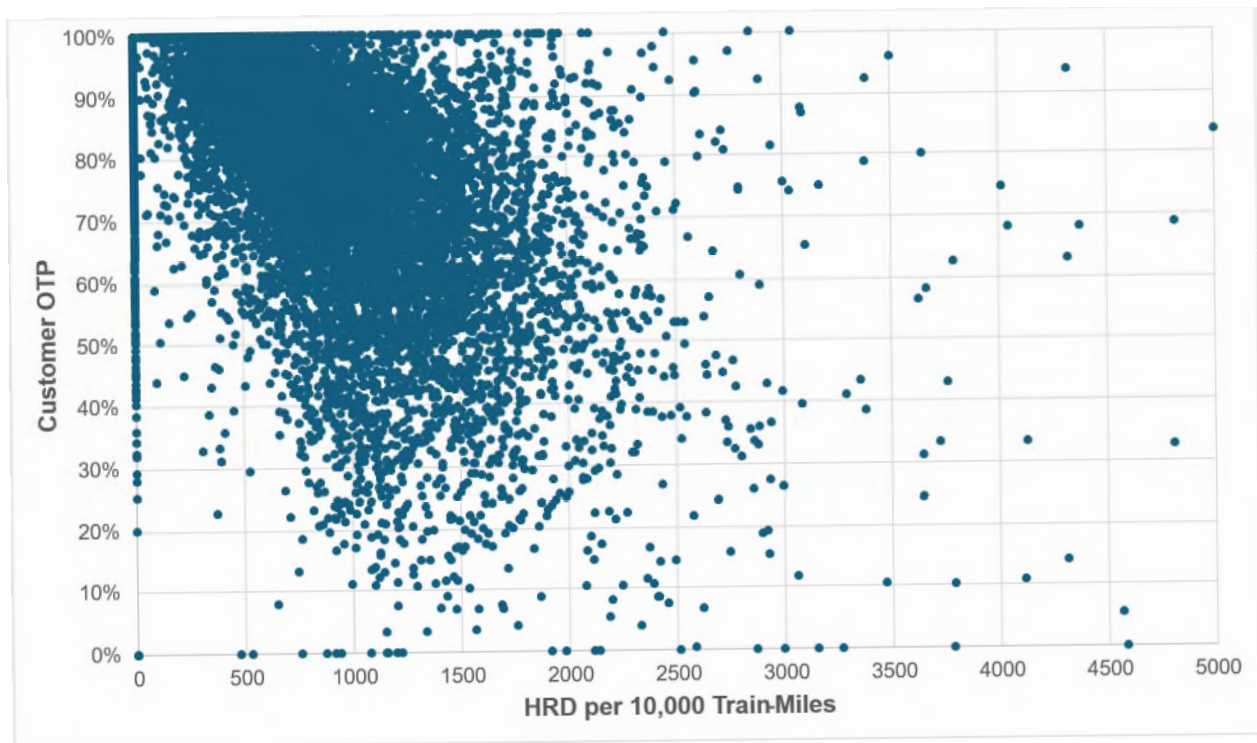
12. In total, Amtrak had analyzed over six years’ worth of data, which again confirmed the association between HRD and COTP. (*Id.* at ¶47).

B. Updated Analysis

13. Amtrak has continued reviewing historical data for every Amtrak train operating on the systems of its Host Railroads (including CN). Specifically, Amtrak analyzed monthly COTP and HRD data, on a train-by-train basis, for all trains operating from April 2022 through March 2025 - - 9,859 Amtrak trains in total.⁶

14. By analyzing historical data of HRDs impacting Amtrak’s trains on routes hosted by its Host Railroads (including CN) from April 2022 through March 2025, Amtrak has confirmed the relationship between HRDs and COTP. Below is a graph that illustrates the relationship:

⁶ Amtrak hosts a majority of the Northeast Corridor, as well as portions of the Michigan and Blue Water routes. Amtrak excluded from the analysis its HRDs for a train operating, in whole or in part, over a portion of track that it hosts. Amtrak also excluded HRDs for Long Island Railroad and Metro-North Railroad for portions of track that they host.



15. The top left corner of the graph depicts trains achieving 100% COTP and no HRDs. The data is skewed towards 100%. As HRDs decrease (the X axis), the COTP (y axis) increases.

16. Moreover, Amtrak's analysis revealed that - - for these trains - - the average performance was 75% COTP and 945 minutes of HRD per 10,000 train-miles. The median was 79% COTP and 900 minutes of HRD per 10,000 train miles. Because Amtrak analyzed *almost 10,000 data points*, it is clear there is an association between 80% COTP and approximately 900 minutes of HRD per 10,000 train-miles.

I, Yoel Weiss, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

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Dated: July 22, 2022

Yoel Weiss
Yoel Weiss