
BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. NOR 42175

COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP.
UNDER 49 U.S.C. § 24308(f) – FOR SUBSTANDARD PERFORMANCE OF SUNSET
LIMITED TRAINS 1 AND 2

**AMTRAK'S PROPOSED PROCEDURES AND FRAMEWORK FOR BOARD
INVESTIGATIVE AND REMEDIAL PHASES OF PROCEEDING
UNDER 49 U.S.C. § 24308(F)**

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

Jessica Ring Amunson
Alex Trepp
Kyle Tramonte
Jenner & Block LLP
Suite 900
1099 New York Avenue, NW
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com
atrepp@jenner.com
ktramonte@jenner.com

Counsel for National Railroad Passenger Corporation

Pursuant to Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”), Pub. L. 110-432, 122 Stat. 4848, 4925-27 (2008) (codified at 49 U.S.C. § 24308(f)), the National Railroad Passenger Corporation (“Amtrak”) today filed a Complaint and Petition to initiate an investigation by the Surface Transportation Board (the “STB” or “Board”) into the substandard customer on-time performance of Amtrak’s Sunset Limited Service, including Sunset Limited Trains 1 and 2 (together, the “Sunset Limited Trains”). Consistent with that Complaint and Petition, and in accordance with Section 213, Amtrak requests that the Board conduct an investigation and then undertake remedial proceedings to award Amtrak damages and other appropriate relief. Herein, Amtrak proposes a framework for the Board to follow in this proceeding, and offers guidance on the information that the Board should collect and review, particularly to inform the remedial phase of proceedings.

INTRODUCTORY STATEMENT

Long-distance passenger routes like the Sunset Limited continue to be plagued by substandard on-time performance that hurts Amtrak, its passengers, and the public interest. In Section 213, Congress established a mechanism for those harms to be investigated and remedied by the Board. This is the first complaint initiated by Amtrak since the Federal Railroad Administration (“FRA”) promulgated the metrics and standards for measuring on-time performance in November 2020.¹ Those measures confirm that the Sunset Limited performs well below the federal legal standard for on-time performance, and has done so for at least two consecutive quarters. Accordingly, Amtrak has filed a Complaint and Petition, and the Board must initiate an investigation to determine, first, the cause of delays and failure to achieve minimum

¹ *Metrics and Minimum Standards for Intercity Passenger Rail Service Final Rule*, 85 Fed. Reg. 72971 (Nov. 16, 2020) (“Final Rule”), codified at 49 C.F.R. § 273.

standards on the Sunset Limited and, second, whether those delays result from the host railroads' violations of Amtrak's statutory right to preference over freight transportation.²

As this investigation will be the first conducted under Section 213 since FRA enacted the Final Rule, Amtrak seeks to provide the Board with the information that the Board will need to efficiently conduct an investigation and to provide appropriate remedies pursuant to the statute. Consistent with the congressional intent to remedy deficiencies based on just two consecutive calendar quarters of substandard performance, any Section 213 investigation must be conducted expeditiously, and should make use of procedures that allow the Board to develop a thorough and appropriately scoped record. Under the statute and the Board's rules, the Board has broad flexibility to gather necessary evidence for review by Board staff and Board Members in the conduct of an investigation. *See* 49 U.S.C. § 24308(f)(1); *see also* 49 C.F.R. § 1111.8.

Amtrak has extensive information readily at hand to aid in the Board's investigation. Amtrak will provide the Board with documents and data that will enable the Board to examine all of the allegations in the Complaint and Petition, including the extent, cause, and persistence of substandard on-time performance and the related violations of Amtrak's statutory right to preference. These materials are detailed in Part III below. Amtrak stands ready to provide the relevant materials in whatever format would best serve the Board and its staff.³ Amtrak is also prepared to meet with Board staff and Board Members to address questions about Amtrak documents and data.

² 49 U.S.C. § 24308(f)(1).

³ As discussed below, Amtrak also requests that the Board immediately enter a protective order that generally tracks orders issued in other Board proceedings. While Amtrak anticipates that most of its proof will be appropriate for public viewing, entry of the protective order will ensure that Amtrak (and host railroads) promptly can provide any material appropriately designated confidential or highly confidential.

Under Section 213, the Board is also charged with obtaining information from all parties involved in its investigation. In Part IV below, Amtrak identifies information from the host railroads that would be useful for the Board to obtain, especially to guide the remedial phase of this proceeding. Amtrak anticipates that the Board’s investigation will focus primarily on Union Pacific Railroad Company (“UP”).⁴ Accordingly, the Board should investigate the steps that UP has taken to improve the customer on-time performance of Sunset Limited Trains and to meet the statutory standards.

The Board should also investigate whether and how UP’s corporate strategies and objectives drive substandard Amtrak on-time performance. For example, the Board should examine corporate plans, policies, and protocols, as well as other documents and information concerning how UP dispatchers are trained, directed, evaluated, and compensated; how UP dispatching algorithms are programmed; how UP trains and dispatching centers are staffed; how UP seeks to ensure that Amtrak’s statutory right to preference is effectuated; and how UP has reconciled its decision to implement Precision Scheduled Railroading (“PSR”) with its obligations to host intercity passenger trains operating over the UP network. These materials, and others concerning network planning and design, will assist the Board in ultimately making “recommendations to improve the service, quality, and on-time performance” of the Sunset Limited, as well as identifying what “reasonable and appropriate relief” should be ordered to address on-time performance issues and to “adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak” on the Sunset Limited. 49 U.S.C. §§ 24308(f)(2), (f)(3)(B).

⁴ As set out in the Complaint and Petition, UP hosts almost 89% of the track miles of the Sunset Limited route. UP also jointly owns and dispatches much of the remaining route, pursuant to a public agreement with BNSF and governing the track between Dawes, Texas and Avondale, Louisiana.

To ensure that the Board is able to obtain the information it needs to conduct a systematic and efficient investigation, the Board should also issue record preservation notices to UP and to any other Sunset Limited host that the Board considers relevant to the investigation. In issuing such preservation notices, the Board should direct the relevant host railroads to suspend any automated deletion policies; take affirmative steps to preserve documents within categories identified by Board staff; and designate a point of contact to coordinate preservation and production with the Board.

In all events, as set forth below, Amtrak requests that the Board lead an investigation and issue relief quickly and efficiently, consistent with Congressional intent to focus on two consecutive quarters of substandard on-time performance. The information required to conduct an investigation has been defined through the FRA's Final Rule, which established the metrics intended to help the Board to identify the causes of delay, and provided the freight railroads with a full opportunity to litigate the appropriate evidence for a Section 213 proceeding. The documents and data underlying the metrics that FRA adopted, and any supplemental information needed to evaluate why the Sunset Limited consistently fails to satisfy the on-time performance minimum standard, can be obtained through requests from Board staff for the production of documents and interviews with key personnel at both host railroads and Amtrak.

Finally, while Amtrak has limited its Complaint and Petition to the Sunset Limited, the worst-performing Amtrak route, Amtrak also respectfully encourages the Board to pursue additional investigations based on the roadmap offered below. The FRA's quarterly reporting provides a sufficient basis to initiate and conduct investigations of other non-compliant routes.

And doing so would help to address on-time performance deficiencies that afflict Amtrak passengers on routes nationwide.⁵

I. INVESTIGATIVE PROCESS

Section 213 empowers the Board to shape the structure of its investigation to address substandard on-time performance. The statute also contemplates that any investigation will proceed expeditiously, and provides the Board with broad authority and flexibility to develop a suitable investigative record. Amtrak addresses each issue in turn.

At the outset, Section 213 provides the Board with considerable discretion in shaping its investigation and awarding appropriate relief. Consistent with the structure of the statute, Amtrak recommends that the Board proceed in two distinct phases. The first phase of this proceeding should be investigative. Congress charged the Board with developing a record and rendering its determination on “whether and to what extent delays or failure to achieve minimum standards” on the Sunset Limited “are due to causes that could reasonably be addressed by” host railroads, Amtrak, or other intercity passenger rail operators. *See* 49 U.S.C. § 24308(f)(1). The Board is also charged with determining whether delays or substandard on-time performance are attributable to a host railroad’s failure to provide preference to Amtrak.⁶ *See id.* § 24308(f)(2). Addressing these issues in a single investigative phase is appropriate and efficient; the determination of whether delays or sub-substandard on-time performance are attributable to preference violations is necessarily bound up in factual findings about the cause or causes of delay.

The second phase of the proceeding should be remedial. Under Section 213, the Board must “identify reasonable measures and make recommendations to improve the service, quality,

⁵ Amtrak is continuing to monitor the performance of each route and may file additional complaints seeking Board investigations and other relief if service does not improve.

⁶ In undertaking this phase of its investigation, the Board may review the accuracy of train performance data and consider the extent to which scheduling and congestion contribute to delays. 49 U.S.C. § 24308(f)(1).

and on-time performance of the train.” 49 U.S.C. § 24308(f)(1) (authorizing Board to offer recommendations “[i]n making its determination or carrying out [its] investigation” (emphasis added)). Should the Board determine that delays or substandard on-time performance are attributable to preference violations, it must also determine whether to award damages and other reasonable and appropriate relief. *Id.* § 24308(f)(2)-(3). As part of this remedial work, the statute permits the Board to receive additional record evidence, including on mandatory considerations like Amtrak’s financial loss and measures that will adequately deter actions reasonably expected to cause further delays on the route, as well as other issues that bear on the magnitude, scope, and terms of monetary or equitable relief. *See id.* Addressing these issues in a discrete remedial phase is also efficient and appropriate because each turns on factual determinations that will be made in the investigative phase. In addition, the further factual development needed to inform remedial orders will necessarily overlap with the process of identifying reasonable measures and recommendations to improve on-time performance.

Proceeding in two phases—an investigative phase followed by a remedial phase—will enable the Board to focus first on what is driving delay and, second, on evaluating remedies. This approach should promote clarity, allowing the Board to determine precisely what causes substandard on time-performance and then to rely on those factual findings to inform a remedy. This approach will also promote efficiency, allowing host railroads to concentrate first on timely providing the Board with evidence necessary to determine the cause or causes of delay and substandard on-time performance. The Board may then consider any additional relevant evidence regarding remedial issues.

This framework is an efficient way of effectuating Congress’s intent. Congress enacted Section 213 to address systemic issues that subject Amtrak and its passengers to persistent and unacceptable delays. Under the statute, Amtrak is permitted to initiate a Board-led investigation

if “the on-time performance of any intercity passenger train averages less than 80 percent for **any two consecutive calendar quarters.**” *See* 49 U.S.C. § 24308(f)(2) (emphasis added). A process intended meaningfully to improve passenger experience on the route, and triggered by performance over just two consecutive calendar quarters, must reach resolution quickly to serve statutory goals.

In light of these timing concerns, the Board should proceed on an expedited basis to develop a thorough but manageable record. The Board should begin that process immediately, relying on the broad fact-finding authority conferred by statute,⁷ and separately provided for in the Board’s own regulations,⁸ to: (i) authorize Board staff to conduct preliminary fact-finding; (ii) direct the authorized staff members to request documents from Amtrak; (iii) direct the preservation of relevant host railroad records; (iv) direct the authorized staff members to request documents from host railroads; and (v) enter an appropriate protective order to facilitate prompt production.

Consistent with the congressional intent to provide an expedited path to remedying deficient on-time performance, Amtrak recommends that the Board aim to obtain all documents within sixty days of commencing its investigation,⁹ and authorize Board staff to interview witnesses on a rolling basis.¹⁰ Rather than confining its investigative work to reviewing documents and interviewing witnesses, the Board should also authorize staff to meet on an *ex parte* basis with Amtrak and each host railroad for the purpose of obtaining additional information that may be relevant to the investigation. This might include, for example, the opportunity for Board staff to visit segments of the track particularly affected by freight train interference; ride with

⁷ *See* 49 U.S.C. § 24308(f)(1).

⁸ *See* 39 C.F.R. § 1111.8.

⁹ In Part III below, Amtrak identifies documents the Board should request from host railroads.

¹⁰ In Part IV below, Amtrak identifies potential personnel for the Board to interview as part of its investigation.

conductors who can demonstrate the use of conductor delay reporting; meet with dispatchers along the route; or otherwise take a hands-on approach to enhancing the Board’s familiarity with key data, systems, and operations. Amtrak is prepared to grant the Board access to Amtrak’s facilities and to provide demonstrations of relevant systems and technology.

II. PROTECTIVE AND PRESERVATION ORDERS

The Board should aim to maximize transparency in its investigation. Most documents concerning the substandard performance of the Sunset Limited, such as the data that underlies public reporting on key performance metrics, or documents reflecting information that can be discerned from public rights of way, should not require confidential treatment. Moreover, most information obtained in interviews—such as information concerning areas where freight train interference (“FTI”) is substantial and recurring,¹¹ how network design affects customer on-time performance, or what steps host railroads take to comply with their statutory obligation to provide Amtrak trains with preference, should not require confidential treatment.

However, Amtrak appreciates that documents and information furnished in response to Board requests sometimes may contain legitimately confidential or proprietary information. To ensure that information is provided promptly, the Board should immediately enter a protective order that generally tracks orders issued in other Board proceedings, while recognizing that Amtrak and host railroads may need to seek modifications of the protective order to ensure that in-house personnel can access highly confidential documents where necessary and appropriate.¹²

¹¹ Freight train interference is a form of host-responsible delay that occurs when an Amtrak train is stopped or slowed down due to meeting, being forced to follow, or otherwise being held for a freight train. As discussed in Amtrak’s accompanying Complaint and Petition, this problem is at the root of the on-time performance deficiencies on the Sunset Limited route.

¹² Cf. Decision, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308*, Docket No. FD 36496 (June 10, 2022) (permitting certain in-house Amtrak personnel to access certain highly confidential materials in proceeding under Section 24308(e)).

In addition to taking steps designed to facilitate the prompt production of documents in response to staff requests, the Board should take immediate steps to ensure (i) that documents needed to complete its investigation are retained during the pendency of the investigation, and (ii) that those documents are also retained during the term of any Board order that involves oversight of the route. More specifically, in its decision opening this investigation,¹³ the Board should require that host railroads for the Sunset Limited suspend any automated processes that would delete relevant documents during the ordinary course of business.¹⁴

Any preservation requirements for host railroads on the Sunset Limited should also require affirmative steps to preserve electronic, paper, and other types of documents that relate to or concern the subject matter of the Board's investigation, such as documents related to the on-time performance of Sunset Limited Trains, freight train interference along the Sunset Limited route, compliance with the Section 24308(c) preference obligation, and other issues. To effectuate the preservation notice, the Board should consider requiring the designation of a responsible point of contact at each host railroad for purposes of overseeing the preservation obligation.¹⁵

III. REVIEW OF AMTRAK DOCUMENTS

For its part, Amtrak is prepared to produce all non-confidential documents and data that underlie its Complaint as soon as the investigation is opened and the Board conveys its desired method of production. Amtrak is also prepared to produce confidential material, if any, upon entry of a protective order.

¹³ See 49 C.F.R. § 1111.8.

¹⁴ Board regulations already require the retention of certain documents that may be relevant to a PRIIA Section 213 investigation. See 49 C.F.R. § 1220.1-6. For example, railroad companies already must retain dispatchers' sheets, registers, and other records pertaining to movement of transportation equipment for three years. *Id.* § 1220.6.

¹⁵ Any preservation notice should of course issue to all parties, though Amtrak has already implemented steps to preserve pertinent documents.

The information that Amtrak will provide includes comprehensive data on the Sunset Limited, which will supplement the extensive analysis already contained in Amtrak's Complaint and Petition. In fact, at the very outset of this investigation, Amtrak intends to provide the Board with the data needed to calculate each of the on-time performance and train delay metrics adopted by the FRA and codified in 49 C.F.R. § 273.5.¹⁶ Amtrak will also provide data needed to evaluate other key issues,¹⁷ including for Sunset Limited 1 and Sunset Limited 2:

- The average delay minutes incurred on each host's portion of the route;
- The amount of FTI incurred on each host's portion of the route;
- The share of delay attributable to FTI on each host's portion of the route;
- The locations where FTI occurs on each host's portion of the route;
- The coded basis for each delay experienced on each host's portion of the route; and
- Conductor narratives for each delay experienced on each host's portion of the route.

Once the Board initiates its investigation, Amtrak also intends to furnish additional documentary evidence to aid the Board in evaluating the causes of delay, the role of preference violations in causing delays, and other issues pertinent to the Board's determination. Those documents will help to contextualize the on-time performance and train delay metrics and data. The documents will include, among other things, schedule skeletons, delay data recording policies, service manuals, and customer complaints about the Sunset Limited service.

In addition to providing the data and documents referenced above, Amtrak intends to make personnel available to meet with Board Members and staff to answer questions that might arise during the investigation. Amtrak will likewise make personnel available to discuss precisely how

¹⁶ Amtrak intends to provide this data in a format that enables Board staff to compute each item for the Sunset Limited 1, for the Sunset Limited 2, and for the Sunset Limited Trains together. Amtrak will also provide the data in a format that enables Board staff to assess data on a quarterly or aggregated basis.

¹⁷ Amtrak does not believe that much, if any, of this information requires confidential treatment. However, Amtrak is prepared provisionally to designate certain non-public material as highly confidential, for the sole purpose of allowing host railroads to evaluate the material and explain whether and why it requires such treatment. Amtrak reserves the right to challenge any assertion that the information it maintains must be shielded from other host railroads and from public view.

performance-related data is collected, how data is maintained, how it is shared with host railroads, and how computations in the Complaint were performed. Finally, Amtrak is prepared to provide the Board with access to Amtrak facilities, with demonstrations of pertinent systems and technology, and with access to Sunset Limited Trains, to enhance the Board's familiarity with key data, systems, and operations. Put simply, Amtrak intends to provide the Board with all of the information in Amtrak's possession that would aid in an efficient and expeditious investigation, and will strive to maintain public access to that material whenever possible.

IV. REQUEST FOR AND REVIEW OF HOST RAILROAD DOCUMENTS AND INFORMATION

During its investigation, the Board should also seek documents and interview witnesses from host railroads. Although Amtrak anticipates that the Board should focus its investigation primarily on UP, for reasons set out in Amtrak's Complaint and Petition, collecting information from other host railroads will provide insight into operational issues along the route. That information will assist the Board in evaluating how to remedy the cause or causes of extreme delay experienced by Amtrak and its passengers.

Amtrak does not have visibility into the full range of documents or information that each host railroad maintains in the ordinary course of business. Moreover, analysis into the cause of delay required under Section 213 should be driven by the on-time performance and train delay metrics promulgated by FRA in the Final Rule. Still, to facilitate a determination about the role of preference violations in those delays and appropriate remedies, Amtrak recommends that the Board obtain corporate policies, plans, protocols, and objectives that affect the on-time performance of Sunset Limited Trains, as well as compliance with the statutory obligation to provide Amtrak with preference. Based upon Amtrak's knowledge and experience, the following documents are likely to aid in the Board's investigation:

- Documents sufficient to show all management personnel involved in preparing, reviewing, or approving corporate policies, guidance documents, protocols, or training materials that (i) are provided or applicable to dispatchers, and (ii) affect or relate to the dispatching of trains;
- For the time period March 31, 2020-present, corporate policies, guidance documents, protocols, operating rules, or other materials that (i) are provided or applicable to dispatchers, and (ii) affect or relate to the dispatching of trains;
- For the time period March 31, 2020-present, any training documents that affect or relate to the dispatching of trains, were provided to dispatchers, or were used in connection with training dispatchers;
- Documents sufficient to show all management personnel involved in preparing, reviewing, or approving any dispatching algorithms used to dispatch trains along the Sunset Limited route;
- Documents sufficient to show what considerations were evaluated and are reflected in programming for any dispatching algorithm used to dispatch trains along the Sunset Limited route;
- Documents concerning whether or under what circumstances a dispatcher may override algorithmic dispatching decisions;
- Documents sufficient to show all management personnel involved in evaluating the performance of dispatchers; in making compensation decisions for dispatchers; or in preparing, reviewing, or approving corporate policies, guidance documents, or other materials related to the evaluation and compensation of dispatchers;
- Documents sufficient to show how dispatchers, and personnel who oversee dispatchers or dispatching centers, are evaluated and compensated (including with respect to any incentive payments or bonuses);
- Documents sufficient to show whether dispatchers are management employees, and documents related to the decision to make dispatchers management employees;
- Documents sufficient to show all management personnel involved in preparing, reviewing, or approving any corporate policies, protocols, guidance documents, or other materials related to implementation of the preference obligation under 49 U.S.C. § 24308(c);
- For the time period March 31, 2020-present, all corporate policies, protocols, guidance documents, or other materials related to implementation of the preference obligation under 49 U.S.C. § 24308(c);
- Documents sufficient to show any procedures or systems used to implement preference obligations, as well as the management personnel involved in preparing, reviewing, or approving the same;

- All schedules for freight operations along the Sunset Limited route;
- For the time period October 1, 2021-present, documents sufficient to associate locomotive numbers associated with each train operating on a fixed schedule dating back to October 1, 2021;
- For the time period October 1, 2021-present, documents concerning the relative priority to be given to Amtrak trains and the freight trains they meet or overtake;
- For the time period October 1, 2021-present, documents that include any data gathered about Amtrak performance, any reporting on Amtrak performance, and any communications about that performance dating back to October 1, 2021;
- All corporate plans, policies, or similar strategic documents related to how the adoption and implementation of PSR has affected Amtrak performance and/or affected the host railroad's ability to satisfy the customer on-time performance minimum standard adopted in 49 C.F.R. § 273.5, or the host railroad's preference obligation set out in 49 U.S.C. § 24308(c);
- All corporate plans, policies, or similar strategic documents related to network planning and design, including but not limited to documents concerning whether and how network planning and design have affected, are affecting, or will affect the ability to satisfy the customer on-time performance minimum standard adopted in 49 C.F.R. § 273.5, or the preference obligation set out in 49 U.S.C. § 24308(c); and
- Documents sufficient to show freight volumes along the Sunset Limited route for each of the last five years, broken down along any categories maintained in the ordinary course of business.

In addition to requesting documents, the Board should consider asking that staff seek interviews with key personnel at the host railroads, including company Board Members, executives, chief compliance officers, and other senior managers ultimately responsible for:

- Ensuring that host railroads deliver satisfactory on-time performance;
- Ensuring that host railroads comply with the statutory preference obligation; and
- Driving implementation of enterprise-wide strategy, policy, and plans affecting Amtrak performance.

Interviews with leadership and senior management will be particularly important for two reasons. First, the severity and persistence of delays to the Sunset Limited suggest that substandard on-time performance is driven by systemic issues, rather than by isolated or individual dispatching

decisions. Understanding the priorities of leadership and senior management—including what leadership and senior management have done, failed to do, or neglected to do to address substandard on-time performance and meet their statutory obligations to Amtrak—will be essential to remedying the cause or causes of delay. Second, and likewise, the severity and persistence of delays to the Sunset Limited suggest that enterprise-wide solutions will be necessary to address the unacceptable performance of Sunset Limited Trains. Without input from leadership and senior management, Amtrak anticipates that it will be challenging to fashion relief and to ensure that host railroads are accountable for implementing and sustaining compliance with any remedial recommendations or orders.

Finally, Board staff should seek interviews with representatives from host railroad departments and offices on the following topics:

Department	Topics
Dispatching and Operations	Dispatching policies, procedures, and protocols; Dispatcher training; Dispatcher evaluations and compensation; Dispatching records; Dispatching priorities; Policies, procedures, protocols, and training regarding compliance with Amtrak preference obligations; Reporting to leadership and senior management
Human Resources	The training, evaluation, and compensation of Dispatchers, personnel who supervised dispatchers, and personnel responsible for the development, implementation, monitoring, and modification of computer assisted dispatching.
Accounting	Existence and implementation of any incentive programs for dispatchers, personnel who supervise dispatchers, and personnel responsive for the development, implementation, monitoring, and modification of computer assisted dispatching.

Network Operations and Planning	Schedules for freight trains operating on fixed schedule; methodology or associating locomotive numbers with train numbers; steps considered, taken, or rejected to mitigate FTI
Passenger Desk (NPRC Officer)	Information regarding Amtrak performance

CONCLUSION

For the above-stated reasons, Amtrak respectfully requests that the Board promptly initiate its investigation of substandard on-time performance on the Sunset Limited. Amtrak further requests that the Board commence the investigatory phase of proceedings by (i) authorizing Board staff to conduct preliminary fact-finding; (ii) directing the authorized staff members to request documents from Amtrak; (iii) directing the preservation of relevant host railroad records; (iv) directing the authorized staff members to request documents from host railroads; and (v) interviewing witnesses, making site visits, and gathering and evaluating any other relevant data; and entering an appropriate protective order to facilitate prompt production.

December 8, 2022

Respectfully submitted:

/s/ Jessica Ring Amunson

Eleanor D. Acheson
 Chief Legal Officer, General Counsel
 & Corporate Secretary
 National Railroad Passenger Corporation
 1 Massachusetts Avenue, NW
 Washington, DC 20001
 (202) 906-3971

Jessica Ring Amunson
 Alex Trepp
 Kyle Tramonte
 Jenner & Block LLP
 1099 New York Ave., NW
 Suite 900
 Washington, DC 20001
 (202) 639-6000
 jamunson@jenner.com
 atrepp@jenner.com
 ktramonte@jenner.com

Counsel for National Railroad Passenger Corporation

CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that courtesy copies of this document are simultaneously being provided by email and express overnight delivery to all host railroads for the Sunset Limited, by way of the below-listed individuals.

<p>Katherine Novak NRPC Operations Officer (acting) Union Pacific Railroad Company 850 Jones Street Omaha, NE 68102</p> <p>Craig Richardson Chief Legal Officer Union Pacific Railroad 1400 Douglas Street, Stop 1580 Omaha, NE 68179</p>	<p>Tamara Noel NRPC Operations Officer BNSF Railway Company 2600 Lou Menk Drive; NOC/Amtrak P.O. Box 961034 Fort Worth, TX 76161 FedEx 76131</p> <p>Roger Nober EVP, Law and Corporate Affairs, Chief Legal Officer BNSF Railway Company 2650 Lou Menk Drive Fort Worth, TX 76131</p>
<p>Darren Kettle Chief Operating Officer Southern California Regional Rail Authority 2558 Supply Street Pomona, CA, 91767</p> <p>Don Del Rio General Counsel Metrolink; Southern California Regional Rail Authority 900 Wilshire Blvd. Ste, 1500 Los Angeles, CA 90017</p>	<p>Scott Kuxmann NRPC Operations Officer CN North America 17641 South Ashland Ave. Homewood, Illinois 60430-1345</p> <p>Olivier Chouc Senior Vice-President and Chief Legal Officer Canadian National Railway Company Law Dept. & Office of the Secretary, 16th Flr. 935 rue De La Gauchetière o. Montréal, Québec H3B 2M9</p> <p>M. Cristina Circelli Canadian National Railway Company Deputy Corporate Secretary and General Counsel Law Dept. & Office of the Secretary, 16th Flr. 935 rue De La Gauchetière o. Montréal, Québec H3B 2M9</p>

/s/ Jessica Ring Amunson

December 8, 2022

Jessica Ring Amunson