



240076

February 8, 2016

ENTERED  
Office of Proceedings  
February 8, 2016  
Part of  
Public Record

RE: On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008: A Proposed Rule by the Surface Transportation Board on 12/28/2015

We write on behalf of 12,000 members of the North Star Chapter of the Sierra Club in Minnesota, and many thousands more supporters. Many of our members and supporters are concentrated at stops along the Empire Builder and Northstar Commuter Rail routes, especially the Twin Cities, that have been most impacted by the poor On-Time Performance (OTP) of recent years.

We thank the Surface Transportation Board (STB) for this opportunity to comment on these OTP issues due — superficially at least — to the booms in oil production, ethanol and frack sand mining along the Empire Builder’s route. We say ‘superficially’ because the real cause is a failure of administrative and statutory process. Procedures established in PRIIA 2008 and prior law and regulations either have not been invoked or not been enforced sufficiently to result in deterrence or compliance by BNSF or CP Rail dispatchers and management.

Although we are encouraged by the December 2015 achievement of 80.6% OTP by the Empire Builder, we remain very concerned at the 57.2% figure for 2015 as a whole. We have also been concerned about less common but still serious incidents of poor OTP by Northstar Commuter Rail between Minneapolis and Big Lake. From our environmental point of view, it is particularly serious and ironic that poor OTP derives so strongly from the transport and production of fossil fuels that are the root cause of climate change, and that OTP problems disincentives citizens from choosing passenger rail, instead of driving or flying, as a climate-friendly travel option.

Recent reversal of decades-long underinvestment by BNSF and CP Rail, we hope, have now removed physical bottlenecks heretofore used as excuses not to execute OTP remedies and penalties provided in law, but should not be seen as “self-corrections” that make enforcement changes unnecessary. Investigations and penalties, including access to dispatching and other information, should be mandatory, routine, real-time and automatic, not discretionary or delayable.

We are concerned not just with dispatching and traffic but also maintenance of way, for example rail bridges and viaducts too low and/or short to be obvious to the public or government inspectors. BNSF and CP Rail maintenance data should be available real-time to regulators, inspectors, Amtrak and commuter rail operators on the Empire Builder and Northstar route. Investigations based on slow orders due to track conditions should be as routine and automatic, and result in the equal deterrence and compliance, as improved investigations and penalties we urge be automatically triggered by dispatching and capacity issues. State and federal monitoring and staffing should be sufficient to enable this.

Recent experience with oil train explosions has exposed gaps in jurisdiction and accountability at individual, local and state levels due to the interstate and common carrier status of Class 1 freight railroad operations, and we believe this could be germane to passenger rail OTP. If passengers, localities and states have such poor access to regulation and remedy regarding safety, they obviously have the same poor access to regulation and remedy regarding OTP of passenger rail. Passenger rail OTP is of substantial import to individuals, stops and destinations all along passenger rail routes for many reasons. We believe standing of individual passengers, localities and states should be created or enhanced to enable these stakeholders to pursue OTP remedies directly from host freight railroads; should federal or any other level of remedy not be performing, these other levels of remedy must. Individual passengers, for example, should receive compensation for lost accommodations, connections and travel not from Amtrak or commuter rail operators but from freight operators directly, routinely and automatically. This would mitigate individual damages currently almost universally ignored because, among other reasons, of Amtrak's chronic poor funding and "orphan" status in the federal budget.

In short, all stakeholders of efficient, productive passenger rail deserve much better OTP, and the tools to obtain it, than has been the case to date.

Sincerely,



Mathews Hollinshead  
Conservation Chair  
Sierra Club North Star Chapter