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**ENTERED**  
**Office of Proceedings**  
**October 11, 2016**  
**Part of**  
**Public Record**

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October 11, 2016

**VIA ELECTRONIC FILING**

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

Re: ***Genesee & Wyoming Inc. -- Acquisition of Control Exemption – Providence  
and Worcester Railroad Company***  
**Docket No. FD 36064**

Dear Ms. Brown:

The Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation (“MassDOT”) hereby offers its comments in response to the petition for exemption (the “Petition”) in the above-referenced docket, whereby regional and short line railroad holding company Genesee & Wyoming, Inc. (“GWI”) is requesting authority to acquire control of Providence and Worcester Railroad Company (“P&W”).<sup>1</sup> MassDOT takes no position concerning the competition analysis contained in the Petition. However, MassDOT is interested in, and will closely monitor, P&W track maintenance under a GWI regime, particularly in light of a commitment on maintenance contained in the Petition. Also, MassDOT believes that that GWI must redouble its efforts to ensure that its pursuit of P&W – including its efforts in this proceeding – does not tap GWI resources necessary to remedy passenger train service deterioration over a nearby line owned and maintained by a railroad in the GWI corporate family. For that reason, MassDOT is seeking GWI’s assurance that the anticipated post-approval integration of P&W within GWI’s Northeast Region will not compromise or delay steps that GWI will need to take going forward to restore Amtrak service on another GWI railroad to previously agreed-upon performance levels.<sup>2</sup>

Independent P&W has excelled at maintaining its physical plant, and is expert in securing funding – through both public and private sources – to finance maintenance and capital

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<sup>1</sup> Although not stated in the caption and title page of GWI’s filing of September 1, 2016, MassDOT understands that GWI is urging the Board to act expeditiously to grant the Petition.

<sup>2</sup> The National Railroad Passenger Corporation (“Amtrak”).

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improvements that have enabled P&W to become, in MassDOT's view, a particularly effective transportation service competitor. Thus, for example, while MassDOT understands that P&W's base annual budget for track maintenance and other routine capital expenditures has averaged around \$2.5-\$3 million in recent years, P&W often has doubled or trebled that spending figure through its aggressive and adept pursuit of federal, state and private funding. While GWI management may prove to be equally adept at securing funds to augment P&W's annual capital budget, MassDOT will be observing closely to see if indeed the "scope or nature" of P&W's post-transaction maintenance spending will prove to be as robust as P&W's pre-control spending historically has been, particularly in light of GWI's statement that it contemplates "no material changes" in G&W's post-transaction maintenance. Petition at 4.

As may bear generally on the issue of physical plant maintenance, the Commonwealth supports Amtrak's regional, Washington-St. Albans "Vermont" service as well as other Amtrak train service in Massachusetts. The Vermont is of such interest to the Commonwealth that MassDOT acquired a portion of the Vermont's route – between Springfield, Massachusetts, and East Northfield, Massachusetts, comprising part of central Massachusetts' "Knowledge Corridor – to reduced route circuitry, improve overall transit times, and to facilitate additional passenger trains in the future.<sup>3</sup> Amtrak's Vermonters operate over a railroad line in Vermont owned, dispatched, and maintained by GWI subsidiary New England Central Railroad, Inc. ("NECR"). As such, the overall performance of the Vermont depends upon NECR, one of its hosts, to maintain the Vermont's schedule requirements.

In that regard, MassDOT is aware of a "Project Benefits/Service Outcomes Agreement" dated August 27, 2010 (the "SOA" – attached hereto as Exhibit A), among Amtrak, the State of Vermont, and NECR, entered into as an outgrowth of a railroad project in Vermont aided by federal funds supplied under the American Recovery and Reinvestment Act of 2009, and the Passenger Rail Investment and Improvement Act of 2008. Among other things, NECR has committed under the terms of the SOA to adhere to certain on-time performance standards in hosting Vermont service. Unfortunately, since October of 2015, the Vermont's on-time performance has been undercut by operating delays while those trains operate on NECR's line, such that the Vermont's performance for several months in a row has been below the requirements of the SOA, as is reflected in the charts appended hereto as Exhibit B.

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<sup>3</sup> See Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of Pan Am Southern LLC, Docket No. FD 35863 (STB served Dec. 24, 2014).

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As a stakeholder in Vermonter service, MassDOT has engaged GWI and NECR management to discuss Vermonter service delays, including the preponderance of NECR-imposed slow orders to which most of the Vermonter delays while on NECR's lines appear to be attributed. MassDOT is concerned that remedial action to improve the Vermonter performance not be compromised by GWI's focus on its acquisition of P&W. MassDOT believes that GWI would have no reason unnecessarily to delay remedial action regarding the Vermonter, and MassDOT is optimistic that future discussions with GWI and NECR will lead to an appropriate action plan to bring the Vermonter back into compliance with the terms of the SOA. But MassDOT is also mindful of the demands that will likely be imposed upon GWI as it seeks to integrate P&W into its corporate family, and MassDOT therefore expects that, through such an anticipated P&W implementation phase, GWI will make a particular effort not to neglect Vermonter service issues.

MassDOT has secured NECR's commitment to meet collectively with Amtrak within one month to develop a mutually agreeable plan within three months to address and remedy the aforementioned slow orders. MassDOT believes that the Board should share MassDOT's concerns over the deterioration of the Vermonter's performance over NECR's lines, and believes that the Board would not want GWI management's focus upon the anticipated P&W transaction at the expense of nearby intercity passenger train service on another railroad in the GWI corporate family. MassDOT looks to GWI to commit itself to resolving the Amtrak service issues within its Northeast Region, and to provide assurances that it can and will address Vermonter performance and P&W integration contemporaneously without undue delay.

For the reasons set forth herein, MassDOT expects that GWI will abide by its commitment that P&W's lines will continue to be maintained under the same high standards to which current P&W management had come to expect of the railroad, and MassDOT looks to GWI, as MassDOT expects that the Board will do also, to give due attention to addressing and resolving service declines on Amtrak's Vermonter notwithstanding GWI management's attention to the anticipated P&W acquisition and planned implementation.

Respectfully submitted,



Robert A. Wimbish  
Counsel for Massachusetts Department of Transportation

RAW/ekf

**CERTIFICATE OF SERVICE**

I certify that I have this day served copies of this document upon all parties of record in this proceeding, by U.S. Mail, postage prepaid, or via more expeditious means of delivery.



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Robert A. Wimbish  
Counsel for Massachusetts  
Department of Transportation

October 11, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. FD 36064**

**GENESEE & WYOMING INC.  
-- ACQUISITION OF CONTROL EXEMPTION --  
PROVIDENCE AND WORCESTER RAILROAD COMPANY**

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**EXHIBIT A**

**SOA**

**Project Benefits/Service Outcomes Agreement**  
**By and Among**  
**National Railroad Passenger Corporation,**  
**State of Vermont,**  
**And**  
**New England Central Railroad, Inc.**

**THIS AGREEMENT** is made as of the 27 day of August, 2010, the effective date, by and among the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (recodified at 49 U.S.C. § 24101 et seq.) and the laws of the District of Columbia and having its principal office and place of business in Washington, DC (hereinafter referred to as "Amtrak"), the State of Vermont, acting by and through its Agency of Transportation (hereinafter referred to as the "State") and New England Central Railroad, Inc., a Delaware corporation with offices in St. Albans Vermont (the "Host"), referred to collectively as the "Parties."

**WHEREAS**, the Federal Railroad Administration ("FRA") has notified the State of the proposed award of a grant for the Project defined below ("Project"), to be funded through the American Recovery and Reinvestment Act of 2009 ("ARRA") and the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"); and

**WHEREAS**, the Project will be implemented on right-of-way owned and/or controlled by the Host; and

**WHEREAS**, the primary purpose of the Project will be to benefit intercity passenger rail ("IPR") service; and

**WHEREAS**, the Parties have reached agreement concerning the benefits that will be realized upon completion of the Project ("Service Outcomes"), as well as a methodology for measuring the Service Outcomes; and

**WHEREAS**, Amtrak operates state funded IPR service (the "Service") along the right-of-way owned and controlled by the Host pursuant to an agreement between Amtrak and the State, "*National Railroad Passenger Corporation and The State of Vermont Agreement for the Provision of Rail Passenger Service From October 1, 2009 through September 30, 2010, dated October 1, 2009*", as amended or superseded ("Amtrak-State Agreement") on which the Project will be implemented; and

**WHEREAS**, Amtrak and the Host are Parties to an agreement "*Agreement Between New England Central Railroad and National Railroad Passenger Corporation, dated April 2, 1995*", as amended or superseded ("Amtrak-Host Agreement"); and

**WHEREAS**, the State and the Host are Parties to an agreement "*Standard Rail Agreement dated August 24, 2010*" ("State-Host Agreement") providing for the implementation of the Project on the Host's right-of-way, which sets forth terms and conditions that apply to the Project; and

**WHEREAS**, the Parties are all authorized by applicable law to enter into this Agreement on the terms and conditions hereinafter set forth.

**NOW THEREFORE**, in consideration of the premises and mutual covenants contained in this Agreement, the Parties agree as follows:

Operation of the Service shall be governed by the above-mentioned Agreements except as specifically provided below:

1. Project Defined. This Project is to be completed as detailed in the Standard Rail Agreement dated August 26, 2010 as may be amended and as listed in the following Exhibit 1.
2. Service Outcomes Resulting from the Project. The Service Outcomes to be realized upon completion of the Project are described in Exhibit 2.
3. Compliance with ARRA Requirements. Each of the Parties shall comply with grant requirements applicable to the Project which are mandated by ARRA, including the requirement that authorized representatives of the FRA, U.S. Department of Transportation and the Comptroller General shall, until three years after completion of the Project, have access to and the right to examine, audit and copy any Project information controlled by the State, Amtrak, the Host, and their respective contractors.
4. Modification of Amtrak-Host Agreement. Upon completion of the Project or portions of the Project ("Phases"), as listed in Exhibit 2, Amtrak and the Host shall amend the Amtrak-Host Agreement (or subsequent Amtrak-Host Agreement, should the April 2, 1995 agreement be renegotiated) as follows:
  - a) Modification of Appendix I of the Amtrak-Host Agreement to reflect the new Maximum Passenger Train Speeds permitted by the Project described in Exhibit 2, Table 2A of this Agreement.
  - b) Appendix V, Table 1 shall be modified such that the Scheduled Time from Origin equals the Phase 2 Scheduled Amtrak Train Trip Time.
  - c) Modification of Appendix IV, Section III, Item 1 of the Amtrak-Host Agreement to reflect incremental track maintenance payments as listed therein and adjusted according to that agreement.
5. (Reserved)
6. Discontinuance or Reduction of Service, Resumption of Service. If the Service is discontinued or reduced, the following shall apply:
  - a) Any Federal penalties or return of funds to the Federal Government shall be paid according to the Standard Rail Agreement dated August 24, 2010, and
  - b) Host shall, for no less than one year following such discontinuance or reduction of Service, maintain the Project in an operable condition that will allow resumption of service at the same level of utility as when the Service was discontinued.
7. (Reserved)
8. (Reserved)

9. Dispute Resolution. Any dispute, claim, or controversy between or among the Parties hereto relating to the interpretation, application, or implementation of this Agreement shall be resolved in the following manner:
- a) Disputes between Amtrak and the Host shall be resolved pursuant to the NRPC Arbitration Agreement dated April 16, 1971 and the Arbitration Rules of the National Arbitration Panel as revised April 8, 1975.
  - b) Disputes between the State and the Host shall be resolved pursuant to the dispute resolution procedures applicable under the State-Host Agreement.
  - c) Disputes between Amtrak and the State shall be resolved pursuant to the dispute resolution procedures in Section 12 of the Amtrak-State Agreement, which section is incorporated herein by reference.
  - d) With respect to disputes involving whether the Host delivered or failed to deliver the Service Outcomes described in Exhibit 2, Amtrak and the State shall have the right to specific performance of the agreed-upon Service Outcomes.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont, except to the extent the rights of FRA are affected, in which case Federal law shall apply if inconsistent with the laws of the State of Vermont.
11. Modification. This Agreement constitutes the entire agreement among the Parties and supersedes any and all prior representations, understandings or agreements among the Parties, whether oral or written, concerning the Project. This Agreement or any part hereof may not be changed, amended or modified, except by written agreement of the Parties, as signed by duly authorized representatives of all Parties. This Agreement shall not be materially amended without FRA's prior written consent.
12. Term. This Agreement shall remain in effect for a period of twenty (20) years beginning from the date of the Project's placement in service. The State may terminate this Agreement prior to twenty years, in which case the State shall notify FRA and provide FRA with a plan (subject to FRA approval) on how passenger service will continue or the schedule for the service to be discontinued, in which latter event, the State will be subject to the provisions of the Cooperative Agreement with FRA.
13. Successors and Assigns. This Agreement shall apply to and be binding upon the successors, assigns, subsidiaries, agents, affiliates, and lessees of the Parties hereto and any person acting under, through, or for the Parties.
14. Notices. Any notice, request or other communication to any Party by any other as provided for herein, shall be given in writing, sent by first-class mail, return receipt requested or by overnight courier, and shall be deemed given upon actual receipt by the addressee. Notices shall be addressed as follows:

If to Amtrak:

Senior Director Host Railroads

National Railroad Passenger Corporation  
30<sup>th</sup> & Market Streets  
Philadelphia, PA 19104

If to the State:

Director of Operations  
Vermont Agency of Transportation  
1 National Life Drive  
Montpelier, VT 05633-6200

If to the Host:

General Manager  
New England Central Railroad, Inc.  
2 Federal Street  
St. Albans, VT 05478

RailAmerica, Inc.  
Legal Department  
7411 Fullerton St., Ste. 300  
Jacksonville, FL 32256

[Remainder of Page Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first hereinabove written.

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF VERMONT

By: David C. Dill  
Name: David C. Dill  
Title: Secretary of Transportation

NEW ENGLAND CENTRAL RAILROAD, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

DATE: 8/27/2010

[Signature]  
ASSISTANT ATTORNEY GENERAL  
STATE OF VERMONT

**Exhibit 1**

**Project(s)**

Projects and improvements as detailed in the Standard Rail Agreement dated August 26, 2010 as may be amended.

## Exhibit 2

### Service Outcomes

1. Upon completion of the Project listed in Exhibit 1 and in Table 1 below, the Host commits that the Service Outcomes identified in Table 1 below shall be achieved for each intercity passenger train operating on the Host between East Northfield, MA and St Albans, VT:

*Table 1: Service Outcomes:*

Phase No.	Description (Upon Completion of Listed Project(s))	Minimum Amtrak Train Round Trips per Day Permitted by Host*	Maximum Scheduled Amtrak Train Trip Time Between East Northfield and St. Albans**	Delay Ceiling (Maximum Host-Responsible Delay Minutes per Amtrak Trip)
1	<i>Baseline – Current Service</i>	1	<i>4hr 37 m</i>	13.8
2	<i>Projects as listed in Exhibit 1</i>	1#	<i>4hr 10m</i>	13.0

*\*Unless otherwise agreed by the Parties, approximate scheduled departure times from East Northfield and St. Albans for existing round trips shall be comparable to those in the public schedules in effect as of the effective date of this Agreement.*

*# Infrastructure improvements detailed in Vermont's HSIPR grant will allow for additional frequencies in the future. In the event additional frequencies are desired, the parties will negotiate in good faith for such intercity passenger rail service(s).*

*\*\* Service level attainment is dependent upon being allowed by FRA to operate the Service with a 4 inch cant deficiency, and operation of the Service with a consist containing no more than six coaches and powered by (2) P42 locomotives or their horsepower equivalent.*

- a. "Host-Responsible Delay Minutes" shall be measured using Amtrak's Conductor Delay Reports as the sum of the following delay categories: Freight Train Interference (FTI), Passenger Train Interference (PTI), Commuter Train Interference (CTI), Routing (RTE), Slow Orders (DSR), Signals (DCS), Maintenance of Way (DMW), Debris (DBS), and Detour (DTR).
- b. "Delay Ceiling" shall be the maximum allowable Host-Responsible Delay Minutes per one-way Amtrak train trip. The Host's compliance with the Delay Ceiling will be determined by comparing the Delay Ceiling to the Monthly Actual Average Host-Responsible Delay Minutes per trip for each Amtrak Train, which shall be calculated monthly for each Amtrak Train as the total Host-Responsible Delay Minutes for each calendar month divided by the number of Amtrak Train trips operated during that calendar month. Temporary adjustments

to the Delay Ceiling may be negotiated by the parties due to major track maintenance projects.

2. For purposes of this Exhibit 2, "Percentage of on time performance" will be the percentage of trains operating within the corridor from East Northfield to St. Albans within the Maximum Scheduled Amtrak Train Trip Time shown in Table 1. In a month that Percentage of on time performance falls below 90%, the Amtrak Conductor Delay Report data will be used to determine the Amtrak and Host factors that caused the performance to fall below 90%. The Host will review Host-Responsible causes of delay. For those delay minutes that are not one-time events, the Host will address the cause for delay in their operation.
3. If, at any time, the Percentage of on time performance, as outlined in #2 above, falls below 90% for a period exceeding four consecutive months, the following will apply for subsequent months until the next month that Percentage of on time performance is above 90%: The Host shall, at the Host's sole expense, take any necessary actions to reduce the Monthly Actual Average Host-Responsible Delay Minutes per trip on each Amtrak Train to or below the Delay Ceiling within two calendar months. If winter weather prohibits taking the necessary actions to reduce the Monthly Actual Average Host-Responsible Delay Minutes per trip on each Amtrak Train to or below the Delay Ceiling within two months, Host must file a plan of action within two calendar months with the State and receive concurrence, on how the Monthly Actual Average Host-Responsible Delay Minutes per trip will be reduced and then implement the plan within the first two months of non-winter weather that occur.
4. If Host's actions in Paragraphs 2 and 3 above fail to bring Monthly Actual Average Host-Responsible Delay Minutes per trip on each Amtrak Train to or below the Delay Ceiling within two calendar months, the Host, Amtrak, or the State may request that the Parties seek jointly to analyze potential corrective actions. Any joint findings or conclusions may be used in efforts to reduce delays and improve performance, but shall not prevent Amtrak or the State from seeking specific performance from Host.
5. The obligations of Host under this Exhibit 2 shall be subject to force majeure (which shall include strikes, riots, floods, accidents, extreme heat conditions, Acts of God, and other causes or circumstances beyond the reasonable control of Host), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. FD 36064**

**GENESEE & WYOMING INC.  
-- ACQUISITION OF CONTROL EXEMPTION --  
PROVIDENCE AND WORCESTER RAILROAD COMPANY**

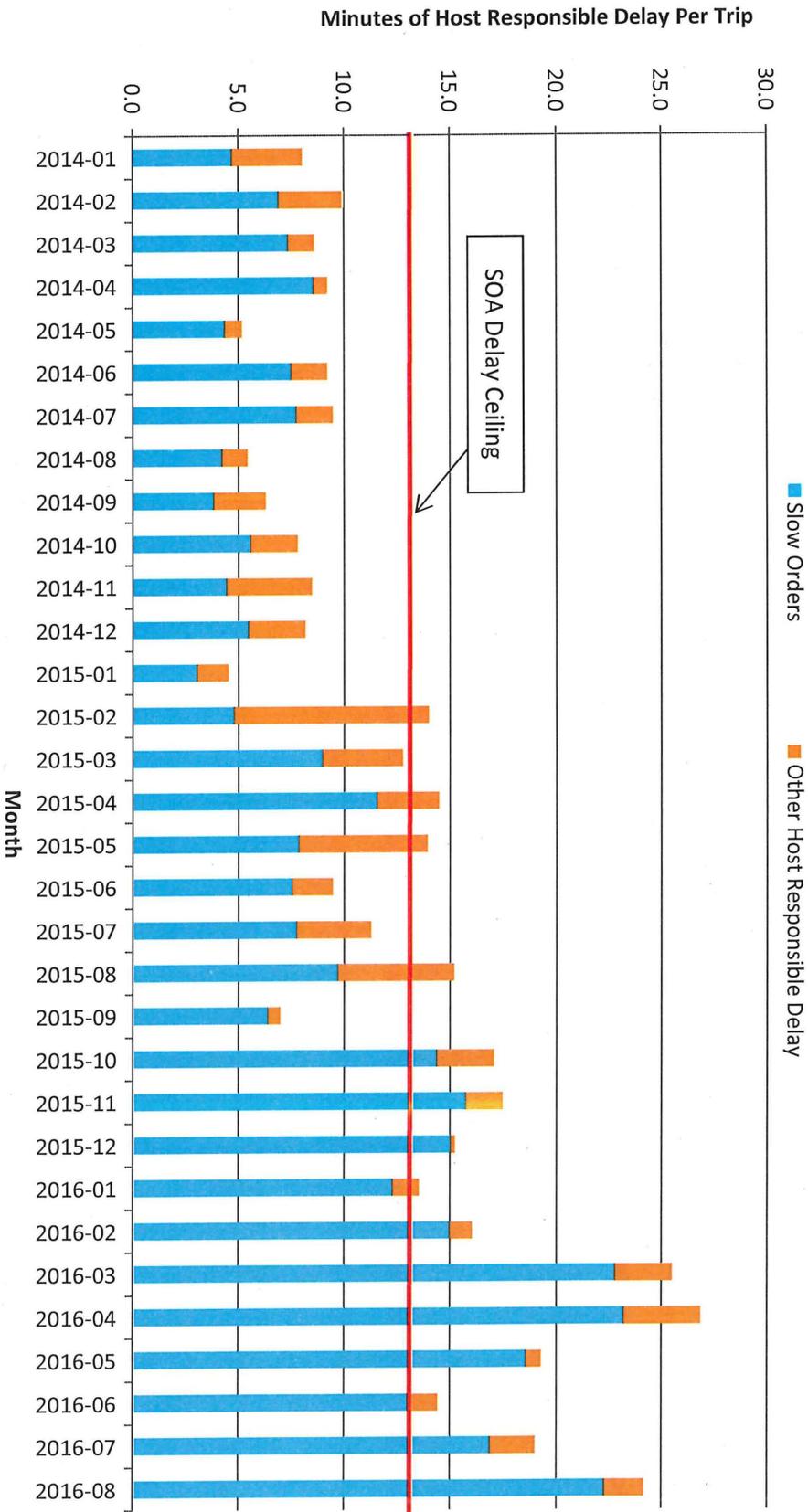
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**EXHIBIT B**

**CHARTS**

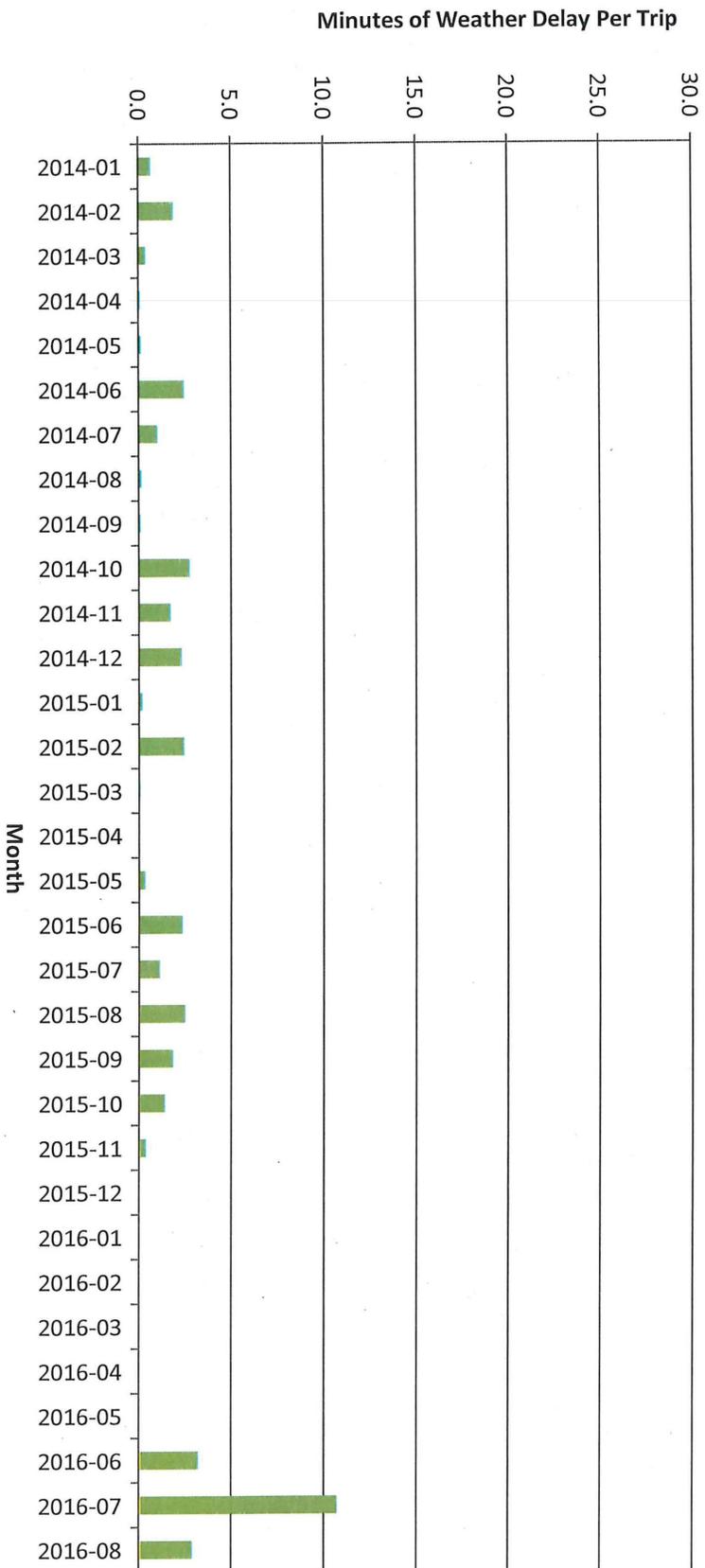
# NECR Host Railroad Responsible Delay – Jan 2014 through Aug 2016

Vermont Service  
January 2014 - August 2016



# Weather Delay on NECR – Jan 2014 through Aug 2016

Vermont Service  
January 2014 - August 2016



\* Includes Heat Orders, Cold Orders, Slippery Rail and other Weather delay

