

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**ON-TIME PERFORMANCE UNDER SECTION 213 OF THE
PASSENGER RAIL INVESTMENT IMPROVEMENT ACT OF 2008**

REPLY COMMENTS OF UNION PACIFIC RAILROAD COMPANY

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Union Pacific Railroad Company is filing these reply comments in accordance with the Surface Transportation Board's Notice served December 28, 2015, and the Board's Decision served February 25, 2016.¹

After reviewing the opening comments filed by other parties, we continue to believe the Board's rules defining "on-time performance" should incorporate existing measures of on-time performance contained in agreements between Amtrak and host carriers.

Adopting rules that incorporate contractual performance standards would address four key considerations highlighted by the opening comments. Such rules would (i) provide clear, easy-to-apply standards, (ii) focus attention on situations that are more likely to involve actual performance problems, (iii) respect existing contracts, and (iv) allow for measurement of performance at agreed-upon intermediate stations.

The Board should reject calls to adopt rules that measure performance at all intermediate stations on a route, or "All-Stations OTP." All-Stations OTP would not be a reasonable trigger for Board performance investigations under Section 213 of PRIIA because Amtrak's schedules

¹ Union Pacific also endorses the reply comments filed by the Association of American Railroads.

and operating agreements with host carriers simply are not designed to meet that standard. In discussing use of All-Stations OTP for purposes of Section 207 of PRIIA, the Federal Railroad Administration and Amtrak acknowledged that “introduction of the All-Stations OTP standard will involve a challenging process of readjustment, in which Amtrak, its railroad hosts, and (where applicable) State sponsors of service” would be required to make “operational and scheduling adjustments.”²

Amtrak has not readjusted any schedules on Union Pacific or any other host carrier (to the best of our knowledge) to permit meaningful application of the All-Stations OTP standard. Nor has Amtrak agreed to pay for capital investments that would be required to adjust operations to meet the All-Stations OTP standard. The Board should not adopt rules that would define on-time performance, and thus potentially trigger costly investigations, based on a standard that is inconsistent with Amtrak’s existing schedules and operating agreements with host carriers.

I. The Board’s Rules Should Incorporate Measures of “On-Time Performance” Contained in Agreements Between Amtrak and Host Carriers.

The opening comments filed by other parties support using existing contractual measures to define on-time performance. The Association of American Railroads and Canadian National Railway expressly call for using contractual measures.³ Other parties embrace principles that support use of existing contractual measures. For example, many comments endorse the Board’s view that the definition of on-time performance should be clear and easy to apply.⁴ Union Pacific

² Department of Transportation, Federal Railroad Administration, Docket No. FRA-2009-0016, Response to Comments, Metrics and Standards for Intercity Passenger Rail Service (“*Metrics & Standards*”) at 18 (May 12, 2010), available at <https://www.fra.dot.gov/eLib/Details/L02875>.

³ See Comments of the Association of American Railroads at 10-11; Comments of Canadian National Railway at 4-5.

⁴ See, e.g., Comments of the California State Transportation Agency (“CalSTA Comments”) at 1; Comments of the States for Passenger Rail Coalition, Inc. (“SPRC Comments”) at 2.

explained on opening that adopting contractual standards achieves that goal because Amtrak and host carriers are already using those standards to measure on-time performance. *See* Union Pacific Comments at 4.

We also explained that adopting contractual definitions of on-time performance would help focus the Board’s investigatory resources on situations that could reasonably be addressed by eliminating false positives and help focus on the performance of individual railroads. *See id.* at 3-4. In their opening comments, several non-railroad parties also recognize the benefits of a definition that would allow more focused investigations, thus avoiding “a burdensome and lengthy discovery process with multiple host railroads.”⁵

We also observed on opening that using route-specific contractual standards is preferable to a fixed formula. *See* Union Pacific Comments at 4. Several non-railroad parties also recognize that contractual standards provide an important means of ensuring high-quality performance by establishing route-specific service commitments, incentives and penalties, and negotiated capital investments.⁶ They urge the Board “to ensure that such performance is not diminished by the proposed rulemaking.”⁷

Finally, we explained on opening that a contractual definition of on-time performance would allow the Board to consider performance at intermediate stations on a route where the

⁵ Comments of North Carolina Department of Transportation Comments (“NCDOT Comments”) at 2; *see also* SPRC Comments at 3 (“The proposed rule is silent on the impact and responsibilities of routes operated over multiple host railroads . . .”).

⁶ *See* CalSTA Comments at 1 (“At the same time, California rail corridors benefit from mutually agreeable contracts negotiated with our host railroad partners . . .”); SPRC Comments at 8 (“Some service sponsors have purchased capacity and or have negotiated separate operating agreements with host railroads.”); *see also* NCDOT Comments at 3 (emphasizing the need to “encourag[e] collaboration between stakeholders on capacity and schedules”).

⁷ CalSTA Comments at 1; *see also* SPRC Comments at 8 (“Any new definition of OTP should not negate these agreements nor diminish intercity passenger rail service which meets the requirements of the service sponsor/s.”).

parties had negotiated such standards. *See* Union Pacific Comments at 4. Many non-railroad parties ask the Board to adopt a definition that addresses on-time performance at intermediate stations. A definition that incorporates contractual standards could address performance at intermediate stations without creating the problems associated with the All-Stations OTP standard, which we discuss in the next section.

If Amtrak and a host carrier do not have an agreement containing measures of on-time performance, we continue to believe a definition establishing a delay allowance of at least 10% of the scheduled travel time as published in Amtrak’s public time-tables, or at least 15 minutes per 100 route miles, would be appropriate for the reasons discussed in our opening comments. However, the Board should also carefully consider the proposals set forth in the opening comments filed by CSX Transportation, Inc., and Norfolk Southern Railway Company.

II. The Board Should Not Adopt All-Stations OTP to Measure On-Time Performance.

In their opening comments, Amtrak and several non-railroad parties urge the Board to adopt All-Stations OTP as the means to measure on-time performance for purposes of triggering an investigation under Section 213 of PRIIA.⁸ However, as Amtrak previously acknowledged, All-Stations OTP cannot be a reasonable measure of host carrier performance until and unless Amtrak, host carriers, and State sponsors of service first engage in “a challenging process” of “needed operational and scheduling adjustments.”⁹ That process has not occurred. The Board should not adopt a standard for triggering performance investigations that is inconsistent with Amtrak’s current schedules and operating agreements with host carriers.

⁸ *See, e.g.*, Comments of the National Railroad Passenger Corporation (“Amtrak Comments”) at 2; Comments of National Association of Railroad Passengers (“NARP Comments”) at 2-3; Comments of Midwest Interstate Passenger Rail Commission (“MIPRC Comments”) at 1.

⁹ *Metrics & Standards* at 18.

As Amtrak acknowledged in *Metrics & Standards*, its schedules simply are not designed to ensure that train times (*i.e.*, departure time from origin station and arrival time at all other stations) at all of a train’s stations take place within 15 minutes of the time in public schedules at least 80% of the time, as required by All-Stations OTP. That is, Amtrak does not build enough tolerance into its schedules to meet the All-Stations OTP standard. Instead, Amtrak’s schedules and operating agreements with host carriers—at least Amtrak’s agreements with Union Pacific—have built-in tolerances, or “recovery time,” at end points and agreed-upon intermediate “check points.” As Amtrak acknowledged in *Metrics & Standards*, if Amtrak wants to meet the 15 minute/80% All-Stations OTP standard, “Amtrak and host railroads” would have to “agree to schedule adjustments to reallocate recovery time among intermediate stations.”¹⁰ In fact, if Amtrak were serious about ensuring its trains meet the All-Stations OTP standard, it almost certainly would have to *add* recovery time, not merely reallocate recovery time, thus lengthening existing schedules.¹¹ This may well undermine existing performance agreements between host carriers and State sponsors—a concern those sponsors raised in their opening comments.¹²

Moreover, any renegotiation of Amtrak schedules would have to address the additional interference with freight operations that would result from allocation of recovery time to each intermediate station on a route and the capital investment necessary to mitigate the interference.

To meet the All-Stations OTP standard, Amtrak’s schedules would have to be designed so trains

¹⁰ *Id.*

¹¹ If Amtrak and Union Pacific were to renegotiate the on-time performance standards in their operating agreement, we would base our approach on established modeling techniques. But we expect the total recovery time needed to ensure timely arrival at each of several points on a route would be greater than the recovery time needed to ensure timely arrival at only the end point because one would have to account separately for the possibility of delay between each pair of measurement points, rather than account for the average delay across the entire route.

¹² See CalSTA Comments at 1; SPRC Comments at 8.

would routinely arrive early, to offset the delays that inevitably arise in rail operations. That is the idea of building in recovery time. However, early arrivals can impose significant operating costs on host carriers. Currently, at almost every check point station where recovery time is provided under Amtrak's agreement with Union Pacific, Amtrak trains stop on sidings or other non-main-line track. But at most other intermediate stations, Amtrak trains stop on the main line—there is no station track or siding. If a train arrives early, it sits on the main line until its scheduled departure, blocking freight traffic. Amtrak might be willing to pay the incremental costs to build and operate new station tracks or other rail infrastructure to accommodate early arrivals.¹³ However, if Amtrak and others want the overarching service characteristics implied by the All-Stations OTP standard, someone must also pay the associated costs, and the statute places that responsibility on Amtrak and, in the case of short-distance corridors, both Amtrak and the States.¹⁴

Amtrak and several other non-railroad parties claim the All-Stations OTP standard is necessary to take into account the experience of Amtrak passengers that do not travel between end points on a route.¹⁵ However, those parties never explain why that standard is necessary or even appropriate to identify performance problems that merit further investigation by the Board. Use of the All-Stations OTP standard to trigger investigations would likely generate many false positives because trains would not have sufficient time to recover from random delays. As trains move along their routes, they inevitably are subject to delays that affect their arrival times at

¹³ See *Standards & Metrics* at 18 (acknowledging “the potential burden and operational impacts of this [All-Stations OTP] standard”).

¹⁴ See PRIIA § 209.

¹⁵ See Amtrak Comments at 2; see also, e.g., NARP Comments at 2-3; MIPRC Comments at 1; Comments of Virginia Rail Policy Institute at 1-3.

intermediate stations. But in many cases, a train will have recovered from such delays by the time it reaches its check point or end point, thus eliminating the false indication of performance problems. If a train consistently arrives on time at its agreed-upon check points or end point, there is no reason to suspect it is experiencing performance problems.¹⁶

Union Pacific's proposal to incorporate contractual standards is a vastly superior way to address any specific concerns for passengers that travel only between intermediate points because on-time performance would be measured against the commitments negotiated by Amtrak. That is, under our proposal, *Amtrak* could continue to evaluate whether and where to prioritize performance at intermediate stations in negotiating new schedules, as part of agreements that appropriately compensate host carriers for at least the incremental costs imposed by the schedules.¹⁷ But the Board would be wasting time and resources on investigations triggered by a performance standard that, as Amtrak acknowledged in *Metrics & Standards*, Amtrak's schedules are not designed to meet.¹⁸

III. Conclusion

Union Pacific continues to believe the Board's rules should incorporate existing measures of on-time performance contained in agreements between Amtrak and host carriers. The use of contractual standards would focus the Board's investigatory resources on situations where it is more likely that a failure to achieve minimum standards is "due to causes that could reasonably

¹⁶ Indeed, by assigning equal weight to each station, the All-Stations OTP standard could mask problems affecting performance at the end point and other major stations on a route.

¹⁷ In addition, Union Pacific's proposal would allow State sponsors to negotiate contracts with host carriers that include enforceable performance commitments. *See* CalSTA Comments at 1; SPRC Comments at 8.

¹⁸ To the extent potential Amtrak passengers and others want to use information provided by the All-Stations OTP standard for any purpose, they can already obtain that information from the Federal Railroad Administration's web site. *See* <https://www.fra.dot.gov/Page/P0532>.

be addressed.” 49 U.S.C. § 24308(f)(1). The Board should not adopt All-Stations OTP as its measure of on-time performance. All-Stations OTP is not a valid measure because Amtrak’s schedules and operating agreements are not designed to achieve that standard. The use of All-Stations OTP as a trigger for investigations would result in wasted resources and would be inconsistent with Congress’s objectives in enacting Section 213 of PRIIA.

Respectfully submitted,

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