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**PUBLIC VERSION**

239243

September 23, 2015

ENTERED
Office of Proceedings
September 23, 2015
Part of
Public Record

**BY E-FILING**

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

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

Dear Ms. Brown:

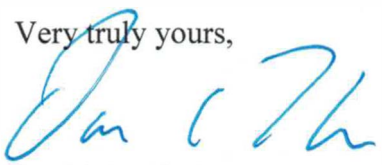
We have identified minor errata in the Joint Verified Statement of Paul E. Ladue and Scott Kuxmann, and the Verified Statements of Anne Morehouse and Fiona Murray, which were included as part of our Opening Evidence filed in the above-referenced proceeding on September 4, 2015. The errata are shown for each statement as redline pages attached hereto as Exhibit A, with deleted text shown as stricken and inserted text shown as double-underlined. (Corrections to the Figure 2 line graphs on page 27 of the verified statement of Messrs. Ladue and Kuxmann and on page 5 of the verified statement of Ms. Morehouse are shown by use of different colors.)

In addition, enclosed as Exhibit B are clean copies of the corrected pages. We have added "-E" to the page numbers of these pages so they can be readily distinguished from the originally filed pages.

We are submitting this letter and accompanying exhibits in two forms: a Highly Confidential version filed under seal in accordance with the Protective Order in this proceeding, and a Public version, from which all Confidential or Highly Confidential material has been

redacted. The Public version includes pages only where corrections were to the public (*i.e.*, unredacted) portion of a statement.

Very truly yours,



David A. Hirsh

Counsel for Illinois Central Railroad Company and Grand Trunk Railroad Company

Enclosures (Exhibits A and B)

cc: Linda J. Morgan, Esquire

# EXHIBIT A

## Redline Pages

# Joint Verified Statement of
# Paul E. Ladue and Scott Kuxmann

trains also operate over lines of BNSF Railway ("BNSF") and UP between Joliet and San Antonio.)

- Blue Water (Trains 364 and 365), a corridor service operating daily in each direction over the GTW Lines between Battle Creek and Port Huron, Michigan. (Amtrak's Blue Water trains also operate over lines of Norfolk Southern Railway Company ("NS") and Michigan Department of Transportation ("MiDOT")[6] between Chicago and Battle Creek.)

- Wolverine (Trains 350, 351, 352, 353, 354, and 355), a corridor service operating three times a day in each direction over a 1.2 mile stretch of the GTW Lines between Gord and Baron (which are interlockings located in Battle Creek, Michigan) and between Vinewood (an interlocking in Detroit) and Pontiac, Michigan. (Amtrak's Wolverine trains also operate over lines of NS, MiDOT, and Amtrak itself between Chicago and Gord and between Baron and Vinewood.)

Key aspects of these services are presented in the following table, and graphic representations of each of these services are attached as Exhibit 2 to this Verified Statement.

[6] Although Amtrak reports MiDOT as the "host" of the line, Amtrak itself ~~leases and~~ operates the line.

**Table 1**
**Amtrak Services Hosted by CN**

| Service & Train Nos. | Service Endpoints | Service Route Miles | CN Segment Endpoints | CN Segment Route Miles | Number of Trains and Frequency of Operation | Number of Railroads Other than CN in Route (including Amtrak) |
|---|---|---|---|---|---|---|
| Blue Water 364-365 | Chicago to Port Huron | 318.5 | Gord to Port Huron | 158.7 | 2 daily | 2 |
| City of New Orleans, 58-59 | Chicago to New Orleans | 933.8 | Clark Street to Southport Jct. | 927.8~~927.9~~ | 2 daily | 1 |
| Illini/Saluki, 390-393 | Chicago to Carbondale | 308.9 | Clark Street to Carbondale | 306.7 | 4 daily | 1 |
| Lincoln, 300-307 | Chicago to St. Louis | 284.1 | 21st Street to Joliet | 34.9~~35.7~~ | 8 daily | 3 |
| Texas Eagle, 21-22 | Chicago to San Antonio | 1305.4 | 21st Street to Joliet | 34.9~~35.7~~ | 2 daily | 4 |
| Wolverine, 350-355 | Chicago to Pontiac | 304.1 | Pontiac to Vinewood; Gord to Baron | 26.5 | 6 daily | 3 |

### B. The Growth of Amtrak Service on CN's Lines, Without Any Accompanying Amtrak Investment in Capacity

Amtrak began operations on May 1, 1971, with a total of 12 trains a day on what are now the IC Lines: one train in each direction between Chicago and New Orleans, one train in each direction between Chicago and Carbondale, two trains in each direction between Chicago and Kankakee, and two trains in each direction between Chicago and St. Louis (on what was at that time a line of Gulf, Mobile and Ohio Railroad Company).[7] (There were no Amtrak trains on the

[7] Harold A. Edmonson (ed.), Journey to Amtrak: The Year History Rode the Passenger Train 103 (1972); Amtrak Trains as of May 1, 1971,

[redacted]

## III. THE STRUCTURE OF THE OPERATING AGREEMENT IS SOUND, AND IT OPERATES AS INTENDED TO INCENTIVIZE STRONG CN PERFORMANCE

### A. The Quality of CN's Service to Amtrak Is Most Accurately Measured by CN's Performance Under the Operating Agreement

#### 1. CN has performed well as an Amtrak host, as demonstrated by its strong KOTP under the Operating Agreement

As explained above, KOTP provides the best measure of CN performance because it measures CN's actual contribution to Amtrak's performance against its schedules. It is structured to measure only the delays that are CN-responsible, which is critical to any efficient incentive/penalty provision. As the following table demonstrates, CN's performance under the KOTP measure of the Operating Agreement has been strong.[23]

**Table 2**
**Average Monthly KOTP for Amtrak Services Hosted by CN**
**January 2012 – December 2014 and Q1-Q2, 2015**

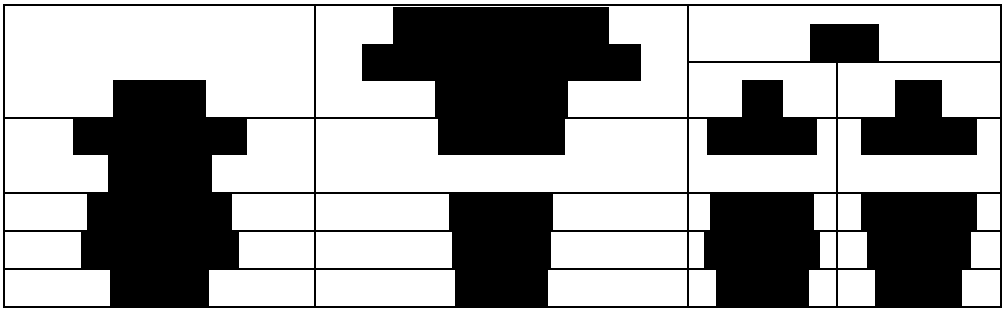
| Service | Average Monthly KOTP, 2012-2014 | 2015 | |
|---|---|---|---|
| | | Q1 | Q2 |
| City of New Orleans | 90.2%~~90.0%~~ | 78.6% | 91.7% |
| Illini/Saluki | 84.1%~~84.2%~~ | 90.6% | 89.9% |
| Texas Eagle | 91.6%~~91.9%~~ | 91.0% | 91.2% |
| Lincoln | 96.2%~~96.1%~~ | 96.9% | 96.0% |
| Blue Water | 94.8%~~95.2%~~ | 96.6% | 96.2% |
| Wolverine | 88.6%~~89.4%~~ | 90.2% | 87.9% |

[23] *See* Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx" for the monthly KOTP and Performance Payment source data for this table and the following discussion. The Illini/Saluki KOTP is based on CN's billing, and thus does not reflect the dispute between the parties concerning operating restrictions imposed to prevent short shunts by Amtrak's equipment, which is discussed in Section III.B.2, below.

CN consistently averages KOTP above 80% across all six services – meaning that CN is on average performing above the base level of performance that was negotiated with Amtrak (70-79% KOTP). In fact, five of the six services have a monthly average KOTP of 89% or higher over the past 3 years. The average KOTP for all Amtrak services operating on CN was 90.8%~~91.3%~~ in 2012, 93.8%~~93.9%~~ in 2013, 88.0%~~88.2%~~ for 2014, and 91.6% for the first 7 months of 2015.

[redacted]

**Table 3**
**Average Monthly Performance Payments for Amtrak Services Hosted by CN on the IC Lines**
**January 2012 – December 2014 and Q1-Q2, 2015**

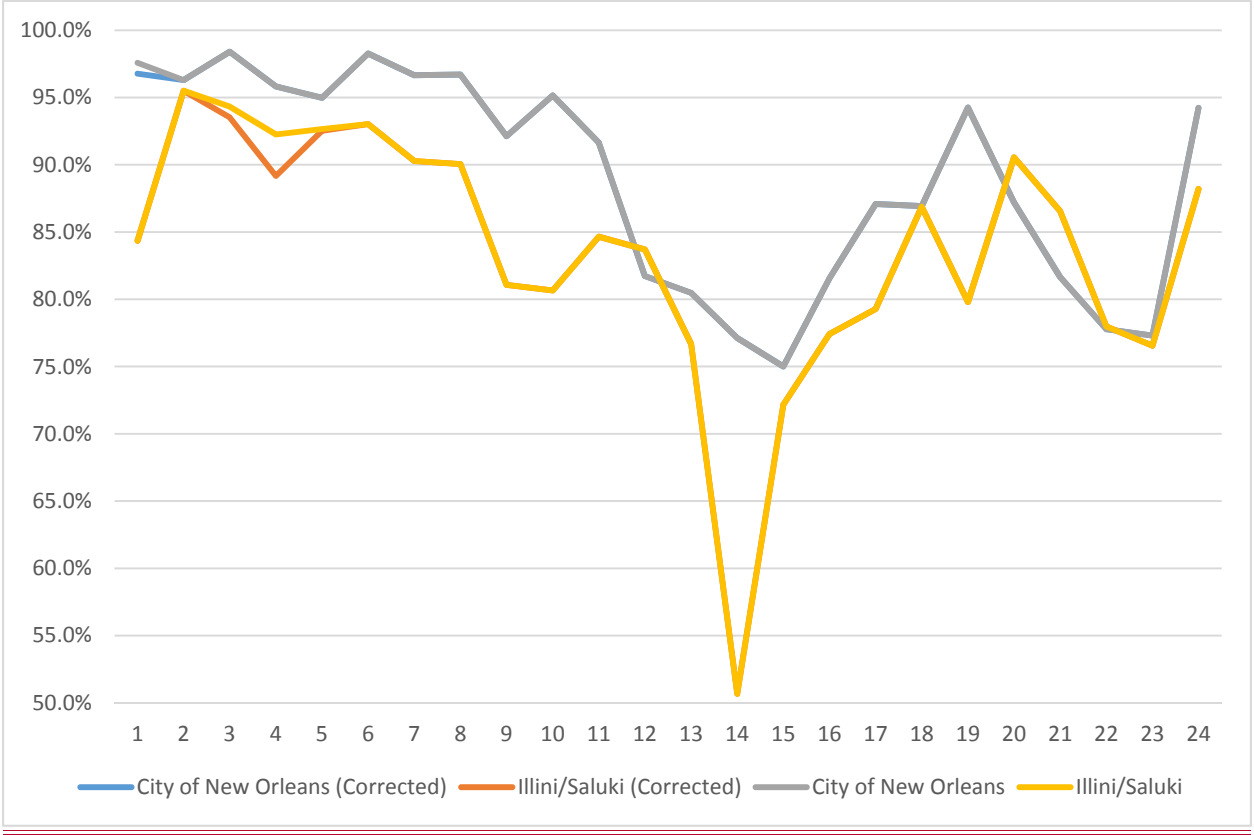


A significant exception to that generally high performance was February 2014, when CN was battling severe weather conditions that hurt the performance of all trains operating on its lines, whether freight or passenger. As a result of that decline in performance, CN earned net penalties during that month.[24] As one would expect of a well-functioning agreement, however, following this slip in performance, with CN's desire to avoid further penalties and the prospect of increased Performance Payments, CN improved its performance as soon as the weather

[24] Because CN had performed well in earlier months, the contractual "lookback" provision did not apply, and CN suffered the full extent of those penalties.

conditions made it feasible to do so. The following Figure, showing monthly KOTP for the City of New Orleans and the Illini/Saluki service between January 20132012 and December 2014, illustrates this effect.

**Figure 1**
**Monthly KOTP for City of New Orleans and Illini/Saluki services**




CN's strong performance under the terms of the existing Operating Agreement demonstrates that the Performance Payments and Penalties system is working as intended: it is incentivizing CN to reduce CN-attributable delays and drive a high level of service from CN. As discussed above in Section II.B.2., since the current Agreement went into effect in 2011, CN has always been in a position where it had a reasonable opportunity to earn incentive payments.[25]

[25] In addition to such financial considerations, CN also takes seriously its legal obligations toward Amtrak and the public interest served by Amtrak's transportation services to its passengers.

analysis for these two services and its impact on Amtrak's performance is discussed in the context of the broader analysis of those services in Section III.B., below.

### B. Amtrak's Performance Under Various PRIIA Standards Does Not Properly Reflect the High Quality of CN's Host Services

Focused and objective analysis demonstrates that CN's performance as a host has been strong, and that Amtrak's failures to meet various PRIIA standards do not demonstrate otherwise; nor are they primarily due to CN. Amtrak's failure to meet PRIIA standards has been driven by (i) events that occur off of CN's lines,[36] (ii) delays that occur on CN's lines but are outside of CN's reasonable control,[37] (iii) insufficient PRT in Amtrak's schedules, and (iv), in the case of the PRIIA HRD standard, misleading aggregation of a relatively small number of unusually lengthy delays. In the following sections, we review in turn each of the Amtrak services that operate on CN's lines.[38]

#### 1. The City of New Orleans: Amtrak's top performing long-distance service

The City of New Orleans service consists of two trains per day (1 northbound and 1 southbound) that operate between Chicago and New Orleans; 927.8~~927.9~~ of the 933.8 total route miles (99.4%) are on the IC Lines. From January, 2012 to July, 2015, CN's monthly average

[36] *See* ATK0000032327 [redacted]

[37] *See id.* [redacted]

[38] Data in this and the following sections related to the PRIIA metrics comes from Amtrak's Monthly Performance Reports, which are available on the "Reports and Documents" section of its website, and Amtrak's CDR database, and included in the Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx," tab "PRIIA Metrics."

KOTP for this service was 89.6%~~89.5%~~, and has been 96.4% over the last three months for which data is available (May – July 2015).[39] Because of the route's length, it represents almost half of all Amtrak route miles hosted by CN (47.5%), and accounts for a significant portion of CN's Performance [redacted] Given CN's control over approximately 99% of the route miles for this service, it is also an excellent example of how the structure of the current agreement effectively aligns CN's and Amtrak's interest in high quality service.

According to Amtrak's key PRIIA measures, the City of New Orleans service is Amtrak's best performing long-distance service, and has been for a long time.[40] The service's Endpoint OTP is regularly the highest among Amtrak's long-distance services.[41] According to published Amtrak data, it is also the only long-distance service to have a monthly average Endpoint OTP above 80% for the period January 2012 through July 2015, and it has had the fewest months during that period (12 of 43) where the service operated with an Endpoint OTP below 80% (the next-best long-distance service, the Auto Train, had 21 months with an Endpoint OTP below 80%). The following table summarizes the Endpoint OTP performance of the long-distance services, based on Amtrak's monthly reports for the period January 2012 through July 2015.[42]

[39] *See* Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx."

[40] *See* [redacted]

[41] Endpoint OTP is particularly meaningful with regard to this service because over 99% of the route is on CN, and high Endpoint OTP on this route tends to confirm the correlation between KOTP and CN's contribution to the overall performance of the service.

[42] *See* Ladue/Kuxmann workpaper "CNO delay analysis," tab "Long-Distance OTP."

**Table 3**
**Endpoint OTP Performance of Long-Distance Services**
**January 2012 through July 2015**

| Service | Average Monthly Endpoint OTP, Jan. 2012 – Jul. 2015 | Number of months below 80% Endpoint OTP, Jan. 2012 – Jul. 2015 |
|---|---|---|
| Auto Train | 78.0% | 21 |
| California Zephyr | 52.7% | 38 |
| Capitol Limited | 55.3% | 32 |
| Cardinal | 47.2% | 42 |
| City of New Orleans | 81.2% | 12 |
| Coast Starlight | 78.8% | 22 |
| Crescent | 65.1% | 32 |
| Empire Builder | 47.8% | 41 |
| Lake Shore Ltd | 54.3% | 37 |
| Palmetto | 70.8% | 32 |
| Silver Meteor | 56.8% | 42 |
| Silver Star | 56.5% | 42 |
| Southwest Chief | 68.0% | 29 |
| Sunset Limited | 65.8% | 34 |
| Texas Eagle | 56.0% | 36 |

This performance is particularly remarkable given the results of CN's analysis of the PRT underlying the schedule for the City of New Orleans. That analysis, which is summarized in Table 4~~3~~, demonstrates that the PRT is deficient for Amtrak's northbound Train No. 58 by at least 19 minutes, and for the southbound Train No. 59 by at least 36 minutes.[43]

**Table 4**
**Run-time Deficiencies in the City of New Orleans Schedules**
***(based on 1 P42 locomotive and 9 Superliner cars)***

| Trains | Segment Endpoints | Minutes of PRT in Amtrak Schedule | Minimum Run Time from TPC | Schedule Deficiency | |
|---|---|---|---|---|---|
| | | | | Mins. | Percent |
| 58 | Southport Jct.-Clark St. | 914.0 | 933.0 | (19.0) | -2.1% |
| 59 | Clark St.–Southport Jct. | 892.0 | 928.0 | (36.0) | -4.0% |

[43] CN's TPC analysis and results are described more fully in the Joint Verified Statement of Harald Krueger, Brian Doyle, and Nikola Rank, Section V.A.

**Table 8**
**Comparison of Schedule Time in Amtrak Corridor Services**

| Service | Total schedule time (mins) | Estimated Dwell Time (mins) | Estimated Run Time w/o Scheduled Dwell | Average Distance (Miles) | Scheduled miles per hour | Scheduled miles per hour (w/o dwell) |
|---|---|---|---|---|---|---|
| IL Zephyr/Carl Sandburg | 263 | 16 | 247 | 258 | 58.9 | 62.7 |
| Hiawatha | 91 | 6 | 85 | 86 | 57.057.1 | 61.161.2 |
| New York - Albany | 151 | 9 | 142 | 142 | 56.456.5 | 59.859.9 |
| Illini/Saluki | 330 | 12 | 318 | 309 | 56.2 | 58.3 |
| Piedmont | 191 | 12 | 179 | 173 | 54.5 | 58.2 |
| San Joaquin | 350 | 24 | 326 | 315 | 54.054.3 | 57.958.2 |
| Carolinian | 564400 | 24 | 520376 | 479352 | 53.0 | 56.3 |
| New York - Niagara Falls | 535 | 40 | 495 | 461 | 51.7 | 55.9 |
| Heartland Flyer | 238 | 10 | 228 | 206 | 51.9 | 54.2 |
| Pennsylvanian | 557 | 65 | 492 | 444 | 47.9 | 54.2 |
| Lincoln | 333 | 17 | 316 | 284 | 51.3 | 54.0 |
| Maple Leaf | 553 | 41 | 512 | 460 | 49.9 | 53.9 |
| ~~Grand Total~~ | ~~259~~ | ~~21~~ | ~~238~~ | ~~206~~ | ~~48.7~~ | ~~52.9~~ |
| Missouri River Runner | 340 | 16 | 324 | 283 | 49.9 | 52.4 |
| Blue Water | 392 | 18 | 374 | 319 | 48.9 | 51.251.3 |
| Wolverine | 380 | 21 | 359 | 304 | 48.048.3 | 50.951.1 |
| Cascades | 278 | 20 | 257 | 218 | 47.047.2 | 50.850.6 |
| Downeaster | 173 | 21 | 152 | 128 | 44.244.6 | 50.250.5 |
| Capitol Corridor | 159 | 18 | 140 | 114 | 43.143.6 | 48.849.2 |
| Pacific Surfliner | 269 | 3529 | 234240 | 188 | 41.842.8 | 48.047.9 |
| Ethan Allen | 337 | 34 | 303 | 241 | 43.0 | 47.7 |
| Adirondack | 483653 | 46 | 437 | 332 | 41.333.1 | 45.636.1 |
| Vermonter | 566 | 64 | 502 | 379 | 40.2 | 45.3 |
| Pere Marquette | 250 | 6 | 244 | 176 | 42.2 | 43.3 |
| Hoosier | 305 | 8 | 297 | 196 | 38.6 | 39.6 |
| ~~Adirondack~~ | ~~653~~ | ~~46~~ | ~~607~~ | ~~332~~ | ~~33.1~~ | ~~36.1~~ |
| Average All~~all~~ Corridors | 337334 | 2524 | 312310 | 271263 | 48.748.6 | 52.552.3 |

As the table shows, the schedules for only three services require average speeds greater than the Illini/Saluki. None of those three services are comparable to the Illini/Saluki. The BNSF line that hosts the IL Zephyr service is double tracked for almost two-thirds of its route (162 of 258 route miles), allowing the trains to achieve and maintain significantly higher speeds

In sum, Amtrak's service issues for the Illini/Saluki are not due any general CN service deficiency. Amtrak's performance for this service would markedly improve if (1) reasonably achievable schedules, including updated PRT, were adopted, (2) as part of that process, Amtrak considers potential infrastructure investments to increase the capacity of congested segments of the service, and (3) the short shunt issue is resolved.

3. Lincoln and Texas Eagle: Delays outside of CN's reasonable control and flaws in Amtrak's metrics obscure CN's true performance

Two Amtrak services – the Lincoln and the Texas Eagle – operate over a 34.9-mile portion of CN's Joliet Subdivision. The Lincoln service covers a total distance of approximately 284 miles between Chicago and St. Louis, and the Texas Eagle service covers a total distance of approximately 1,305 miles between Chicago and San Antonio. CN's portion of the route therefore represents 12.3% of the Lincoln service and 2.7% of the Texas Eagle service. Between January, 2012 and July, 2015, CN's monthly average KOTP was 91.5%~~91.7%~~ for the Texas Eagle and 96.2% for the Lincoln service.[54]

CN's excellent KOTP for these services is not reflected in their average monthly Endpoint OTP under PRIIA for the same period: 68.8% for the Lincoln service and 56.0% for the Texas Eagle. But that is not surprising, since CN hosts only a very small portion of these routes, and thus contributes little to overall OTP.[55] Moreover, both in absolute terms and proportionately, there are fewer delays on CN's portion of these routes than on the remainder of the route.

[54] *See* Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx."

[55] *See, e.g.,* [redacted]

During the period January, 2012 to July, 2015, CN's monthly average KOTP for this service was 95.0%~~95.4%~~. In addition, in sixteen of those months, Train #364 had a KOTP of 100%; in ten of those months, Train #365 had a KOTP of 100%, and there were eight months in which both trains simultaneously achieved 100% KOTP. Between January 2012 and July 2015, the monthly average HRD as calculated by Amtrak was 959. Recent performance has been even better: the monthly average HRD in the first seven months of 2015 was 810, and HRD in five of those seven months has been below the 900-minute standard sought by Amtrak.

However, because CN's portion of the route is less than 50% of the total, the superior performance on the CN portion of the route cannot overcome the delays experienced on other host railroads. This service has experienced major delays on the non-CN portion of the route due to ongoing track improvement work. Since January 2014, monthly average HRD per 10,000 train miles has been 5,827 on the NS portion of the route, 1,354 on the MiDOT portion of the route (which Amtrak reports as MiDOT, even though Amtrak ~~leases and~~ operates the line), and 806 on the Amtrak portion of the route. Between January 2012 and June 2015, HRD attributed to CN (by Amtrak) was just 35.8% of the total HRD and 20.5% of the total delay minutes, despite CN hosting 50% of the route. It is delays on the non-CN portion of this route that have driven down the Blue Water's on-time performance.[58]

5. Wolverine: Amtrak experiences very little delay on CN's portion of this service, and flaws in Amtrak's metrics obscure CN's true performance

The Wolverine service consists of 6 daily trains (3 eastbound and 3 westbound)[59] between Chicago and Detroit; CN hosts only 8.7% of the route (26.5 of 304.1 total route miles).

[58] *See* Ladue/Kuxmann workpaper "Blue Water delay analysis.xlsx."

[59] In addition to these trains, due to disruption caused by work on other host lines, Amtrak has been running some additional trains in this service.

CN's portion of the route is split between two non-contiguous segments: a 25.3 mile segment between West Detroit and Pontiac and a short 1.2 mile section between two interlockings (Gord and Baron) in the Battle Creek area. During the period January 2012 to July 2015, CN's monthly average KOTP was 84.2%~~85.0%~~ for the Pontiac to Vinewood segment of this service and 93.2%~~93.7%~~ for the Gord to Baron segment. However, the service's Endpoint OTP during the same period has been quite poor: a monthly average of 37.7%~~37.5%~~.

The Wolverine is similar to the Lincoln and Texas Eagle services in that CN's superior performance over a very short section of the overall route is masked when a measure other than KOTP is used to assess that performance. Like those other services, the host-responsible delays on the CN portion of the route are very small when measured on a per train basis – only an average of 4.5 minutes per train during the period January 2012 through July 2015.[60]

The high reported CN HRD (monthly average of 1,8841,~~881~~ between January 2012 and July 2015) on this service is likewise not indicative of CN's actual performance. Because of the length of the route, a train can experience only 2.4 minutes of delay before it exceeds the 900 minute threshold; each minute of delay equates to 377 minutes of delay per 10,000 train miles. And a significant portion of the delay minutes Amtrak counts against CN for HRD should rightly be excluded. Some of this HRD is due to delays at interlockings CN does not control and at which CN cannot reasonably be held responsible for the cross traffic delays at these locations. Additional HRD on this service is due to permanent slow orders that were agreed to by the parties under the Operating Agreement, because it was recognized that a capital investment would be required to eliminate them, and doing so would only be for the benefit of Amtrak.

[60] *See* Ladue/Kuxmann workpaper "Wolverine delay analysis.xlsx."

costs of delays and interference to CN's freight traffic due to Amtrak for the period August~~May~~ 2013 through January 2015 were at least $4.69 million. After the Board renders its decision, if it approves such costs, CN would use this same methodology to determine remaining retroactive compensation between the date of the decision and February 2015.

For the future, if approved by the Board, CN would use this process monthly to determine its quantifiable delay costs and bill Amtrak for those costs, subject to Amtrak review and audit. This process would be similar to the review and audit by CN of Amtrak's coding of the delays to its own trains. Further, if Amtrak would like to do so, CN would be willing to discuss simplifying this process. As a simplified process, for example, the parties might agree on fixed compensation for CN's average base delay and interference costs or they might continue to determine the number of delay minutes suffered by CN, but establish an average cost per delay minute for purposes of compensation.

The process described above will not come close to providing CN with full compensation for all of its incremental costs of delay and interference due to Amtrak. It is limited to direct, practically quantifiable, labor, fuel, and equipment costs, and it underestimates even these because the SRS database does not include all freight delays due to Amtrak. See V.S. Summerfield, et al., Section III.B. It also does not address the significant additional operating and marketing costs as described in the separate verified statements of Anne Morehouse and Fiona Murray. Insofar as additional incremental costs due to Amtrak can be quantified, the Operating Agreement should provide for their recovery by CN.

Alternatively, as a way to eliminate or reduce these costs, the Board could order Amtrak, or Amtrak could agree, to modify its schedules, to run fewer trains, and/or to fund the capital projects necessary to restore the capacity Amtrak consumes on CN's lines. CN has determined,

### B. Performance Payments and Penalties Should Be Aligned More Simply and Clearly With the Delays CN Can Reasonably Control

As explained in Section II.B.3.~~II.B.2.~~, "relief items" play an important role under the Operating Agreement by helping to establish responsibility for Amtrak delays. Distinguishing the cause of delays is critical because it means that CN is rewarded for the efforts it makes to reduce Amtrak delays, and is not penalized for delays that are not within its reasonable control. In the subsections below, we discuss CN's proposal (1) to reduce the number of existing relief items under the Operating Agreement by formalizing the initial use of Amtrak's coding of responsibility for delays and by merging the separate lists of relief items for Amtrak services on IC and GTW; (2) to add several new relief items to clarify further certain delays that are not within CN's reasonable control; and (3) to modify the current provisions of the Operating Agreement relating to the data and procedures used for implementing the relief items, that is, for determining responsibility for delays. As noted in Subsection IV.B., the effect of CN's proposed changes on the relief items in the Operating Agreement is shown in the draft Mark Up of Appendices in Exhibit 15.

#### 1. By incorporating Amtrak's existing delay codes into the Operating Agreement and merging GTW's and IC's relief items, many existing relief items can be eliminated

CN proposes to reduce the current number of relief items by providing that delays that should presently be coded by Amtrak conductors as non-host-responsible for purposes of PRIIA will not be counted as CN-responsible delays for purposes of performance payments and penalties, and by merging the separate lists of relief codes for Amtrak services on IC and GTW.

The Operating Agreement presently relies as an initial source of data on Amtrak's conductor delay coding. Agreement, App. V, Sec. A.3. The Operating Agreement, however, does not incorporate definitions of Amtrak's codes and does not provide that delays coded by

Amtrak as non-Host-responsible will be treated as such for purposes of the Operating Agreement. As a result, relief items must now be listed in the Operating Agreement even for types of delays that Amtrak recognizes in its conductor coding are not the responsibility of the host carrier. By specifying Amtrak's conductor delay codes in the Operating Agreement and providing that delays categorized by Amtrak conductors' in accordance with those codes as non-Host-responsible (*i.e.*, Amtrak or third-party responsible) will be recognized as such under the Operating Agreement, many existing relief items under the Operating Agreement can be eliminated.

To implement this, CN would add to the Operating Agreement an appendix setting forth Amtrak's conductor delay codes and the definitions of those codes based on the coding instructions provided to conductors. (These definitions tend to be more specific and instructive than Amtrak's abbreviated definitions published with its monthly PRIIA reports.) A draft list of those codes and definitions is shown in~~attached hereto~~ the draft Mark Up of Appendices in Exhibit 15. The Operating Agreement would specify that delays coded by a conductor in accordance with those codes as Amtrak or third-party responsible (that is coded as ADA, CAR, CCR, CON, CTC, ENG, HLD, INJ, ITI, MTI, OTH, SVS, SYS, BSP, CUI, MBO, NOD, POL, TRS, UTL, or WTR) do not count against CN for purposes of the run time calculation.[62] This would efficiently account for numerous delays recognized to be caused by third-parties or Amtrak. The only additional relief codes that would then be required are those that, as compared to Amtrak's conductor delay codes, clarify or recognize additional or more specific circumstances in which a delay should not be treated as under CN's reasonable control (such as

[62] CN's code definitions would be drawn from Amtrak's instruction manual of Service Standards for Train Service & On-Board Service Employees, relevant pages of which are attached hereto as Exhibit 16.

used in determining the calculation of performance payments and penalties. It states that Amtrak conductor delay reports shall be the initial source for data required by Appendix V (*i.e.*, for performance payments and penalties). Those reports are required by Amtrak to be based on the cause of delay directly observed by conductors (i.e., their "windshield view"), rather than the actual root cause of a delay. Section A.3. provides that CN may supplement these data with various information from other sources, but nothing in the provision clarifies the relative weight to be accorded between evidence of direct or proximate cause and root cause. CN proposes to address this issue by amending Section A.3. to provide that insofar as evidence of the root cause of a delay is adduced by a party, the delay shall be classified based on root cause, not direct or proximate cause.[72]

### C. Provision to Address Any Consistent Failure by CN to Meet Base Performance Standards

The parties have a mutual interest in establishing an Agreement under which CN's performance under the Operating Agreement will generally meet or exceed the base performance required under the Operating Agreement. Amtrak's interest is in strong performance in support of its passenger rail services, and CN's interest is in exceeding the base level of performance so it can earn positive Performance Payments.

In order to help assure that the parties' expectations regarding performance are not disappointed, CN proposes to develop a new provision for the Operating Agreement to assure that if CN performance under the Operating Agreement is so poor that it incurs performance

[72] CN's specific proposed change is to add the following as a new third sentence of Appendix V, A.3.: "In determining the cause of a particular delay, evidence of root cause, as opposed to proximate cause, shall be taken as the best evidence of the cause of a delay." ~~"Insofar as the root cause of a particular delay is known, the cause of the delay shall be assigned based on that root cause, rather than the direct or proximate cause."~~

# Verified Statement of Anne Morehouse

**PUBLIC VERSION**

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

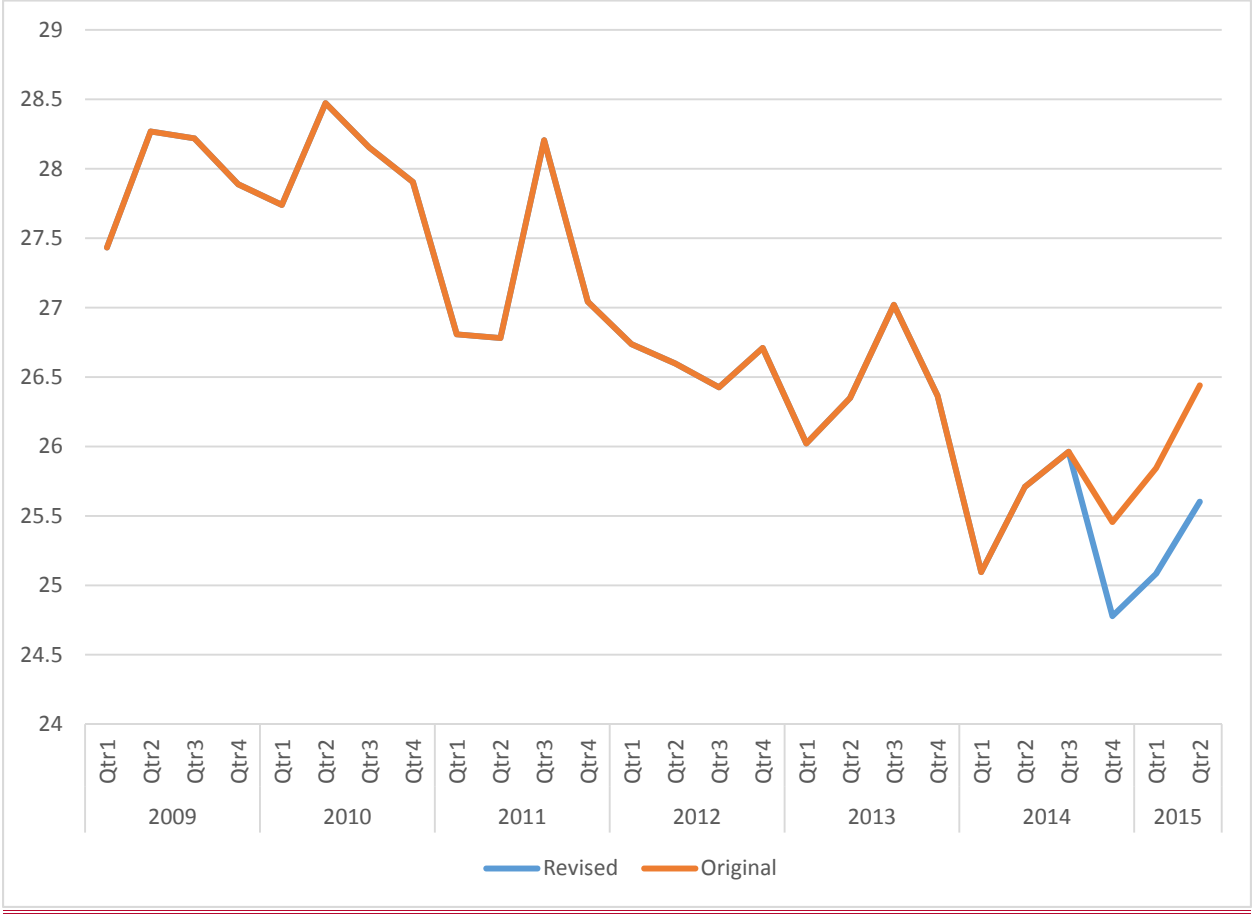
APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER 49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

# VERIFIED STATEMENT OF ANNE MOREHOUSE

My name is Anne Morehouse. I am Superintendent of the Regional Operations Center for CN's Southern Region. I have held this position since May 1, 2014. Previously I have held the positions of Rail Traffic Controller, Asst. Chief Train Dispatcher, Chief Train Dispatcher, Senior Chief Dispatcher and Senior Manager Bulk, Southern Region. In my current position, I am responsible for overseeing, coordinating and dispatching freight and passenger rail operations on all of CN's U.S. lines, with the exception of certain lines adjacent to the Canadian border that are unrelated to this proceeding. As such, I am familiar with both freight and passenger operations on the CN lines used by Amtrak, including the challenges faced and measures taken by CN as it strives to accommodate the increasing and oftentimes competing demands of freight and passenger rail customers, including Amtrak.

Successful rail operations depend on the efficient use of available capacity. In this statement, I first describe the importance of network capacity to CN's freight operations and the operational problems that arise when capacity is constrained. I then discuss more specifically Amtrak's effects on CN's operations and the costs imposed on CN by Amtrak's consumption of CN's rail line capacity. Finally, I discuss how the Performance Payments CN earns under the

**Figure 2**
**Average Intermodal Train Speed by Quarter on Divisions that Host Amtrak.**




If freight traffic continues to grow as expected, the freight delay costs attributable to Amtrak are likely to increase more rapidly as remaining areas of excess capacity that CN can use to manage traffic growth are exhausted.

In this era of constrained capacity, operating efficiently and predictably to schedule are essential in order to make the most of our limited capacity. Delays – especially unpredictable and unavoidable delays imposed on CN by other entities, such as Amtrak – are not only an indication of capacity constraints, but an independent source of inefficiency that imposes very significant costs. Delays create both direct costs (such as crew, fuel, and equipment costs) and indirect costs (for example, by complicating yard work that needs to be managed with minimal

variability and by reducing the quality and reliability of service to present and potential CN customers, who may be lost to CN or may pay less for CN's services).

Addressing capacity constraints, however, requires capital resources – such as main line track, sidings, yards, locomotives and cars – and access to such resources is limited in the short term and expensive in the long term. CN has continued to invest in its rail capacity in order to serve its shippers. Since 1998, when CN greatly expanded its U.S. operations by acquiring the Illinois Central Railroad, CN has made capital expenditures of almost $25 billion (CAD) – close to 20% of its revenues during that time. CN recently announced that it will spend a further $2.7 billion CAD in 2015 in capital expenditures (approximately 22% of its 2014 revenue), including approximately $800 million on its U.S. operations. While CN regularly spends significant capital dollars maintaining and enhancing its rail lines, including the rail lines used by Amtrak, Amtrak has never provided funding to increase the capacity of CN's rail lines that it uses, despite significantly increasing the number of trains it operates on our rail lines. *See* Ladue/Kuxmann V.S. at § I.B.

## II. AMTRAK'S CONSUMPTION OF CN'S RAIL LINE CAPACITY IMPAIRS CN'S OPERATIONS AND IMPOSES COSTS ON CN

Quantifying capacity, and quantifying the consumption of capacity by an individual train or train type, is complex and difficult, just as managing capacity is complex and difficult, because railroad capacity is multi-faceted. At the simplest level, CN track space physically occupied by an Amtrak train cannot be occupied at the same time by a freight or other passenger train. Nor can other traffic occupy space too close to an Amtrak train, for obvious safety reasons.

In that respect, Amtrak trains consume CN's capacity just as other traffic does. But because of their speed, priority, and unpredictability, Amtrak trains consume ~~capacity~~ far more

means that if there is a train working the yard any trains passing the yard must use the siding. In addition to this already challenging scenario, there is an Amtrak station, located on the single track main line through Champaign, at which 6 daily Amtrak trains are scheduled to stop. In addition, both pairs of Illini/Saluki trains are scheduled to meet each other at or near the Champaign siding. Weaving the four daily Illini/Saluki trains and the two daily City of New Orleans trains between the mix of freight trains on the limited available track is a difficult exercise that leads to frequent, lengthy delays of CN trains.

Champaign is an area that would obviously and significantly benefit from infrastructure improvements. In order to address the unavoidable conflicts caused by Amtrak operations through this area, CN has in the past asked Amtrak to fund (1) additional double track between Paxton and Leverett Junction with crossovers (which would allow freights to work Champaign without interfering with Amtrak), (2) installation of a universal crossover between Gilman and Delrey (which would eliminate three-way meets and eliminate the need to hold trains 8 miles north of Gilman or 13.5 miles south of Delrey), and (3) double-track between Tolono and Tuscola and additional crossovers at Tolono and Tuscola (which would allow multiple meets without the need to hold trains 9.7 miles north of Tolono or 8.6 miles south of Tuscola, and expedite moves at the Tuscola and the Tolono interlockings). Although Amtrak would be the primary beneficiary of these projects, no infrastructure on CN's lines has ever been added at Amtrak's expense or through public funding sponsored by Amtrak. *See* Ladue/Kuxmann V.S. at § I.B.

Amtrak's use of capacity on CN's lines results in two primary effects on CN's operations: (A) delays to CN's freight trains, and (B) operational adjustments that CN must make to accommodate Amtrak, but which reduce the efficiency of our freight operations.

One example of such practical restrictions impacts CN's local/"last-mile" service to shippers with facilities adjacent to CN's main line. Particularly along its congested single track IC main line south of Chicago, CN frequently encounters situations in which, in order to provide local service, it must cross the main line between switching yards and customer sidings, and/or temporarily block the main line. In order to avoid conflicts with Amtrak, and with higher priority freight trains that must be scheduled around Amtrak or delayed to allow Amtrak to pass, CN operates some of those local trains only during certain hours of the night. Even then, main line congestion involving Amtrak – sometimes directly (the City of New Orleans runs through the night on the IC main line), and sometimes indirectly (for example, when Amtrak delays intermodal trains that delay lower priority freight trains) – frequently disrupts both the last-mile service for those customers and the movement of their cars further along CN's lines. Amtrak trains are responsible for significant delays to local trains and road switchers that operate on CN's [redacted]. Moreover, as Fiona Murray explains in her V.S. discussing CN customers [redacted], on some days, restrictions and congestion on the main line during the limited windows of operational time available to local trains and switchers lead to service exceptions, meaning that local customers are not served at all, or are only served in one direction (inbound or outbound).[8]

Another example of inefficiencies created by CN's need to accommodate Amtrak's inflexible schedule requirements involves CN's operations and maintenance of its Bluford and Centralia Subdivisions, which run parallel to each other north of the Amtrak station in Carbondale, IL, which is located on the Centralia Sub. Were it not for Amtrak's requirements,

[8] Similar examples occur in and around Effingham, where CN must regularly hold a local train, L551, in the yard in order to avoid delays to Amtrak, and on CN's Yazoo Subdivision between Memphis and Jackson (at locations such as Greenwood and Yazoo City).

slower to accelerate than other trains (although in due course they can generally reach the same speed as trains not equipped with DP). This means that when DP locomotives are forced to slow or stop due to interference from Amtrak, their availability and productivity are reduced even more than other locomotives. And, like other locomotives and equipment, the full loss of reliability and efficiency suffered by CN as a result of its inability to fully utilize its DP locomotives cannot be fully quantified.

## III. CN'S SRS DATABASE REPORTS DELAYS TO CN'S TRAINS CAUSED BY AMTRAK.

As discussed in more detail in the separate V.S. that I have submitted jointly with John Summerfield and Gregg Girard, some but not all of the delays to CN's trains are recorded in CN's SRS database. That database tracks the movement of scheduled CN trains, locomotives, and cars through CN's system, and automatically creates a database entry called a Delay Record when a train is delayed beyond a certain threshold. The Delay Records automatically generated by SRS prompt dispatchers to code and manually input information and comments related to the root causes of each specific delay. Using this information, Messrs. Baranowski and Fisher of FTI Consulting identify and quantify some of the costs of delays to CN freight trains caused by Amtrak. *See generally* Baranowski & Fisher V.S..

Part of Messrs. Baranowski and Fisher's analysis involved allocating to Amtrak portions of a delay with multiple causes. I understand that for delays in which the cause was attributed to multiple trains, with no non-train cause for the delay (*e.g.*, a broken rail), FTI Consulting allocated minutes of delay on a pro rata basis based on the total number of trains listed in the Delay Comment field. For delays in which the cause was attributed to both trains and a non-train cause, FTI Consulting allocated 50% of the total minutes of delay to the trains, and then further allocated that delay on a pro rata basis based on the total number of trains listed in the Delay

# EXHIBIT B

## Replacement Pages

# Joint Verified Statement of
# Paul E. Ladue and Scott Kuxmann

trains also operate over lines of BNSF Railway ("BNSF") and UP between Joliet and San Antonio.)

- Blue Water (Trains 364 and 365), a corridor service operating daily in each direction over the GTW Lines between Battle Creek and Port Huron, Michigan. (Amtrak's Blue Water trains also operate over lines of Norfolk Southern Railway Company ("NS") and Michigan Department of Transportation ("MiDOT")[6] between Chicago and Battle Creek.)

- Wolverine (Trains 350, 351, 352, 353, 354, and 355), a corridor service operating three times a day in each direction over a 1.2 mile stretch of the GTW Lines between Gord and Baron (which are interlockings located in Battle Creek, Michigan) and between Vinewood (an interlocking in Detroit) and Pontiac, Michigan. (Amtrak's Wolverine trains also operate over lines of NS, MiDOT, and Amtrak itself between Chicago and Gord and between Baron and Vinewood.)

Key aspects of these services are presented in the following table, and graphic representations of each of these services are attached as Exhibit 2 to this Verified Statement.

[6] Although Amtrak reports MiDOT as the "host" of the line, Amtrak itself operates the line.

**Table 1**
**Amtrak Services Hosted by CN**

| Service & Train Nos. | Service Endpoints | Service Route Miles | CN Segment Endpoints | CN Segment Route Miles | Number of Trains and Frequency of Operation | Number of Railroads Other than CN in Route (including Amtrak) |
|---|---|---|---|---|---|---|
| Blue Water 364-365 | Chicago to Port Huron | 318.5 | Gord to Port Huron | 158.7 | 2 daily | 2 |
| City of New Orleans, 58-59 | Chicago to New Orleans | 933.8 | Clark Street to Southport Jct. | 927.8 | 2 daily | 1 |
| Illini/Saluki, 390-393 | Chicago to Carbondale | 308.9 | Clark Street to Carbondale | 306.7 | 4 daily | 1 |
| Lincoln, 300-307 | Chicago to St. Louis | 284.1 | 21st Street to Joliet | 34.9 | 8 daily | 3 |
| Texas Eagle, 21-22 | Chicago to San Antonio | 1305.4 | 21st Street to Joliet | 34.9 | 2 daily | 4 |
| Wolverine, 350-355 | Chicago to Pontiac | 304.1 | Pontiac to Vinewood; Gord to Baron | 26.5 | 6 daily | 3 |

### B. The Growth of Amtrak Service on CN's Lines, Without Any Accompanying Amtrak Investment in Capacity

Amtrak began operations on May 1, 1971, with a total of 12 trains a day on what are now the IC Lines: one train in each direction between Chicago and New Orleans, one train in each direction between Chicago and Carbondale, two trains in each direction between Chicago and Kankakee, and two trains in each direction between Chicago and St. Louis (on what was at that time a line of Gulf, Mobile and Ohio Railroad Company).[7] (There were no Amtrak trains on the

[7] Harold A. Edmonson (ed.), Journey to Amtrak: The Year History Rode the Passenger Train 103 (1972); Amtrak Trains as of May 1, 1971,

[redacted]

## III. THE STRUCTURE OF THE OPERATING AGREEMENT IS SOUND, AND IT OPERATES AS INTENDED TO INCENTIVIZE STRONG CN PERFORMANCE

### A. The Quality of CN's Service to Amtrak Is Most Accurately Measured by CN's Performance Under the Operating Agreement

#### 1. CN has performed well as an Amtrak host, as demonstrated by its strong KOTP under the Operating Agreement

As explained above, KOTP provides the best measure of CN performance because it measures CN's actual contribution to Amtrak's performance against its schedules. It is structured to measure only the delays that are CN-responsible, which is critical to any efficient incentive/penalty provision. As the following table demonstrates, CN's performance under the KOTP measure of the Operating Agreement has been strong.[23]

**Table 2**
**Average Monthly KOTP for Amtrak Services Hosted by CN**
**January 2012 – December 2014 and Q1-Q2, 2015**

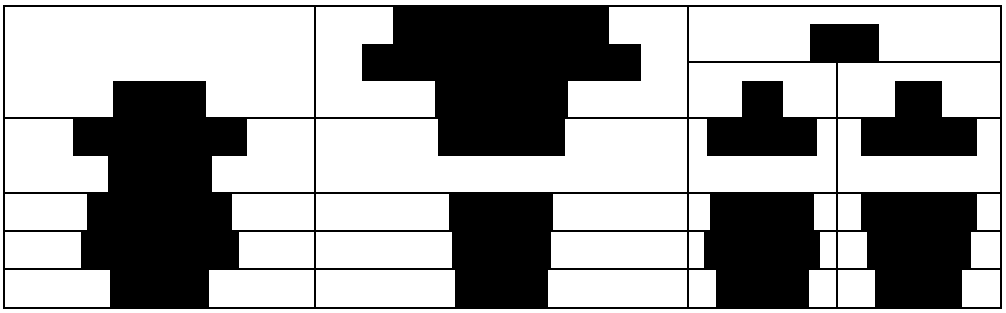
| Service | Average Monthly KOTP, 2012-2014 | 2015 | |
|---|---|---|---|
| | | Q1 | Q2 |
| City of New Orleans | 90.2% | 78.6% | 91.7% |
| Illini/Saluki | 84.1% | 90.6% | 89.9% |
| Texas Eagle | 91.6% | 91.0% | 91.2% |
| Lincoln | 96.2% | 96.9% | 96.0% |
| Blue Water | 94.8% | 96.6% | 96.2% |
| Wolverine | 88.6% | 90.2% | 87.9% |

[23] *See* Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx" for the monthly KOTP and Performance Payment source data for this table and the following discussion. The Illini/Saluki KOTP is based on CN's billing, and thus does not reflect the dispute between the parties concerning operating restrictions imposed to prevent short shunts by Amtrak's equipment, which is discussed in Section III.B.2, below.

CN consistently averages KOTP above 80% across all six services – meaning that CN is on average performing above the base level of performance that was negotiated with Amtrak (70-79% KOTP). In fact, five of the six services have a monthly average KOTP of 89% or higher over the past 3 years. The average KOTP for all Amtrak services operating on CN was 90.8% in 2012, 93.8% in 2013, 88.0% for 2014, and 91.6% for the first 7 months of 2015.

[redacted]

**Table 3**
**Average Monthly Performance Payments for Amtrak Services Hosted by CN on the IC Lines**
**January 2012 – December 2014 and Q1-Q2, 2015**

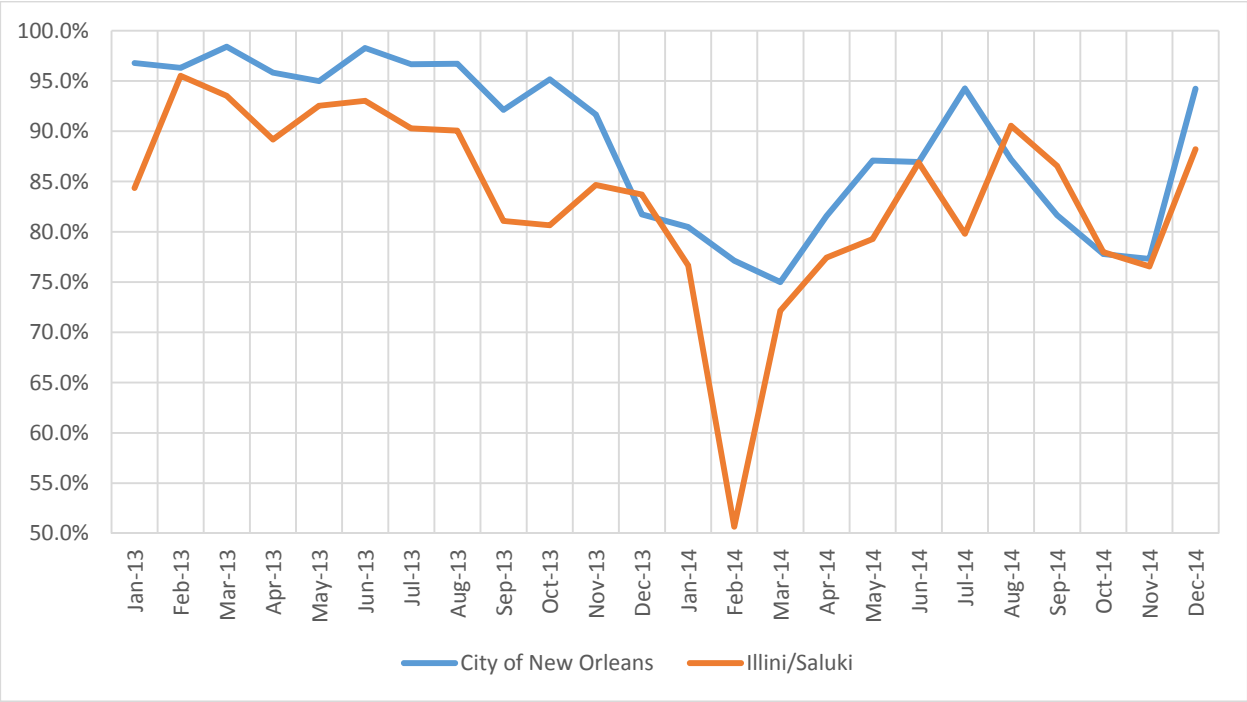


A significant exception to that generally high performance was February 2014, when CN was battling severe weather conditions that hurt the performance of all trains operating on its lines, whether freight or passenger. As a result of that decline in performance, CN earned net penalties during that month.[24] As one would expect of a well-functioning agreement, however, following this slip in performance, with CN's desire to avoid further penalties and the prospect of increased Performance Payments, CN improved its performance as soon as the weather conditions made it feasible to do so. The following Figure, showing monthly KOTP for the City

[24] Because CN had performed well in earlier months, the contractual "lookback" provision did not apply, and CN suffered the full extent of those penalties.

of New Orleans and the Illini/Saluki service between January 2013 and December 2014, illustrates this effect.

**Figure 1**
**Monthly KOTP for City of New Orleans and Illini/Saluki services**




CN's strong performance under the terms of the existing Operating Agreement demonstrates that the Performance Payments and Penalties system is working as intended: it is incentivizing CN to reduce CN-attributable delays and drive a high level of service from CN. As discussed above in Section II.B.2., since the current Agreement went into effect in 2011, CN has always been in a position where it had a reasonable opportunity to earn incentive payments.[25]

[25] In addition to such financial considerations, CN also takes seriously its legal obligations toward Amtrak and the public interest served by Amtrak's transportation services to its passengers.

analysis for these two services and its impact on Amtrak's performance is discussed in the context of the broader analysis of those services in Section III.B., below.

### B. Amtrak's Performance Under Various PRIIA Standards Does Not Properly Reflect the High Quality of CN's Host Services

Focused and objective analysis demonstrates that CN's performance as a host has been strong, and that Amtrak's failures to meet various PRIIA standards do not demonstrate otherwise; nor are they primarily due to CN. Amtrak's failure to meet PRIIA standards has been driven by (i) events that occur off of CN's lines,[36] (ii) delays that occur on CN's lines but are outside of CN's reasonable control,[37] (iii) insufficient PRT in Amtrak's schedules, and (iv), in the case of the PRIIA HRD standard, misleading aggregation of a relatively small number of unusually lengthy delays. In the following sections, we review in turn each of the Amtrak services that operate on CN's lines.[38]

#### 1. The City of New Orleans: Amtrak's top performing long-distance service

The City of New Orleans service consists of two trains per day (1 northbound and 1 southbound) that operate between Chicago and New Orleans; 927.8 of the 933.8 total route miles (99.4%) are on the IC Lines. From January, 2012 to July, 2015, CN's monthly average KOTP

[36] *See* ATK0000032327 [redacted]

[37] *See id.* [redacted]

[38] Data in this and the following sections related to the PRIIA metrics comes from Amtrak's Monthly Performance Reports, which are available on the "Reports and Documents" section of its website, and Amtrak's CDR database, and included in the Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx," tab "PRIIA Metrics."

for this service was 89.6%, and has been 96.4% over the last three months for which data is available (May – July 2015).[39] Because of the route's length, it represents almost half of all Amtrak route miles hosted by CN (47.5%), and accounts for a significant portion of CN's Performance [redacted] Given CN's control over approximately 99% of the route miles for this service, it is also an excellent example of how the structure of the current agreement effectively aligns CN's and Amtrak's interest in high quality service.

According to Amtrak's key PRIIA measures, the City of New Orleans service is Amtrak's best performing long-distance service, and has been for a long time.[40] The service's Endpoint OTP is regularly the highest among Amtrak's long-distance services.[41] According to published Amtrak data, it is also the only long-distance service to have a monthly average Endpoint OTP above 80% for the period January 2012 through July 2015, and it has had the fewest months during that period (12 of 43) where the service operated with an Endpoint OTP below 80% (the next-best long-distance service, the Auto Train, had 21 months with an Endpoint OTP below 80%). The following table summarizes the Endpoint OTP performance of the long-distance services, based on Amtrak's monthly reports for the period January 2012 through July 2015.[42]

[39] *See* Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx."

[40] *See* [redacted]

[41] Endpoint OTP is particularly meaningful with regard to this service because over 99% of the route is on CN, and high Endpoint OTP on this route tends to confirm the correlation between KOTP and CN's contribution to the overall performance of the service.

[42] *See* Ladue/Kuxmann workpaper "CNO delay analysis," tab "Long-Distance OTP."

**Table 3**
**Endpoint OTP Performance of Long-Distance Services**
**January 2012 through July 2015**

| Service | Average Monthly Endpoint OTP, Jan. 2012 – Jul. 2015 | Number of months below 80% Endpoint OTP, Jan. 2012 – Jul. 2015 |
|---|---|---|
| Auto Train | 78.0% | 21 |
| California Zephyr | 52.7% | 38 |
| Capitol Limited | 55.3% | 32 |
| Cardinal | 47.2% | 42 |
| City of New Orleans | 81.2% | 12 |
| Coast Starlight | 78.8% | 22 |
| Crescent | 65.1% | 32 |
| Empire Builder | 47.8% | 41 |
| Lake Shore Ltd | 54.3% | 37 |
| Palmetto | 70.8% | 32 |
| Silver Meteor | 56.8% | 42 |
| Silver Star | 56.5% | 42 |
| Southwest Chief | 68.0% | 29 |
| Sunset Limited | 65.8% | 34 |
| Texas Eagle | 56.0% | 36 |

This performance is particularly remarkable given the results of CN's analysis of the PRT underlying the schedule for the City of New Orleans. That analysis, which is summarized in Table 4, demonstrates that the PRT is deficient for Amtrak's northbound Train No. 58 by at least 19 minutes, and for the southbound Train No. 59 by at least 36 minutes.[43]

**Table 4**
**Run-time Deficiencies in the City of New Orleans Schedules**
***(based on 1 P42 locomotive and 9 Superliner cars)***

| Trains | Segment Endpoints | Minutes of PRT in Amtrak Schedule | Minimum Run Time from TPC | Schedule Deficiency | |
|---|---|---|---|---|---|
| | | | | Mins. | Percent |
| 58 | Southport Jct.-Clark St. | 914.0 | 933.0 | (19.0) | -2.1% |
| 59 | Clark St.–Southport Jct. | 892.0 | 928.0 | (36.0) | -4.0% |

[43] CN's TPC analysis and results are described more fully in the Joint Verified Statement of Harald Krueger, Brian Doyle, and Nikola Rank, Section V.A.

**Table 8**
**Comparison of Schedule Time in Amtrak Corridor Services**

| Service | Total schedule time (mins) | Estimated Dwell Time (mins) | Estimated Run Time w/o Scheduled Dwell | Average Distance (Miles) | Scheduled miles per hour | Scheduled miles per hour (w/o dwell) |
|---|---|---|---|---|---|---|
| IL Zephyr/Carl Sandburg | 263 | 16 | 247 | 258 | 58.9 | 62.7 |
| Hiawatha | 91 | 6 | 85 | 86 | 57.0 | 61.1 |
| New York - Albany | 151 | 9 | 142 | 142 | 56.4 | 59.8 |
| Illini/Saluki | 330 | 12 | 318 | 309 | 56.2 | 58.3 |
| Piedmont | 191 | 12 | 179 | 173 | 54.5 | 58.2 |
| San Joaquin | 350 | 24 | 326 | 315 | 54.0 | 57.9 |
| New York - Niagara Falls | 535 | 40 | 495 | 461 | 51.7 | 55.9 |
| Carolinian | 564 | 44 | 520 | 479 | 51.0 | 55.3 |
| Heartland Flyer | 238 | 10 | 228 | 206 | 51.9 | 54.2 |
| Pennsylvanian | 557 | 65 | 492 | 444 | 47.9 | 54.2 |
| Lincoln | 333 | 17 | 316 | 284 | 51.3 | 54.0 |
| Maple Leaf | 553 | 41 | 512 | 460 | 49.9 | 53.9 |
| Missouri River Runner | 340 | 16 | 324 | 283 | 49.9 | 52.4 |
| Blue Water | 392 | 18 | 374 | 319 | 48.9 | 51.2 |
| Wolverine | 380 | 21 | 359 | 304 | 48.0 | 50.9 |
| Cascades | 278 | 20 | 257 | 218 | 47.0 | 50.8 |
| Downeaster | 173 | 21 | 152 | 128 | 44.2 | 50.2 |
| Capitol Corridor | 159 | 18 | 140 | 114 | 43.1 | 48.8 |
| Pacific Surfliner | 269 | 35 | 234 | 188 | 41.8 | 48.0 |
| Ethan Allen | 337 | 34 | 303 | 241 | 43.0 | 47.7 |
| Adirondack | 483 | 46 | 437 | 332 | 41.3 | 45.6 |
| Vermonter | 566 | 64 | 502 | 379 | 40.2 | 45.3 |
| Pere Marquette | 250 | 6 | 244 | 176 | 42.2 | 43.3 |
| Hoosier | 305 | 8 | 297 | 196 | 38.6 | 39.6 |
| Average All Corridors | 337 | 25 | 312 | 271 | 48.7 | 52.5 |

As the table shows, the schedules for only three services require average speeds greater than the Illini/Saluki. None of those three services are comparable to the Illini/Saluki. The BNSF line that hosts the IL Zephyr service is double tracked for almost two-thirds of its route (162 of 258 route miles), allowing the trains to achieve and maintain significantly higher speeds

In sum, Amtrak's service issues for the Illini/Saluki are not due any general CN service deficiency. Amtrak's performance for this service would markedly improve if (1) reasonably achievable schedules, including updated PRT, were adopted, (2) as part of that process, Amtrak considers potential infrastructure investments to increase the capacity of congested segments of the service, and (3) the short shunt issue is resolved.

3. Lincoln and Texas Eagle: Delays outside of CN's reasonable control and flaws in Amtrak's metrics obscure CN's true performance

Two Amtrak services – the Lincoln and the Texas Eagle – operate over a 34.9-mile portion of CN's Joliet Subdivision. The Lincoln service covers a total distance of approximately 284 miles between Chicago and St. Louis, and the Texas Eagle service covers a total distance of approximately 1,305 miles between Chicago and San Antonio. CN's portion of the route therefore represents 12.3% of the Lincoln service and 2.7% of the Texas Eagle service. Between January, 2012 and July, 2015, CN's monthly average KOTP was 91.5% for the Texas Eagle and 96.2% for the Lincoln service.[54]

CN's excellent KOTP for these services is not reflected in their average monthly Endpoint OTP under PRIIA for the same period: 68.8% for the Lincoln service and 56.0% for the Texas Eagle. But that is not surprising, since CN hosts only a very small portion of these routes, and thus contributes little to overall OTP.[55] Moreover, both in absolute terms and proportionately, there are fewer delays on CN's portion of these routes than on the remainder of the route.

[54] *See* Ladue/Kuxmann workpaper "CN KOTP and Performance Payments.xlsx."

[55] *See, e.g.,* [redacted]

During the period January, 2012 to July, 2015, CN's monthly average KOTP for this service was 95.0%. In addition, in sixteen of those months, Train #364 had a KOTP of 100%; in ten of those months, Train #365 had a KOTP of 100%, and there were eight months in which both trains simultaneously achieved 100% KOTP. Between January 2012 and July 2015, the monthly average HRD as calculated by Amtrak was 959. Recent performance has been even better: the monthly average HRD in the first seven months of 2015 was 810, and HRD in five of those seven months has been below the 900-minute standard sought by Amtrak.

However, because CN's portion of the route is less than 50% of the total, the superior performance on the CN portion of the route cannot overcome the delays experienced on other host railroads. This service has experienced major delays on the non-CN portion of the route due to ongoing track improvement work. Since January 2014, monthly average HRD per 10,000 train miles has been 5,827 on the NS portion of the route, 1,354 on the MiDOT portion of the route (which Amtrak reports as MiDOT, even though Amtrak operates the line), and 806 on the Amtrak portion of the route. Between January 2012 and June 2015, HRD attributed to CN (by Amtrak) was just 35.8% of the total HRD and 20.5% of the total delay minutes, despite CN hosting 50% of the route. It is delays on the non-CN portion of this route that have driven down the Blue Water's on-time performance.[58]

5. Wolverine: Amtrak experiences very little delay on CN's portion of this service, and flaws in Amtrak's metrics obscure CN's true performance

The Wolverine service consists of 6 daily trains (3 eastbound and 3 westbound)[59] between Chicago and Detroit; CN hosts only 8.7% of the route (26.5 of 304.1 total route miles).

[58] *See* Ladue/Kuxmann workpaper "Blue Water delay analysis.xlsx."

[59] In addition to these trains, due to disruption caused by work on other host lines, Amtrak has been running some additional trains in this service.

CN's portion of the route is split between two non-contiguous segments: a 25.3 mile segment between West Detroit and Pontiac and a short 1.2 mile section between two interlockings (Gord and Baron) in the Battle Creek area. During the period January 2012 to July 2015, CN's monthly average KOTP was 84.2% for the Pontiac to Vinewood segment of this service and 93.2% for the Gord to Baron segment. However, the service's Endpoint OTP during the same period has been quite poor: a monthly average of 37.7%.

The Wolverine is similar to the Lincoln and Texas Eagle services in that CN's superior performance over a very short section of the overall route is masked when a measure other than KOTP is used to assess that performance. Like those other services, the host-responsible delays on the CN portion of the route are very small when measured on a per train basis – only an average of 4.5 minutes per train during the period January 2012 through July 2015.[60]

The high reported CN HRD (monthly average of 1,884 between January 2012 and July 2015) on this service is likewise not indicative of CN's actual performance. Because of the length of the route, a train can experience only 2.4 minutes of delay before it exceeds the 900 minute threshold; each minute of delay equates to 377 minutes of delay per 10,000 train miles. And a significant portion of the delay minutes Amtrak counts against CN for HRD should rightly be excluded. Some of this HRD is due to delays at interlockings CN does not control and at which CN cannot reasonably be held responsible for the cross traffic delays at these locations. Additional HRD on this service is due to permanent slow orders that were agreed to by the parties under the Operating Agreement, because it was recognized that a capital investment would be required to eliminate them, and doing so would only be for the benefit of Amtrak.

[60] *See* Ladue/Kuxmann workpaper "Wolverine delay analysis.xlsx."

costs of delays and interference to CN's freight traffic due to Amtrak for the period August 2013 through January 2015 were at least $4.69 million. After the Board renders its decision, if it approves such costs, CN would use this same methodology to determine remaining retroactive compensation between the date of the decision and February 2015.

For the future, if approved by the Board, CN would use this process monthly to determine its quantifiable delay costs and bill Amtrak for those costs, subject to Amtrak review and audit. This process would be similar to the review and audit by CN of Amtrak's coding of the delays to its own trains. Further, if Amtrak would like to do so, CN would be willing to discuss simplifying this process. As a simplified process, for example, the parties might agree on fixed compensation for CN's average base delay and interference costs or they might continue to determine the number of delay minutes suffered by CN, but establish an average cost per delay minute for purposes of compensation.

The process described above will not come close to providing CN with full compensation for all of its incremental costs of delay and interference due to Amtrak. It is limited to direct, practically quantifiable, labor, fuel, and equipment costs, and it underestimates even these because the SRS database does not include all freight delays due to Amtrak. See V.S. Summerfield, et al., Section III.B. It also does not address the significant additional operating and marketing costs as described in the separate verified statements of Anne Morehouse and Fiona Murray. Insofar as additional incremental costs due to Amtrak can be quantified, the Operating Agreement should provide for their recovery by CN.

Alternatively, as a way to eliminate or reduce these costs, the Board could order Amtrak, or Amtrak could agree, to modify its schedules, to run fewer trains, and/or to fund the capital projects necessary to restore the capacity Amtrak consumes on CN's lines. CN has determined,

### B. Performance Payments and Penalties Should Be Aligned More Simply and Clearly With the Delays CN Can Reasonably Control

As explained in Section II.B.3., "relief items" play an important role under the Operating Agreement by helping to establish responsibility for Amtrak delays. Distinguishing the cause of delays is critical because it means that CN is rewarded for the efforts it makes to reduce Amtrak delays, and is not penalized for delays that are not within its reasonable control. In the subsections below, we discuss CN's proposal (1) to reduce the number of existing relief items under the Operating Agreement by formalizing the initial use of Amtrak's coding of responsibility for delays and by merging the separate lists of relief items for Amtrak services on IC and GTW; (2) to add several new relief items to clarify further certain delays that are not within CN's reasonable control; and (3) to modify the current provisions of the Operating Agreement relating to the data and procedures used for implementing the relief items, that is, for determining responsibility for delays. As noted in Subsection IV.B., the effect of CN's proposed changes on the relief items in the Operating Agreement is shown in the draft Mark Up of Appendices in Exhibit 15.

#### 1. By incorporating Amtrak's existing delay codes into the Operating Agreement and merging GTW's and IC's relief items, many existing relief items can be eliminated

CN proposes to reduce the current number of relief items by providing that delays that should presently be coded by Amtrak conductors as non-host-responsible for purposes of PRIIA will not be counted as CN-responsible delays for purposes of performance payments and penalties, and by merging the separate lists of relief codes for Amtrak services on IC and GTW.

The Operating Agreement presently relies as an initial source of data on Amtrak's conductor delay coding. Agreement, App. V, Sec. A.3. The Operating Agreement, however, does not incorporate definitions of Amtrak's codes and does not provide that delays coded by

Amtrak as non-Host-responsible will be treated as such for purposes of the Operating Agreement. As a result, relief items must now be listed in the Operating Agreement even for types of delays that Amtrak recognizes in its conductor coding are not the responsibility of the host carrier. By specifying Amtrak's conductor delay codes in the Operating Agreement and providing that delays categorized by Amtrak conductors' in accordance with those codes as non-Host-responsible (*i.e.*, Amtrak or third-party responsible) will be recognized as such under the Operating Agreement, many existing relief items under the Operating Agreement can be eliminated.

To implement this, CN would add to the Operating Agreement an appendix setting forth Amtrak's conductor delay codes and the definitions of those codes based on the coding instructions provided to conductors. (These definitions tend to be more specific and instructive than Amtrak's abbreviated definitions published with its monthly PRIIA reports.) A draft list of those codes and definitions is shown in the draft Mark Up of Appendices in Exhibit 15. The Operating Agreement would specify that delays coded by a conductor in accordance with those codes as Amtrak or third-party responsible (that is coded as ADA, CAR, CCR, CON, CTC, ENG, HLD, INJ, ITI, MTI, OTH, SVS, SYS, BSP, CUI, MBO, NOD, POL, TRS, UTL, or WTR) do not count against CN for purposes of the run time calculation.[62] This would efficiently account for numerous delays recognized to be caused by third-parties or Amtrak. The only additional relief codes that would then be required are those that, as compared to Amtrak's conductor delay codes, clarify or recognize additional or more specific circumstances in which a delay should not be treated as under CN's reasonable control (such as delays due to foreign

[62] CN's code definitions would be drawn from Amtrak's instruction manual of Service Standards for Train Service & On-Board Service Employees, relevant pages of which are attached hereto as Exhibit 16.

used in determining the calculation of performance payments and penalties. It states that Amtrak conductor delay reports shall be the initial source for data required by Appendix V (*i.e.,* for performance payments and penalties). Those reports are required by Amtrak to be based on the cause of delay directly observed by conductors (i.e., their "windshield view"), rather than the actual root cause of a delay. Section A.3. provides that CN may supplement these data with various information from other sources, but nothing in the provision clarifies the relative weight to be accorded between evidence of direct or proximate cause and root cause. CN proposes to address this issue by amending Section A.3. to provide that insofar as evidence of the root cause of a delay is adduced by a party, the delay shall be classified based on root cause, not direct or proximate cause.[72]

### C. Provision to Address Any Consistent Failure by CN to Meet Base Performance Standards

The parties have a mutual interest in establishing an Agreement under which CN's performance under the Operating Agreement will generally meet or exceed the base performance required under the Operating Agreement. Amtrak's interest is in strong performance in support of its passenger rail services, and CN's interest is in exceeding the base level of performance so it can earn positive Performance Payments.

In order to help assure that the parties' expectations regarding performance are not disappointed, CN proposes to develop a new provision for the Operating Agreement to assure that if CN performance under the Operating Agreement is so poor that it incurs performance penalties for six consecutive months for a train group (as categorized for purposes of

[72] CN's specific proposed change is to add the following as a new third sentence of Appendix V, A.3.: "In determining the cause of a particular delay, evidence of root cause, as opposed to proximate cause, shall be taken as the best evidence of the cause of a delay."

# Verified Statement of Anne Morehouse

**PUBLIC VERSION**

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

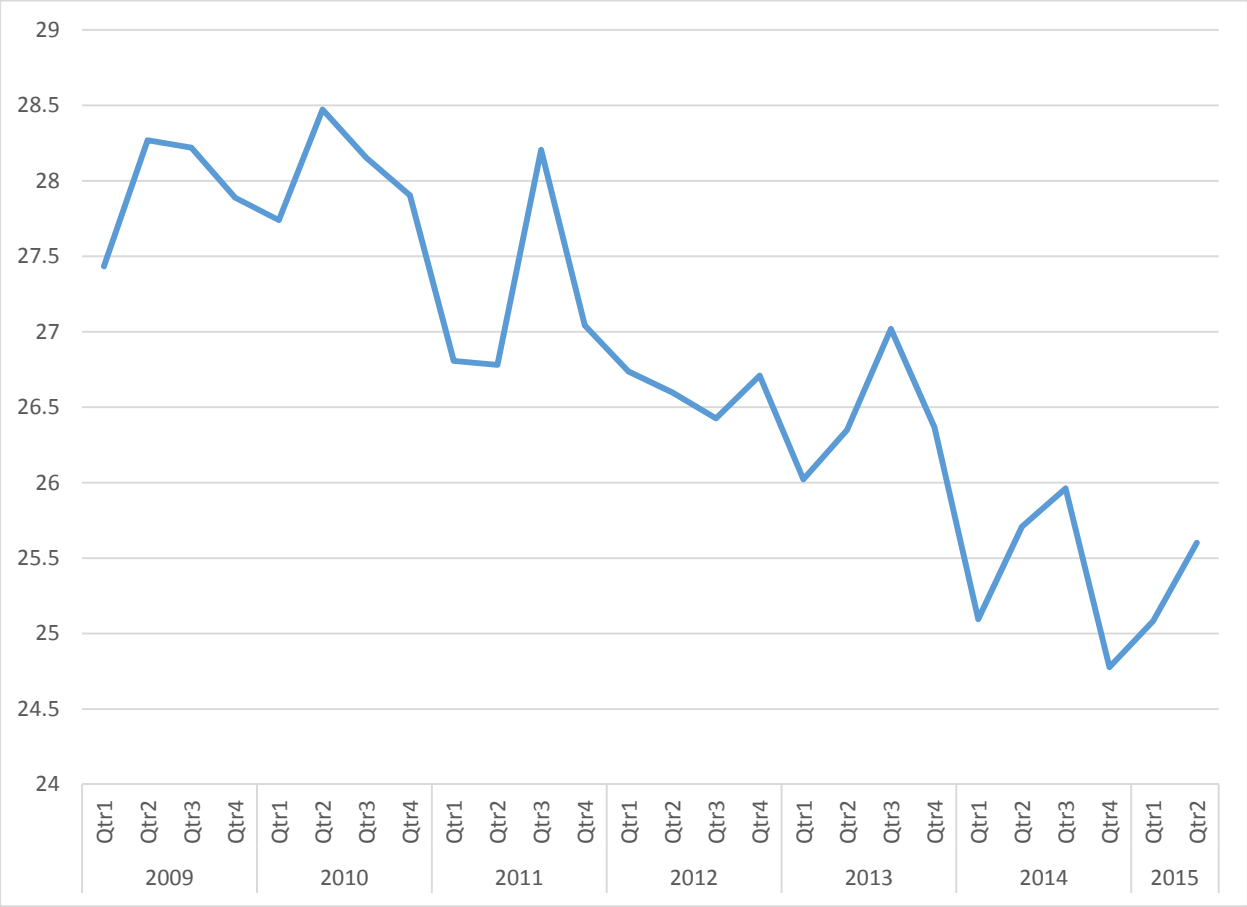
APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER 49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

# VERIFIED STATEMENT OF ANNE MOREHOUSE

My name is Anne Morehouse. I am Superintendent of the Regional Operations Center for CN's Southern Region. I have held this position since May 1, 2014. Previously I have held the positions of Rail Traffic Controller, Asst. Chief Train Dispatcher, Chief Train Dispatcher, Senior Chief Dispatcher and Senior Manager Bulk, Southern Region. In my current position, I am responsible for overseeing, coordinating and dispatching freight and passenger rail operations on all of CN's U.S. lines, with the exception of certain lines adjacent to the Canadian border that are unrelated to this proceeding. As such, I am familiar with both freight and passenger operations on the CN lines used by Amtrak, including the challenges faced and measures taken by CN as it strives to accommodate the increasing and oftentimes competing demands of freight and passenger rail customers, including Amtrak.

Successful rail operations depend on the efficient use of available capacity. In this statement, I first describe the importance of network capacity to CN's freight operations and the operational problems that arise when capacity is constrained. I then discuss more specifically Amtrak's effects on CN's operations and the costs imposed on CN by Amtrak's consumption of CN's rail line capacity. Finally, I discuss how the Performance Payments CN earns under the

**Figure 2**
**Average Intermodal Train Speed by Quarter on Divisions that Host Amtrak.**




If freight traffic continues to grow as expected, the freight delay costs attributable to Amtrak are likely to increase more rapidly as remaining areas of excess capacity that CN can use to manage traffic growth are exhausted.

In this era of constrained capacity, operating efficiently and predictably to schedule are essential in order to make the most of our limited capacity. Delays – especially unpredictable and unavoidable delays imposed on CN by other entities, such as Amtrak – are not only an indication of capacity constraints, but an independent source of inefficiency that imposes very significant costs. Delays create both direct costs (such as crew, fuel, and equipment costs) and indirect costs (for example, by complicating yard work that needs to be managed with minimal

variability and by reducing the quality and reliability of service to present and potential CN customers, who may be lost to CN or may pay less for CN's services).

Addressing capacity constraints, however, requires capital resources – such as main line track, sidings, yards, locomotives and cars – and access to such resources is limited in the short term and expensive in the long term. CN has continued to invest in its rail capacity in order to serve its shippers. Since 1998, when CN greatly expanded its U.S. operations by acquiring the Illinois Central Railroad, CN has made capital expenditures of almost $25 billion (CAD) – close to 20% of its revenues during that time. CN recently announced that it will spend a further $2.7 billion CAD in 2015 in capital expenditures (approximately 22% of its 2014 revenue), including approximately $800 million on its U.S. operations. While CN regularly spends significant capital dollars maintaining and enhancing its rail lines, including the rail lines used by Amtrak, Amtrak has never provided funding to increase the capacity of CN's rail lines that it uses, despite significantly increasing the number of trains it operates on our rail lines. *See* Ladue/Kuxmann V.S. at § I.B.

## II. AMTRAK'S CONSUMPTION OF CN'S RAIL LINE CAPACITY IMPAIRS CN'S OPERATIONS AND IMPOSES COSTS ON CN

Quantifying capacity, and quantifying the consumption of capacity by an individual train or train type, is complex and difficult, just as managing capacity is complex and difficult, because railroad capacity is multi-faceted. At the simplest level, CN track space physically occupied by an Amtrak train cannot be occupied at the same time by a freight or other passenger train. Nor can other traffic occupy space too close to an Amtrak train, for obvious safety reasons.

In that respect, Amtrak trains consume CN's capacity just as other traffic does. But because of their speed, priority, and unpredictability, Amtrak trains consume far more capacity

means that if there is a train working the yard any trains passing the yard must use the siding. In addition to this already challenging scenario, there is an Amtrak station, located on the single track main line through Champaign, at which 6 daily Amtrak trains are scheduled to stop. In addition, both pairs of Illini/Saluki trains are scheduled to meet each other at or near the Champaign siding. Weaving the four daily Illini/Saluki trains and the two daily City of New Orleans trains between the mix of freight trains on the limited available track is a difficult exercise that leads to frequent, lengthy delays of CN trains.

Champaign is an area that would obviously and significantly benefit from infrastructure improvements. In order to address the unavoidable conflicts caused by Amtrak operations through this area, CN has in the past asked Amtrak to fund (1) additional double track between Paxton and Leverett Junction with crossovers (which would allow freights to work Champaign without interfering with Amtrak), (2) installation of a universal crossover between Gilman and Delrey (which would eliminate three-way meets and eliminate the need to hold trains 8 miles north of Gilman or 13.5 miles south of Delrey), and (3) double track between Tolono and Tuscola and additional crossovers at Tolono and Tuscola (which would allow multiple meets without the need to hold trains 9.7 miles north of Tolono or 8.6 miles south of Tuscola, and expedite moves at the Tuscola and the Tolono interlockings). Although Amtrak would be the primary beneficiary of these projects, no infrastructure on CN's lines has ever been added at Amtrak's expense or through public funding sponsored by Amtrak. *See* Ladue/Kuxmann V.S. at § I.B.

Amtrak's use of capacity on CN's lines results in two primary effects on CN's operations: (A) delays to CN's freight trains, and (B) operational adjustments that CN must make to accommodate Amtrak, but which reduce the efficiency of our freight operations.

One example of such practical restrictions impacts CN's local/"last-mile" service to shippers with facilities adjacent to CN's main line. Particularly along its congested single track IC main line south of Chicago, CN frequently encounters situations in which, in order to provide local service, it must cross the main line between switching yards and customer sidings, and/or temporarily block the main line. In order to avoid conflicts with Amtrak, and with higher priority freight trains that must be scheduled around Amtrak or delayed to allow Amtrak to pass, CN operates some of those local trains only during certain hours of the night. Even then, main line congestion involving Amtrak – sometimes directly (the City of New Orleans runs through the night on the IC main line), and sometimes indirectly (for example, when Amtrak delays intermodal trains that delay lower priority freight trains) – frequently disrupts both the last-mile service for those customers and the movement of their cars further along CN's lines. Amtrak trains are responsible for significant delays to local trains and road switchers that operate on CN's [redacted]. Moreover, as Fiona Murray explains in her V.S. discussing CN customers [redacted], on some days, restrictions and congestion on the main line during the limited windows of operational time available to local trains and switchers lead to service exceptions, meaning that local customers are not served at all, or are only served in one direction (inbound or outbound).[8]

Another example of inefficiencies created by CN's need to accommodate Amtrak's inflexible schedule requirements involves CN's operations and maintenance of its Bluford and Centralia Subdivisions, which run parallel to each other north of the Amtrak station in Carbondale, IL, which is located on the Centralia Sub. Were it not for Amtrak's requirements,

[8] Similar examples occur in and around Effingham, where CN must regularly hold a local train, L551, in the yard in order to avoid delays to Amtrak, and on CN's Yazoo Subdivision between Memphis and Jackson (at locations such as Greenwood and Yazoo City).

slower to accelerate than other trains (although in due course they can generally reach the same speed as trains not equipped with DP). This means that when DP locomotives are forced to slow or stop due to interference from Amtrak, their availability and productivity are reduced even more than other locomotives. And, like other locomotives and equipment, the full loss of reliability and efficiency suffered by CN as a result of its inability to fully utilize its DP locomotives cannot be fully quantified.

## III. CN'S SRS DATABASE REPORTS DELAYS TO CN'S TRAINS CAUSED BY AMTRAK.

As discussed in more detail in the separate V.S. that I have submitted jointly with John Summerfield and Gregg Girard, some but not all of the delays to CN's trains are recorded in CN's SRS database. That database tracks the movement of scheduled CN trains, locomotives, and cars through CN's system, and automatically creates a database entry called a Delay Record when a train is delayed beyond a certain threshold. The Delay Records automatically generated by SRS prompt dispatchers to code and manually input information and comments related to the root causes of each specific delay. Using this information, Messrs. Baranowski and Fisher of FTI Consulting identify and quantify some of the costs of delays to CN freight trains caused by Amtrak. *See generally* Baranowski & Fisher V.S..

Part of Messrs. Baranowski and Fisher's analysis involved allocating to Amtrak portions of a delay with multiple causes. I understand that for delays in which the cause was attributed to multiple trains, with no non-train cause for the delay (*e.g.*, a broken rail), FTI Consulting allocated minutes of delay on a pro rata basis based on the total number of trains listed in the Delay Comment field. For delays in which the cause was attributed to both trains and a non-train cause, FTI Consulting allocated 50% of the total minutes of delay to the trains, and then further allocated that delay on a pro rata basis based on the total number of trains listed in the Delay