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January 27, 2023

**VIA E-FILING**

Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E Street, SW  
Washington, DC 20423

**Re: STB Docket No. NOR 42175, Complaint and Petition of the National Railroad Passenger Corp. under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2**

Dear Ms. Brown:

We represent BNSF Railway Company ("BNSF") in the above-referenced matter and hereby provide this limited response to Amtrak's pleadings in this proceeding. We also request that we each be added to the service list for this proceeding.

BNSF enjoys a strong partnership with Amtrak and takes seriously its responsibilities for safely hosting Amtrak passenger rail trains, such as the Sunset Limited service, on its network. BNSF deploys a dedicated team at its Network Operation Center that collaborates 24/7 with Amtrak while it operates on BNSF-hosted rail lines.

In its Complaint, Amtrak repeatedly emphasized that BNSF hosts a small geographic portion of the Sunset Limited service and that "the Board's investigation should likely focus on UP." Compl. at 37 n.88. BNSF nevertheless stands ready to fully participate in this proceeding, as required by the Board or otherwise necessary to protect BNSF's interests. But any such participation must provide sufficient due process to BNSF and any other subjects of the investigation requested by Amtrak.

Amtrak has proposed charging the Board with developing the record in this case, conducting an investigation, and determining remedies – all apparently without the opportunity of the host railroads to present evidence and argument in defense. BNSF is concerned that this approach would deprive the host railroads of due process with respect to any determinations related to preference and damages

that the Board may make in this proceeding. Because Amtrak “encourages the Board to pursue additional investigations based on [its proposed] roadmap,” Amtrak Proposed Procs. at 4, it is important that the Board create a fair and transparent process in this case.

Amtrak correctly notes that this case is the first brought under 49 U.S.C. § 24308(f) since November 2020, when the Federal Railroad Administration (“FRA”) enacted a final rule setting metrics and standards for measuring on-time performance under § 24308(f). But the Board has considered how to conduct prior proceedings conducted under 49 U.S.C. § 24308(f), and the FRA’s rule has no impact on those procedural matters.

In STB Docket No. NOR 42134, Amtrak sought an investigation regarding performance of Amtrak service on rail lines owned by a subsidiary of Canadian National Railway Company (“CN”). Amtrak and CN each suggested procedural frameworks to govern the case, and the Board decided that the “case should be adjudicated using the established procedures governing complaints and the encompassing discovery and motion practice guidelines set forth in Parts 1112 and 1114 of our rules.” *Nat’l R.R. Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Can. Nat’l Ry.*, NOR 42134, slip op. at 3 (STB served Jan. 3, 2013). All of the considerations referenced by the Board in that decision are relevant to this case:

These procedures have been thoroughly developed and interpreted through numerous litigations before the agency, and therefore provide a complete and ascertainable structure for the parties in moving forward in this type of litigation. This proceeding was begun by Amtrak, and the Board’s standard practice in complaint-type proceedings is to have the record built through party-directed discovery. Amtrak and CN are best positioned to know what information is relevant to the possible causes of delay. For that reason, it is appropriate to provide for the development of relevant information through the parties’ own discovery.

*Id.* BNSF encourages the Board to follow its precedent in NOR 42134 and impose a similar process in this case.

As noted above, BNSF stands ready to participate in this proceeding, and preserves its rights to substantively respond once the Board has established a procedure for conducting its investigation. BNSF values its collaborative relationship with Amtrak and recognizes our high calling of handling goods movements for our nation’s supply chain while also hosting passenger rail.

Please contact us if you have any questions.

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Respectfully submitted,

/s/ Peter W. Denton

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*Attorneys for BNSF Railway Company*

cc: All parties of record

## CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2023, I have caused the foregoing letter from BNSF to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams  
*Attorney for BNSF Railway Company*