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AMTRAK INVOICE REVIEW:

Undetected Errors Resulted in Overpayments

Report No. OIG-A-2012-019 | September 5, 2012



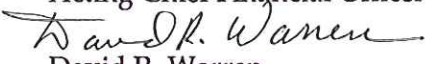


Office of Inspector General



Memorandum

To: Gordon Hutchinson,
Acting Chief Financial Officer

From: 
David R. Warren
Assistant Inspector General, Audits

Date: September 5, 2012

Subject: *Amtrak Invoice Review: Undetected Errors Resulted in Overpayments*
(Report No. OIG-A-2012-019)

The Amtrak Office of Inspector General (OIG) conducted this audit because of previously identified control weaknesses and the significant amount of money associated with Amtrak's service costs and on-time performance (OTP) incentive payments to host railroads. Over time, our office has identified more than \$79.5 million¹ in overpayments and potential recoveries disclosed in OIG audit reports issued since 1995. This does not include the over-\$3 million identified in this report, but does include over \$19 million² in overpayments that have already been collected. This report is part

¹ In *On-Time-Performance Incentives: Inaccurate Invoices Were Paid* (OIG-A-2012-013, June 29, 2012), we reported approximately \$37 million in overpayments and potential recoveries, including at least \$5.7 million in overpayments that have already been recovered (cash or credits). At the time, we were in the process of performing a comprehensive review of all OIG audit reports issued since 1995 relating to audits of host railroad invoices. We have completed that review and determined that overpayments reported since that time total more than \$79.5 million. This accounts for the change from \$37 million in the June report to more than \$79.5 million in this report. This amount will change to the extent that future reports identify additional overpayments. The review also disclosed additional recoveries made by Amtrak to account for the change from \$5.7 million in the June report to the more than \$19 million reported here. This amount is also subject to change if more overpayments are recovered.

² Amtrak also saved more than \$[redacted] million in claims released by CSX. The release of these claimed amounts stemmed from a negotiated agreement to settle the overpayments identified in our audit report *CSX On-time Performance Incentives: Inaccurate Invoices and Lack of Amtrak Management Review Lead to Overpayments* (Report No. 406-2005, March 30, 2010). The CSX release agreement resulted in Amtrak's making an accounting adjustment to settle invoice claims submitted by CSX, but not paid by Amtrak. By making this adjustment to its accounts payable ledger, \$[redacted] million was made available for use by Amtrak in other areas. The agreement was reached on April 17, 2012 and the accounting adjustment was posted on April 30, 2012.

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of a series of OIG audits of Amtrak's payments to host railroads. (See Appendix I for a list of prior reports).

The objective of this audit was to determine whether Union Pacific invoices to Amtrak for service costs and on-time-performance incentives from January 2004 through June 2008 were accurate. For a detailed discussion of our audit scope and methodology, see Appendix I.

SUMMARY OF RESULTS

Union Pacific's (UP) invoice amounts were not consistently accurate. The inaccuracies occurred because invoices were not consistently calculated in accordance with the operating agreement between Amtrak and UP or were unsupported. In total, Amtrak overpaid Union Pacific about \$3.5 million. The errors identified in this report do not include and are in addition to the over-\$1.2 million in errors uncovered by Amtrak's invoice-review process. Our review of judgmentally selected UP invoices for the 54-month period (January 2004 through June 2008) disclosed UP overbilling of about \$2.4 million. In addition, errors for three cost components—General Administration, Communications, and Train Water—continued beyond the period initially reviewed. In expanding the scope of our work to address this issue, we determined that UP overbilled Amtrak about an additional \$1.1 million from July 2008 through December 2011, totaling the \$3.5 million overbilled.

The billing errors went undetected because, as previously reported,³ Amtrak did not have in place an adequate review process during this period. As discussed in a report issued earlier this year,⁴ Amtrak is making progress in improving its invoice-review process. (See Appendix II for further discussion on this issue). The invoice overpayments affect Amtrak's cash flow and ability to effectively manage its activities. Further, these funds, had they been available, might have been used in other areas or to reduce reliance on federal subsidies. We are recommending that Amtrak's Acting Chief Financial Officer act to recover the \$3,473,737 that Amtrak overpaid Union Pacific.

³ *On-Time-Performance Incentives: Inaccurate Invoices Were Paid Due to Long-standing Weaknesses in Amtrak's Invoice-Review Process* (Audit Report 403-2010, April 21, 2011).

⁴ *Amtrak Invoice Review: Inaccurate Invoices were Paid, But Progress is Being Made to Improve the Invoice-Review Process* (OIG-A-2012-005, February 16, 2012).

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OPERATING AGREEMENTS

The Rail Passenger Service Act of 1970 created the National Railroad Passenger Corporation (Amtrak) to provide intercity rail passenger service. The act allowed Amtrak to contract with host railroads, such as the Union Pacific Railroad Company, for the use of its tracks and other facilities and the provision of services on such terms and conditions as the parties may agree.

Operating agreements were developed between Amtrak and host railroads to serve as a basis for determining costs associated with these services, equipment, and facilities provided to Amtrak. The agreements include incentives to encourage host railroads to facilitate Amtrak passenger train on-time operations. The incentives relate to mutually agreed-upon running times between established checkpoints along the route of a passenger train trip. Generally, service performance payments and related incentives are calculated using provisions described in appendix V of the operating agreements—*Performance Payments and Penalties*.

Effective January 1, 2000, Amtrak entered into an agreement with Union Pacific that consolidated four previous contracts with respectively, Southern Pacific Transportation Company, Union Pacific, Southern Pacific Central States Line, and the Denver and Rio Grande Western Railroads. The agreement was further amended through amendment agreement changes. On April 2, 2007, Union Pacific and Amtrak extended this agreement to [REDACTED]. The agreement authorizes Union Pacific to submit monthly invoices for services provided to Amtrak and for OTP incentives. Each month, Union Pacific submits a statement of these charges. The operating agreement lists, in summary form, the authorized cost components. These components and OTP incentives make up the monthly invoices provided to Amtrak.

A separate agreement for the operation of capitol corridor trains⁵ was signed among the Capitol Corridor Joint Powers Authority, Union Pacific, and Amtrak on December 1, 2003. This agreement established a performance payment arrangement specific to capitol corridor trains, separate from appendix V of the 2000 agreement.

⁵ Amtrak trains that operate between Auburn and San Jose, California through the state capital, Sacramento.

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ERRORS WERE FOUND IN ALL COST COMPONENTS REVIEWED

Union Pacific's invoice amounts were either not consistently calculated in accordance with the operating agreement or were unsupported in all categories reviewed.⁶ A review of the judgmentally selected invoices for the audit period disclosed billing errors amounting to \$2,391,986 for service costs and OTP incentives. Table 1 breaks down the categories of overbilling found.

Table 1. Error Categories of Union Pacific Overbilling, January 2004–June 2008^a

Category	Amount
Authorization Notices	\$ 941,912
General Administration	412,618
██████████ and Other ██████ Costs	352,200
Locomotive Rental and West Oakland Locomotive Servicing	207,912
Special Trains	116,018
Diesel Fuel and Fuel-Handling	99,738
Communications	84,492
Station Costs and Train Water	75,384
On-Time-Performance Incentives, Capitol Corridor Trains	74,685
Train and Engine Crews	27,027
TOTAL	\$2,391,986

^a Numbers rounded to whole dollars

Source: OIG analysis of Union Pacific and Amtrak data

The following sections discuss the error categories listed in Table 1.

Authorization Notices

Errors and unsupported costs in authorization notices amounted to \$941,912.

The operating agreement allows UP to bill Amtrak for non-routine services, those that are not otherwise covered by the agreement, under authorization notices.

During the audit period, UP used authorization notices to invoice Amtrak for certain work and services along the route, such as ██████, ██████, work related to ██████ (such as ██████ and ██████), ██████ ██████

⁶ Similar cost components are combined, such as ██████ and other ██████ costs.

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██████████ and ██████████ The invoice amounts totaled \$1,641,912. We judgmentally selected a total of \$1,614,818 (98 percent of the total invoices) for review.

UP did not provide adequate supporting documentation for invoices totaling more than \$886,800. Specifically, the company did not provide hours worked, labor rates, labor payroll reports, vendor invoices, Amtrak authorizations, and contracts for ██████████ ██████████, in support of the charges on its monthly invoices.

For example, on the December 2006 invoice, UP claimed \$30,000 for a lawsuit settlement to indemnify it for an Americans with Disabilities Act suit in Salinas, California. However, we found no document in the invoice, such as Amtrak's agreement to the settlement, to support this charge. We categorized this type of cost as unsupported.

In addition to the more than \$886,800 in unsupported costs, other errors totaling nearly \$55,112 were due to the following:

- charges for wrong crews, non-Amtrak trains, and other unauthorized expenses such as claims, away-from-home pay, and meals;
- duplication;
- inclusion of unallowed labor costs;
- expenses for periods already closed; and
- erroneous rates.

As an example, in June 2004, UP invoiced Amtrak for ██████████ costs of \$5,126 for Train 6-29. According to our calculation, UP was entitled to more than \$2,986 because its calculation included non-Amtrak trains. As a result, we questioned the difference of about \$2,140 for this cost.

General Administration

Invoice errors for general administration costs amounted to \$412,618.

The operating agreement requires Amtrak to pay, each month, costs incurred by Union Pacific for ██████████, ██████████ and ██████████ at the rate specified in item 12 of appendix IV of the agreement. The operating agreement requires Amtrak approval prior to any change in this rate.

General administration or other item costs established in the operating agreement appendices may be modified by mutual agreement of Amtrak and Union Pacific to

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reflect changes in UP's provision of services to Amtrak. Modifications are usually documented in the form of an amendment to the agreement. An amendment must be initialed or signed by representatives of both Amtrak and Union Pacific to be effective and binding.⁷

On three different occasions—in May 2006, April 2007, and March 2008—Union Pacific unilaterally increased the rate for general administration when submitting the monthly invoices, and continued to bill at this higher rate in subsequent months without Amtrak's approval of these increases. Amtrak did not detect these increases during its invoice-review process.

[REDACTED] **and Other [REDACTED] Costs**

Union Pacific claimed [REDACTED] ([REDACTED]) and other [REDACTED] costs ([REDACTED]) that were not allowed by the operating agreement. The errors amounted to \$213,974 and \$138,226, respectively, totaling \$352,200.

Under appendix IV, items 9 and 18, of the operating agreement, normal wear and tear on the railroad's lines and other miscellaneous costs associated with train operations are [REDACTED] through [REDACTED] and [REDACTED]. Both are calculated using three factors: (1) train [REDACTED], (2) [REDACTED], and (3) [REDACTED] per train [REDACTED]. There are [REDACTED] for [REDACTED] — [REDACTED] and [REDACTED]. These [REDACTED] are [REDACTED] an annual inflation adjustment.

We calculated [REDACTED] and [REDACTED] invoice amounts based on the agreement miles and rates and train operating data for all months selected for review; these results were compared with those invoiced by Union Pacific. Our analysis found that UP's invoice errors were due to (1) not using the appropriate [REDACTED] (2) not adjusting train origination or termination for [REDACTED] based on [REDACTED] operating [REDACTED] and (3) including detour, not run, or cancelled trains. Table 2 shows an example of UP's invoicing Amtrak for trains that did not run.

⁷ Amtrak's host railroad group management expressed disagreement with this statement, indicating that there are instances in which amendments are not fully executed yet remain in effect because both parties have agreed through other communications or actions. We disagree with this interpretation, and believe that agreements must be signed to be effective and binding. The undocumented process described is not a sound business practice or a sound basis for making business decisions.

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**Table 2. Example of [REDACTED] and
 Other [REDACTED] Costs Errors,
 February 2005 and April 2008**

Invoice Month	Train #	# Trips Billed	Amount Billed	# Trips Audited	Amount Audited	Error Amount	Explanation
Feb 2005	[REDACTED]	28	\$8,981	0	\$ 0	\$8,981	Train did not run [REDACTED]
Apr 2008	[REDACTED]	30	14,215	15	7,107	7,108	Train did not run [REDACTED]

Source: OIG analysis of Union Pacific and Amtrak data

As shown in table 2, Union Pacific's documentation showed that these trains did not run for the days indicated, contradicting its invoices; Amtrak likewise did not detect these errors.

Locomotive Rental and West Oakland Locomotive Servicing

Invoice errors for locomotive rental costs amounted to \$199,500 and for West Oakland locomotive servicing, \$8,412, for a total of \$207,912.

Occasionally, Amtrak locomotives will malfunction during a trip. When this occurs, Amtrak can rent a freight locomotive from UP to operate the passenger train to its final destination and complete the trip, to minimize passenger delay.

There are [REDACTED] [REDACTED] operating an Amtrak train, and the other [REDACTED] [REDACTED] the rental locomotive is removed from the train.

Amtrak paid \$630,037 for locomotive rental during the audit period; this included a March 2005 invoice covering locomotive rental charges for 2002 through 2004 under the heading "Prior Period Adjustments."⁸ UP included in its rental cost invoices charges for [REDACTED] operating Amtrak trains, when, in fact, this was not the case. UP also used an erroneous rate (other than the one permitted by the operating agreement) or an incorrect [REDACTED] figure. For example:

⁸ When Union Pacific finds errors or omissions in its previously submitted invoices, it is allowed to correct them by listing them under Prior Period Adjustments. Each error or omission is listed separately, along with an explanation and detail to support the amount billed or credited on the current monthly invoice.

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- For a train operated on August 23, 2002, in Utah and Colorado, UP billed Amtrak 19 hours for rental (from [REDACTED] of locomotive), as shown in Figure 1:

Figure 1. Union Pacific Invoice for Train 6-22, August 23, 2002

 Union Pacific Railroad			
Locomotive Lease Ref. No. UPRR-082302-0824 - Billing Summary			
Locomotive Initials/No: UP7217		HP: 4390	
Delivery Date: 08/23/2002	Time: 1000 MDT	Location: PROVO, UTAH	Fuel Level: 4900
Return Date: 08/24/2002	Time: 0500 MDT	Location: DENVER, COLO	Fuel Level: 3000
[REDACTED]		x 19 hrs =	[REDACTED]

Source: Union Pacific

However, as shown in Table 3, UP over billed Amtrak 3.45 hours for this locomotive:

**Table 3. Analysis of Locomotive Rental,
August 23-24, 2002**

Train #	Start Date	Start Time	End Date	End Time	Audited Hours	Union Pacific Hours	Inaccurately Billed Hours
6-22	8/23/02	10:04	8/24/02	1:37	15.55	19	3.45

Source: OIG analysis of Union Pacific and Amtrak data

- For a train operated on February 22, 2007, in California and Oregon, UP invoiced Amtrak 13 locomotive rental hours:

Figure 2. Union Pacific Invoice for Train 14-21, February 22, 2007

ITEM 19	
[REDACTED]	x 13 = [REDACTED]

Source: Union Pacific

As indicated in Table 4, however, UP over billed Amtrak 1.47 hours for this locomotive:

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**Table 4. Analysis of Locomotive Rental,
 February 22, 2007**

Train #	Start Date	Start Time	End Date	End Time	Audited Hours	Union Pacific Hours	Inaccurately Billed Hours
14-21	2/22/07	11:20	2/22/07	22:52	11.53	13.00	1.47

Source: OIG analysis of Union Pacific and Amtrak data

Our audit of West Oakland locomotive [REDACTED] also found errors, including charges for [REDACTED] Union Pacific locomotives, inaccurate number of units [REDACTED] and incorrect rate. Amtrak should not have been charged at all for [REDACTED] by UP rental locomotives because the rental rate includes [REDACTED] as stated in item 19, appendix IV, of the operating agreement. Amtrak did not detect this invoice error, which resulted in Amtrak's overpaying \$8,412.

Special Trains

Invoice errors for special train⁹ costs amounted to \$116,018, including error amounts of \$104,452 and unsupported costs of \$11,566.

Occasionally, Amtrak operates special trains. [REDACTED] [REDACTED] These rates are multiplied by the number of train miles operated for the trip to determine the amount owed to the host railroad.

UP invoices included incorrect rates or mileage, charges for non-special trains and for canceled trains. As an example of an incorrect rate, in January 2004, UP charged Amtrak for a [REDACTED] This train should have been invoiced at the [REDACTED] prescribed in the operating agreement. The difference between these rates resulted in an overpayment of about \$4,881.

Diesel Fuel and Fuel-Handling

Invoice errors for diesel fuel and fuel-handling costs amounted to \$99,738.

⁹ Special trains are those not regularly scheduled and included in Amtrak's National Timetable. Examples include revenue trains such as American Orient Express (AOE) trains, in which Amtrak is paid by, in this case, AOE for the operation of a train over host railroad tracks; and non-revenue trains such as deadhead trains (empty Amtrak equipment that needs to be moved to a different location).

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The locomotive rental rate specified in item 19, appendix IV, of the operating agreement includes [REDACTED]. Therefore, when a rental locomotive is [REDACTED] [REDACTED] should be assessed.

Amtrak locomotives need diesel fuel added to their tanks to avoid running out of fuel on long-distance routes. When UP supplies diesel fuel to Amtrak locomotives, it is entitled to [REDACTED]. However, [REDACTED] provided by UP to a rental locomotive should not be charged to Amtrak because [REDACTED] in the locomotive [REDACTED].

Diesel fuel and fuel-handling errors are summarized in Table 5:

**Table 5. Summary of Diesel Fuel Errors,
January 2004–June 2008^a**

Description	Error Amount
Diesel fuel supplied to rental locomotives	\$23,733
Incorrect diesel fuel quantities	47,962
Unsupported diesel fuel quantities	27,244
Diesel fuel-handling	799
TOTAL	\$99,738

^a Numbers rounded to whole dollars.

Source: OIG analysis of Union Pacific and Amtrak data

For example, in February 2004, Union Pacific's fuel invoice for Train 5 included [REDACTED] gallons supplied to a UP rental locomotive, UP4856, as shown in Figure 3. We disallowed these charges, which resulted in an overpayment of about \$2,271.

Figure 3. Union Pacific Fuel Invoice for Train 5, February 8, 2004

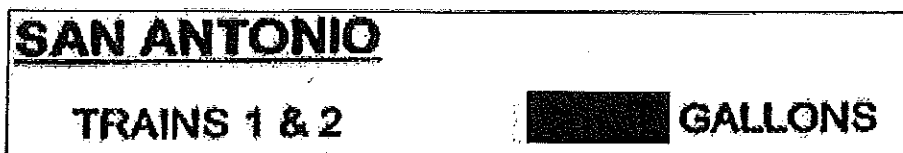
TRAIN	UNIT	GALLONS	DATE: 02/08/04
711	1. 2001	892	
713	2. 2007	1048	
715	3. 2002	884	
717	4. 152	961	
5	5. 58	1183	
5	6. 174	637	
5	7. UP4856	[REDACTED]	\$1.3

Source: Union Pacific

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Another example of Union Pacific's invoicing fuel costs based on an incorrect quantity occurred in October 2004, when UP invoiced Amtrak for [REDACTED] gallons of fuel supplied to Trains 1 & 2 at San Antonio, as shown in Figure 4. However, UP's supporting documentation showed that only [REDACTED] gallons were provided, as shown in Figure 5. Therefore, we questioned the charge for the difference of [REDACTED] gallons, resulting in invoice errors amounting to about \$36,505 for fuel and fuel-handling. In both examples, Amtrak did not detect the errors based on the agreement provisions and documentation provided during its invoice-review process.

Figure 4. Union Pacific Fuel Invoice for Trains 1 & 2, October 2004



Source: Union Pacific

Figure 5. Union Pacific Fuel Support for Trains 1 & 2, October 2004

<p style="text-align: center;">UNION PACIFIC RAILROAD COMPANY</p> <p style="text-align: center;"><u>DESCRIPTION OF EXPENSES</u></p>		<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: small;">BILL TYPE</td> <td style="font-size: small;">NO</td> </tr> <tr> <td style="font-size: small;">DATE ISSUED</td> <td style="font-size: small;">11-05-09</td> </tr> <tr> <td style="font-size: small;">BILL NUMBER</td> <td style="font-size: small;">00000</td> </tr> <tr> <td style="font-size: small;">EXPENSE MONTH</td> <td style="font-size: small;">10-04</td> </tr> <tr> <td style="font-size: small;">CONTRACT NUMBER</td> <td style="font-size: small;">MO92654</td> </tr> </table>	BILL TYPE	NO	DATE ISSUED	11-05-09	BILL NUMBER	00000	EXPENSE MONTH	10-04	CONTRACT NUMBER	MO92654																									
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TOTAL GALLONS	[REDACTED]																																				

Source: Union Pacific

Communications

Invoice errors for communications costs amounted to \$84,492.

The operating agreement requires Amtrak to pay, each month, for communications costs incurred by Union Pacific exclusively for Amtrak operations, at the rate specified

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in item 6 of appendix IV. This rate is subject to annual Association of American Railroads cost index adjustments. Item 6 and other item costs established in the operating agreement appendices may be modified by mutual agreement of Amtrak and Union Pacific to reflect changes in UP's provision of services. Modifications are usually documented in the form of an amendment to the agreement, which (as discussed above) must be initialed or signed by representatives of both Amtrak and UP to be effective and binding.

Starting in April 2007, Union Pacific invoiced Amtrak at a rate 351 percent higher than the previous month's. However, none of the signed amendments to the operating agreement applicable to our audit period affected the communications rate. We found no agreement signed by both Amtrak and Union Pacific to support the April 2007 rate increase. Again, UP unilaterally adjusted the rate without obtaining mutual agreement, as prescribed. Without written mutual agreement of both parties, only annual cost index adjustments can be used to modify the existing rate. This significant increase was not detected by Amtrak in its invoice review-process. We questioned the charge related to the upward adjustments.

Station and Train Water Costs

Invoice errors for station and train water costs amounted to \$75,384, including \$73,074 for station costs and \$2,310 for train water.

According to the operating agreement, the amounts of payment shall be appropriately and timely adjusted whenever UP does not perform any service or such service is changed.

The actual station and train water costs did not reflect the same level of services provided that the compensation was intended to cover in the contract. The rates for station costs and train water were not adjusted in a timely manner when Union Pacific no longer provided these services at ten stations used by Amtrak trains.

For example, effective July 1, 2003, the city of Dunsmuir, California, and Union Pacific entered into a lease agreement for use of the Dunsmuir station. The lease stipulated that the city would pay all utilities. The agreement between the railroad and Amtrak includes a payment per month in utility costs for the Dunsmuir station in the base year (2000). However, the railroad did not adjust the rate to exclude Dunsmuir station utility costs until January 2007. Similarly, on May 6, 1987, Amtrak leased the Granby, Colorado, station from the town, which paid the utilities. In both instances, Union

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Pacific continued to invoice—and Amtrak continued to pay—for station utilities that included services not provided by the host railroad.

Table 6 provides a summary of overbilling errors by station.

**Table 6. Summary of Overbilling Cost Errors by Station,
 January 2004–June 2008**

Station	Error Amount
Tucson, AZ	\$32,128
Independence, MO	18,520
Kirkwood, MO	13,524
Granby, CO	13,275
Dunsmuir, CA	12,400
Reno, NV	8,396
Poplar Bluff, MO	8,145
Marysville, CA	1,924
Warrensburg, MO	745
Other ^a	(35,983)
TOTAL	\$73,074

^a Union Pacific under-billed Amtrak by \$35,983. The \$73,074 is the net amount due Amtrak.
 Source: OIG analysis of Union Pacific and Amtrak data

On December 29, 2006, UP sold the Sacramento train station to Thomas Enterprises, which in turn sold it to the city of Sacramento. Since January 1, 2007, Amtrak has been paying station and train water costs to the city. A review of the Union Pacific invoices indicates that UP still billed Amtrak for train water at the same rate, which included the Sacramento train station after December 31, 2006.

On-Time-Performance Incentives (Capitol Corridor Trains)

Invoice errors for on-time-performance (OTP) incentive costs amounted to \$74,685.

The agreement dated December 1, 2003, among Amtrak, Union Pacific, and the Capitol Corridor Joint Powers Authority established a separate performance payment arrangement specific to Capitol Corridor trains. Incentives earned by UP for facilitating Capitol Corridor trains' on-time operation, as prescribed in this agreement, are funded by the Capitol Corridor Joint Powers Authority. Accordingly, Capitol Corridor trains are [REDACTED] from Amtrak's [REDACTED] under the operating agreement and [REDACTED] [REDACTED] related to other trains.

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During the audit period, Union Pacific earned OTP incentives for Capitol Corridor trains only. We selected one month (December 2004¹⁰) from 9 months with OTP incentives between January 1, 2004 and December 31, 2005 for a detailed review. For the period January 2006 through June 2008, we did not review Capitol Corridor trains' OTP incentives. We determined that UP did not use the correct agreement to calculate OTP incentives and that the review would not be an efficient use of audit resources.

For December 2004, Union Pacific did not follow the December 2003 agreement among the Capitol Corridor Joint Powers Authority, Union Pacific, and Amtrak but, instead, used the operating agreement to calculate incentives. In addition to using the wrong OTP incentive agreement, the railroad's on-time-percentage calculations were inaccurate because in some cases it

- used incorrect [REDACTED] times,
- claimed additional [REDACTED] time,¹¹ and
- claimed [REDACTED] tolerances¹² not allowed by the agreement.

For example, on December 22, 2004, for Train 521, UP claimed a 19-minute tolerance for [REDACTED]. However, no contract provision allows a tolerance for [REDACTED]. Therefore, we questioned the use of this tolerance; revised calculation showed that the train was 5 minutes late instead of on time, as claimed by Union Pacific.

In another example, on December 12, 2004, for Train 737, Union Pacific claimed 31 minutes¹³ of additional [REDACTED] time while our calculation showed only 2 minutes. After we applied the 2 minutes additional [REDACTED] time in the OTP calculation, the train became 16 minutes late instead of on time.

¹⁰ This month had the highest invoice amounts for OTP of Capitol Corridor trains during the initial audit period (January 2004 through December 2005).

¹¹ [REDACTED] time is the amount of time that a train spends at a station to perform station work, such as loading or unloading passengers, crew, or baggage.

¹² Tolerances are allowances given for various reasons to the host railroad. The allowances are in the form of delay minutes that can be applied to an Amtrak train that is late in arriving at a checkpoint. The net effect of applying these minutes can result in a train being late per Amtrak's national timetable schedule, but being on time for incentive purposes.

¹³ Union Pacific did not provide details to support the 31 minutes' additional [REDACTED] time. Therefore, based on our calculation, we allowed only 2 minutes.

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Train and Engine Crews

Invoice errors for train and engine crew costs amounted to \$27,027.

Amtrak sometimes uses Union Pacific train and engine crews to assist its crews in operating Amtrak trains over UP routes.

During the audit period, UP invoiced Amtrak \$250,344 for train and engine crews. This cost component was not selected for audit for the period January 2004 through December 2005. For the period January 2006 through June 2008, we reviewed 8 judgmentally selected months. This review indicated that \$26,545 of the billing had no documentary support, such as labor payroll reports. In addition, \$482 was overbilled for costs not allowed by the agreement, such as off-district penalty.¹⁴

Extended Review

Errors for three cost components—General Administration, Communications, and Train Water—continued beyond the period we had originally selected for audit. Given on concern about the overbilling in these areas, we expanded the period for audit. This work showed that UP overbilled Amtrak an additional \$1,081,751 from July 2008 through December 2011. The following table shows the breakdown of overbillings for these three cost components.

***Table 7. Union Pacific Overbillings, Audit Period and Extended Period
 January 2004–December 2011***

Category	01/2004 – 06/2008 Amount	07/2008- 12/2011 Amount	Total, 01/2004 – 12/2011
General Administration	--	\$800,654	--
Communications	--	274,767	--
Train Water	--	6,330	--
TOTAL	\$2,391,986	\$1,081,751	\$3,473,737

Source: OIG analysis of Union Pacific and Amtrak data

During the course of our work, we provided management with the details of the errors for these three cost components so that they could address them as we finalized our report.

¹⁴ Payments to crews that work in territories other than the ones to which they are assigned.

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RECOMMENDATION

We recommend that Amtrak's Acting Chief Financial Officer take action to recover the \$3,473,737 that Amtrak overpaid to Union Pacific.

MANAGEMENT COMMENTS AND OIG ANALYSIS

In commenting on a draft of this report, management stated that the report provides useful information on which Amtrak management can take action. Management also indicated its intent to enter into appropriate conversations with Union Pacific once this report is issued. Specifically, management stated that the Managing Deputy General Counsel, on behalf of Amtrak's Transportation and Finance departments, will pursue any amounts that are recoverable under the law and within the terms of the applicable operating agreements between Amtrak and Union Pacific. Additionally, management stated that it remains committed to making valuable improvements to the host railroad invoice administration review process, and continues to progress with developing a process that facilitates complete and thorough invoice reviews prior to payment. Management's comments meet the intent of our recommendation.

Amtrak's memo commenting on the draft report is reprinted as Appendix III.

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Appendix I

SCOPE AND METHODOLOGY

This report provides the results of an Amtrak OIG review to determine whether Union Pacific invoices to Amtrak for service costs and on-time-performance incentives (OTP) from January 2004 through June 2008 were accurate. After noting that errors for General Administration, Communications, and Train Water continued beyond the audit period, we extended the review for these three cost components to cover July 2008 through December 2011. We conducted this audit between June 2006 and June 2012.¹⁵ We provided a draft of this report to Amtrak management on July 13, 2012, and requested a written response within 30 calendar days. Management provided its response. Certain information in this report has been omitted due to the confidential nature of the information.

The authority to perform an audit of Union Pacific's invoices is established in section 5.2(b) of the operating agreement with Amtrak. This section allows Amtrak to audit and evaluate any payment relating to either financial or operational issues. Under section 5.2(c), the host railroad is required to maintain supporting accounting, operating, and mechanical department records and any other data related to the performance of services for Amtrak; those records are to be made available to us for inspection and copying.

To determine whether Union Pacific accurately invoiced Amtrak for charges incurred for service costs and OTP, we took eight specific steps. First, we assessed audit risk as it related to the specific program by conducting an analysis of the 22 contract cost components and other billing items and selected 11 for review, along with OTP and other items; (2) we reviewed the operating agreement and its amendments, focusing on sections relating to the billable cost components of each item selected for audit; (3) we obtained and reviewed the relevant monthly invoices for payments related to the items and the documentation to support the invoices submitted to Amtrak; and (4) we compared the amounts invoiced with relevant supporting documentation. Further, we (5) reviewed relevant invoice adjustments, (6) communicated with Union Pacific to obtain clarification of invoice items and supporting documentation, (7) calculated the

¹⁵ This audit combined two separate projects, reviews of the period January 2004 through December 2005 and January 2006 through June 2008. We completed field work for the first project in December 2006 and presented our findings to Union Pacific. We started the second project in July 2008 and completed field work in February 2009. These two projects were suspended in March 2009 while awaiting Union Pacific's response to our findings. In March 2011 we resumed the audit, combined the two projects, and completed the review.

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overbilled and/or under-billed amounts resulting from inaccurate invoices, and (8) reviewed our prior audit reports regarding weaknesses in Amtrak's invoice-review process.

We completed a risk analysis of the 22 cost components and billing items included in Union Pacific's monthly invoices to Amtrak. In designing the judgmental sample for review, we considered risk factors including the amount billed, the potential for recovery, management interest, and operational changes. The level of risk determined for each cost component was based on information from the Union Pacific invoices and auditor judgment. The results of this work are not projectable to the population. The cost components included in our work were the following:

1. ██████████
2. Other ██████ Costs
3. Diesel Fuel
4. Locomotive Rental
5. Special Trains
6. Communications
7. Station Costs
8. Fuel Handling
9. Train and Engine Crews
10. General Administration
11. West Oakland Servicing

For these selected cost components, we reviewed invoiced amounts for the entire audit period, except ██████ and ██████ (we did not review 10 months within the audit period), and Train and Engine Crew (for which we reviewed only 8 judgmentally selected months from January 2006 through June 2008). Train water was added to the review after we found that it had similar errors as station costs.

In addition to these 11 cost components, we reviewed OTP incentives for Capitol Corridor trains only. UP did not earn incentives during the audit period for other trains; therefore, there were no OTP incentives to audit. We judgmentally selected one month (December 2004) from 9 months with OTP incentives during 2004 and 2005 for a detailed review. We selected only one month because we determined that UP did not use the correct agreement to calculate OTP and that the review would not be an efficient use of audit resources. For the period January 2006 through June 2008, we did not review Capitol Corridor train OTP incentives.

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We also reviewed authorization notices, prior period adjustments, and exception notices.¹⁶ The audited amount totaled over \$79 million, which is about █ percent of about \$█ million billed to Amtrak by Union Pacific from January 2004 through June 2008.

Our work was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Internal Controls

We did not review Union Pacific's internal control structure from January 2004 through June 2008, the time period during which it submitted its invoices. However, we performed and relied on substantive testing to determine the dollar amounts attributable to errors invoiced by Union Pacific. In addition, while we did not assess Amtrak's internal controls in its monthly invoice reviews, we did rely on our prior audit work, which had addressed the adequacy of those controls.

Computer –Processed Data

To achieve the assignment's objective, we used computerized Amtrak Train Operations Support System data to verify the OTP data in Union Pacific's invoices. However, where Amtrak delay reports were available, we used them as the primary source to support our work. Although we did not verify the reliability of the support system data, Union Pacific has in the past accepted this information as an alternate form of support in the absence of Amtrak delay reports. Therefore, we considered the data sufficiently reliable for purposes of our audit objectives. Further, it was the host railroad's responsibility to provide adequate source documents to support its OTP calculations as shown in the invoices submitted.

In addition, we used computer-processed data reflected in the hard copies of Union Pacific's invoices. To test the validity of the data, we compared Union Pacific's electronic data with its hardcopy invoices during the course of the audit. Further, we

¹⁶ Exception notices are adjustments made to the current-period invoice amounts by Amtrak management prior to payment.

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compared the total amount billed on the electronic invoices against the total amount paid in Amtrak's Financial Information System or eTrax System for all 54 months in the audit period and 42 months in the extended period. The data in the financial system and in eTrax were not verified, but we considered the data sufficiently reliable for purposes of our audit objective. Based on these tests, we concluded that the data were sufficiently reliable to be used in meeting the assignment's objective.

Prior Coverage

Our review of prior OIG reports found previously identified control weaknesses and significant dollar amounts associated with Amtrak's payments to host railroads. This report is part of a series of OIG audits of Amtrak's host railroad payments. Since 2010, we have issued the following related audit reports:

Amtrak Invoice Review: Inaccurate Invoices were Paid, But Progress is Being Made to Improve the Invoice-Review Process (OIG-A-2012-005, February 16, 2012). *Over \$700,000 in overpayments found.*

On-Time-Performance Incentives: Inaccurate Invoices were Paid Due to Weaknesses in Amtrak's Invoice-Review Process (OIG-A-2012-004, February 15, 2012). *Over \$9 million in overpayments found.*

On-Time-Performance Incentives: Inaccurate Invoices were Paid Due to Longstanding Weaknesses in Amtrak's Invoice-Review Process (Report No. 403-2010, April 21, 2011). *Over \$500,000 in overpayments found.*

BNSF On-Time-Performance Incentives: Inaccurate Invoices and Lack of Amtrak Management Review Lead to Overpayments (Report No. 407-2003, September 24, 2010). *Over \$1 million in overpayments found.*

CSX On-Time-Performance Incentives: Inaccurate Invoices and Lack of Amtrak Management Review Lead to Overpayments (Report No. 406-2005, March 30, 2010). *Over \$20 million in overpayments found.*

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Appendix II

EXCERPT FROM

**Amtrak Invoice Review: Inaccurate Invoices Were Paid, But Progress is Being Made to Improve the Invoice-Review Process
(OIG-A-2012-005, February 16, 2012)**

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PROGRESS BEING MADE TO DEVELOP A PROCESS FOR THOROUGHLY REVIEWING INVOICES

Weaknesses in the invoice-review process have been long-standing, but over the last year, Amtrak has made progress in addressing the issue. Weaknesses in oversight and controls for reviewing invoices were the main cause of overpayments to CSX. In August 2008, we pointed out⁹ that Amtrak's management controls over the review of invoices were inadequate and ineffective, and that host railroads had consistently overbilled Amtrak. We made recommendations to improve Amtrak's invoice-review process. Since March 2010, we have issued three additional reports that found that Amtrak

⁹ *Host Railroad Contract Administration and Operations Management Controls* (OIG Audit Report #01-2008, August 21, 2008).

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overpaid three host railroads for on-time-performance (OTP) incentives.¹⁰ In all three reports, we concluded that the company had not taken adequate steps to improve its management controls and review process for these invoices. In response to the March 2010 report, Amtrak agreed to apply additional resources and establish a process to thoroughly review invoices for OTP incentives and other costs before making payments. It also provided us with a plan showing tasks to be completed, with milestone dates. The invoice-review process was to be completed by December 31, 2010, but the original milestone dates were not met. Amtrak revised its goal and expected improvements to the invoice-review process to be complete by the end of December 2011. However, that goal was also not met.

These missed milestones are not without other progress. Over the last year, Amtrak has made progress in addressing our recommendations. The Law Department is actively working to negotiate settlements on overpayments we identified. The Host Railroad Invoice Administration group was established and has started reviewing selected invoices using a limited set of factors, which are documented in eTrax.¹¹ In at least one case, the group has withheld payment on an invoice where errors were identified. Also, according to a senior director in the Finance Department, a policy and procedures manual for the Host Railroad Invoice Administration group is currently being drafted. Further, Finance Department officials continue to work with the IT Department to develop reports to facilitate the review and have met with us to discuss business practices for reviewing invoices. Additional activities include creating an e-mail box for streamlined routing of communications, invoices, and supporting documentation; and developing a monthly invoice-review checklist detailing invoice-review procedures.

To fully address our prior recommendations, Amtrak has committed to improving its process to perform complete and thorough reviews of all host railroad invoices prior to approving them for payment. Specifically, Amtrak plans to develop policies and procedures for reviewing all invoices, create job aids detailing audit procedures and required supporting documentation to facilitate invoice processing, level out

¹⁰ CSX On-Time-Performance Incentives: Inaccurate Invoices and Lack of Amtrak Management Review Lead to Overpayment (OIG Audit Report 406-2005, March 30, 2010); BNSF On-Time-Performance Incentives: Inaccurate Invoices and Lack of Amtrak Management Review Lead to Overpayments (OIG Audit Report 407-2003, September 24, 2010); and On-Time-Performance Incentives: Inaccurate Invoices were Paid Due to Longstanding Weaknesses in Amtrak's Invoice-Review Process (OIG Audit Report 403-2010, April 21, 2011).

¹¹ eTrax is a software system, used by Amtrak, to document the receipt, approval, and payment of invoices.

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responsibilities among Host Railroad Invoice Administration officers, cross-train officers, develop a training program, and take action to collect the outstanding overpayments identified in prior audit reports. The senior director informed us that a major hurdle that Amtrak deals with is that the contract agreement and amendment agreement changes are not up to date.

Over time, we have identified approximately \$37 million in overpayments and potential recoveries for audit periods ranging between 1993 and 2008, including over \$700,000 in this report. The \$37 million includes at least \$5.7 million in overpayments that have already been collected. This significant amount of overpayments affects Amtrak's cash flow and ability to effectively manage its activities. Further, these funds, had they been available, might have been used in other areas or to reduce reliance on federal subsidies.

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Appendix III

**COMMENTS FROM AMTRAK'S ACTING
 CHIEF FINANCIAL OFFICER**

NATIONAL RAILROAD PASSENGER CORPORATION
 40 Massachusetts Avenue, N.E. 20002

Memo



Date August 6, 2012

From *G.T. Hutchinson*
 Gordon Hutchinson, Acting Chief
 Financial Officer

To David Warren, Assistant Inspector
 General, Audits

Department Finance

Subject On-Time Performance Incentives

cc Eleanor Acheson, Vice President,
 General Counsel and Corporate
 Secretary
 DJ Stadler, Acting Vice President,
 Operations
 Joe McHugh, Vice President,
 Government Affairs & Corporate
 Communications
 Paul Vilter, Assistant Vice President,
 Host Railroads
 William Herrmann, Managing Deputy
 General Counsel
 Jessica Scritchfield, Principal Audit /
 Controls Officer

This letter is in response to Office of Inspector General ("OIG") draft report number 406-2008 "Amtrak Invoice Review: Undetected Errors Resulted in Overpayments", dated July 13, 2012 and which audits service costs and on-time performance incentives under the Amtrak-Union Pacific Operating Agreement.

The OIG audit report provides useful information on which Amtrak management can take action. Management remains committed to making valuable improvements to the host railroad invoice administration review process and continues to progress with developing a process that facilitates complete and thorough invoice reviews prior to payment. With this information, the Managing Deputy General Counsel, on behalf of Amtrak's Transportation and Finance Departments, will pursue any amounts that are recoverable under the law and within the terms of the applicable Operating Agreements between Amtrak and Union Pacific Railroad Company ("UP"). As soon as the final version of this report is issued, we will initiate appropriate conversations with UP and will keep the OIG apprised of our progress.

Management is in the process of preparing its comments related to withholding certain information from this report that it views to be proprietary and confidential, which comments will be separately provided.

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Appendix IV

ABBREVIATIONS

CA	California
CO	Colorado
ITM	incremental track maintenance
MO	Missouri
OIG	Office of Inspector General
OTC	other train costs
OTP	on-time performance
UP	Union Pacific

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Appendix V

OIG TEAM MEMBERS

David R. Warren
Dan Krueger
Raymond Zhang
Jana Brodsky

Assistant Inspector General, Audits
Senior Director, Audits
Senior Auditor
Senior Auditor

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OIG MISSION AND CONTACT INFORMATION

Amtrak OIG's Mission

Amtrak OIG's mission is to

- conduct and supervise independent and objective audits, inspections, evaluations, and investigations relating to agency programs and operations;
- promote economy, effectiveness and efficiency within Amtrak;
- prevent and detect fraud, waste and abuse in Amtrak programs and operations;
- review security and safety policies and programs; and
- review and make recommendations regarding existing and proposed legislation and regulations relating to Amtrak's programs and operations.

Obtaining Copies of OIG Reports and Testimony

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Report suspicious or illegal activities to the OIG Hotline (you can remain anonymous):

Web: www.amtrakoig.gov/hotline
 Phone: 800-468-5469

Congressional and Public Affairs

E. Bret Coulson, Senior Director
 Congressional and Public Affairs
 Mail: Amtrak OIG
 10 G Street, N.E. 3W-300
 Washington, D.C. 20002
 Phone: 202.906.4134
 Email: bret.coulson@amtrakoig.gov
