



PERFORMANCE EVALUATION IN COMMUTER RAIL CONTRACTS AND CONNECTICUT'S CONTRACT WITH METRO NORTH

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COMMUTER RAIL OPERATIONS CONTRACTS

This report compares contracts for operating the following commuter rail systems:

- **Tri-Rail**, which runs in southern Florida, is owned by the South Florida Regional Transportation Authority (SFRTA), and is operated under contract by Veolia Transportation Services, Inc. (VTSI)
- **Altamont Corridor Express (ACE)**, which runs in the San Jose, California area, is owned by the San Joaquin Regional Rail Commission (SJRRRC), and is operated and maintained under contract by Herzog Transit Services, Inc. (HTSI)
- **Metro North (Connecticut)**, which runs from New Haven to New York City with three branch lines, is owned by Connecticut, and is operated and maintained under contract by Metro North, a quasi-public New York State agency

QUESTIONS

1. Do other states' commuter rail operations contracts contain: (a) specific performance standards, (b) provisions for evaluating or monitoring a contractor's performance, and (c) methods for the state or oversight body to enforce performance-related contract provisions?
2. How do these contract provisions compare to those in Connecticut's contract with Metro North?

SUMMARY

Other states' commuter rail service contracts that we reviewed include performance standards, monitoring and evaluation requirements, and enforcement methods. The inclusion of such provisions reflects the fact that these contracts are between quasi-public regional transit authorities and private companies they selected to provide commuter rail services. In contrast, Connecticut's commuter rail contract is between two governmental

entities—Connecticut Department of Transportation (CDOT) and Metro North, a subsidiary of New York's quasi-public Metropolitan Transit Authority. Connecticut appears to be the only state that has this arrangement.

To prepare this analysis, we contacted 20 transit authorities that use private contractors to operate their commuter rail lines and requested copies of their contracts. At this time, only South Florida Regional Transportation Authority (SFRTA) and San Joaquin Regional Rail Commission (SJRRRC) sent copies of their contracts for their commuter lines, Tri-Rail and Altamont Corridor Express (ACE) respectively. We will update this report if we receive more contracts.

The Tri-Rail and ACE contracts have very similar performance standards and evaluation and enforcement requirements. Both establish standards for operations, safety, and customer service and require the contractor's employees to meet minimum qualifications. They also require their contractors to develop and submit for approval operating plans and standards that go beyond those specified in the contract.

SFRTA and SJRRRC evaluate performance primarily through periodic reports from the contractor and require the contractor to make performance data accessible at any time. In addition to reporting, SFRTA requires managers to evaluate their crew members for adherence to operation policies and SJRRRC assigns a representative to every ACE train.

Financial penalties for failing to meet certain performance standards is the primary method SFRTA and SJRRRC use to enforce these standards. Both agencies also have the right to (1) withhold payment for unsatisfactory performance and (2) terminate contracts if the contractor fails to remedy a contractual default. SFRTA also uses financial incentives to encourage on-time performance and safe operations.

The contract between Metro North and CDOT is very different than the contracts for Tri-Rail and ACE. Although it states broad performance goals, it does not impose specific performance standards on Metro North. Except for provisions requiring a one-time productivity review and the right to examine records, CDOT's contract includes no ongoing reporting and monitoring requirements.

Finally, the Metro North contract does not provide CDOT with a method of recourse if Metro North performs unsatisfactorily. CDOT may enter into arbitration or terminate the contract if Metro North defaults on the contract, but may not withhold payment or levy penalties for unsatisfactory performance.

CDOT and Metro North have updated their contract by entering into many memorandums of understanding. We have not examined all of these memorandums, but according to CDOT, none involve performance evaluation.

BACKGROUND

Tri-Rail Commuter Line

The [Tri-Rail](#) Commuter Line is operated by Veolia Transportation Services, Inc. (VTSI) under contract with the [South Florida Regional Transportation Authority \(SFRTA\)](#), a public transit agency responsible for operating, maintaining, and managing the Tri-Rail system. Tri-Rail was established in 1988 and runs along the 72-mile state-owned South Florida Rail Corridor, providing service that links Miami, Ft. Lauderdale, and West Palm Beach. In 2007, SFRTA selected VTSI to operate the rail line and signed a 7-year contract with a 3-year option to renew. Tri-Rail has an annual ridership of just over 4.3 million, stops at 18 stations, and runs 48 trains Monday through Friday, 16 trains on Saturday, and 14 trains on Sunday.

Altamont Corridor Express

The [Altamont Corridor Express \(ACE\)](#) is operated and maintained by Herzog Transit Services, Inc. (HTSI) under contract with the San Joaquin Regional Rail Commission (SJRRC), the public transit agency in California responsible for the line. ACE began operations in 1998 and runs through the Altamont Pass on tracks owned by Union Pacific Rail Road and the Peninsula Corridor Joint Powers Board, providing service between Stockton and San Jose. In 1998, SJRRC selected HTSI to operate the line and maintain the equipment. Their current contract is for 5 years with an option to renew the contract for another 5 years. ACE has an annual ridership of just over 1 million, stops at 10 stations, and operates 4 trains each way on weekdays.

Metro North (Connecticut)

Commuter rail service on the New Haven main line and New Caanan, Waterbury, and Danbury branch lines is operated by Metro North under contract with CDOT. Metro North is a subsidiary of the [Metropolitan Transportation Authority \(MTA\)](#), a New York State chartered public benefit corporation. Connecticut first contracted with Metro North in 1983 under an interim service agreement that replaced Conrail as the rail service operator. After an arbitration period in 1985, Metro North and Connecticut Department of Transportation (CDOT) signed the Amended and Restated Service Agreement (ARSA), which appears to supersede all previous agreements. The ARSA's term was initially 7 years, and the contract renews automatically every five years. In Connecticut, [Metro North](#) runs 265 weekday trains and provides weekend service, stops at 37 stations on the main and branch lines, and has an annual ridership of over 38 million.

PERFORMANCE STANDARDS

Tri-Rail

SFRTA's contract with VTSI for operating the Tri-Rail service establishes specific performance standards VTSI must meet, including: (1) SFRTA's Railroad Operating Rules (general operating standards designed by SFRTA); (2) SFRTA's equipment operating standards and instructions; (3) SFRTA train schedules, with some allowance for unavoidable delays; (4) SFRTA's passenger service policies; and (5) all applicable federal, state, and local laws. In the contract, SFRTA also sets minimum qualifications and standards for hiring VTSI upper management.

Under the contract, VTSI was required to develop an Operating Mobilization Services Master Plan and have it approved by SFRTA before beginning operations. This plan included staffing and organizational plans, minimum qualifications for employees, a hiring plan, a drug and alcohol testing program, standards for training programs, and a safety plan. This plan, when approved, became part of VTSI's contractual obligation, and VTSI's failure to meet its requirements constitutes contractual default.

ACE

The contract between SJRRC and HTSI for operating ACE establishes standards similar to those in the Tri-Rail contract. HTSI must develop a System Safety Program Plan, follow SJRRC's train schedules, and comply with all applicable laws. SJRRC goes farther than SFRTA regarding minimum qualifications for employees, setting minimum hiring qualifications for all employees from upper management to train crews. Trains operated by HTSI are also expected to arrive on time, but because ACE shares tracks with both freight and passenger trains, the contract excuses delays that are not HTSI's fault.

Unlike VTSI, HTSI both operates and maintains equipment for ACE. Consequently, the contract also contains detailed equipment maintenance standards that govern tasks ranging from regular equipment inspections to cleaning inside the train. It also requires HTSI to develop a service plan under which a certain amount of equipment must be available for use each day.

Metro North

CDOT's contract with Metro North (i.e., ARSA) does not establish specific performance standards like SFRTA's and SJRRC's contracts. Instead, it states that the service "shall be operated with the objective of providing timely, efficient, clean, and courteous service to the public on a continuing basis." With regard to equipment maintenance, the contract states that CDOT, Metro North, and MTA agree to "acquire and maintain the capital assets which are necessary to continue

the service on the main line at the level of service which is agreed upon by the parties from time-to-time pursuant to this agreement.” Like VTSI and HTSI, Metro North is also required to comply with all applicable laws.

PERFORMANCE MONITORING AND EVALUATION

Tri-Rail

SFRTA’s contract with VTSI gives SFRTA considerable oversight over VTSI’s operation of Tri-Rail. The contract allows SFRTA to exercise that oversight by requiring VTSI to complete a number of reports, including, but not limited to: (1) annual operating statistics reports; (2) monthly reports on test and observation programs (see below) and late train reports; (3) daily reports of incidents and on-time performance; and (4) immediate reports on operating rule violations, service blockages, injuries, and loss of life. Failure to submit these reports triggers financial penalties.

VTSI must, under the contract, create and maintain a 24-hour operations center that serves as an information clearing house and stores all records and reports. The operations center must update SFRTA on the rail’s performance as necessary, including when a train is running behind schedule. The train is equipped with a GPS system to make this monitoring easier. SFRTA also has the right to randomly inspect any and all records and equipment used by the contractor to perform its duties.

The contract also requires VTSI to develop a “test and observation program” to evaluate the efficiency of operations and report findings to SFRTA. VTSI also must randomly test and observe employees adherence to safety and customer service policies and report the results to SFRTA.

ACE

Like SFRTA, SJRRC monitors its contractor’s performance through reporting requirements, though SJRRC’s reporting requirements are even more substantial. Under the contract, HTSI must report the same information as VTSI, plus: (1) annual reports on goals assessments, maintenance summaries, and service plan modifications; (2) monthly reports on mileage and worker hours; (3) daily reports on equipment availability; and (4) immediate reports of vandalism, written complaints from passengers and employees, and communications with regulatory agencies, among other things. HTSI must store the reports in a central database that SJRRC can access at any time.

SJRRC, unlike SFRTA, also has a representative on every operating ACE train. The representative must assist HTSI employees in checking tickets and serving passengers, but must also ensure that all incidents and delays are reported immediately to SJRRC.

Metro North

Unlike the contracts for Tri-Rail and ACE, the ARSA does not specify performance, monitoring, and evaluation requirements. Under the ARSA, MTA and CDOT agreed to “undertake a joint, comprehensive, one-time review of the service, in effort to improve the efficiency of the service.” According to the ARSA, this review was intended to encompass all activities and identify areas where services can be improved, costs reduced, and revenue enhanced. It is unclear if this “one-time review” is triggered each time the contract renews.

The contract allows Metro North and CDOT, after giving notice, to examine the other’s records, including reports, payroll records, and studies.

Finally, the contract allows CDOT and Metro North to update the contract as needed. However, according to CDOT, there have been no updates concerning performance evaluation.

METHODS FOR ENFORCING PERFORMANCE STANDARDS

Tri-Rail

The Tri-Rail contract authorizes performance penalties and incentives. The penalties include \$100 to \$1,000 fines for trains that arrive late, \$100 a day fines for failing to provide required reports, \$1,000 a day fines for violating a SFRTA operating rule, \$500 per incident fine for unsafe conditions, \$250 fines for not inspecting trains, and a \$250 per incident fine for not adhering to customer service standards. All penalties are assessed against VTSI’s monthly invoice at the discretion of SFRTA.

The contract also allows SFRTA to terminate the contract if VTSI does not remedy a contract violation within 7 days. It also authorizes SFRTA to withhold monthly payments to VTSI for unsatisfactory service.

Unlike the ACE and ARSA contracts, the Tri-Rail contract offers three financial incentives to VTSI for meeting performance standards: (1) a \$10,000 payment if there are no delays of 6 minutes or more in a 4 month period, (2) a \$25,000 payment if there are no Federal Railroad Administration reported injuries or railroad rule violations in a 12-month period, and (3) a \$100,000 payment if on-time performance is 95% or better in a 12-month period.

ACE

The ACE contract allows SJRRC to enforce performance standards primarily by imposing penalties for nonperformance. The penalties are more severe than those authorized under the Tri-Rail contract. SJRRC may fine HTSI between \$1,500 and \$6,500 for a train that arrives late, \$1,000 a day for unavailable service equipment, and \$15,000 for each day HTSI does not remove an employee as requested by SJRRC.

Similar to the Tri-Rail contract, SJRRC may also terminate the contract if HTSI fails to remedy contract violations. SJRRC may also withhold payments to HTSI for unsatisfactory work.

Metro North

Unlike SFRTA and SJRRC, CDOT cannot levy financial penalties on Metro North for nonperformance. Because Metro North is a subsidiary of a public entity operating at a deficit and not a private company, any penalties levied against Metro North would increase the operating deficit.

CDOT may terminate the contract for default if, after giving notice and waiting for 90 days, Metro North has not remedied the default. Unlike SFRTA and SJRRC, CDOT cannot withhold payment if it deems Metro North's services to be unsatisfactory. CDOT may dispute charges, but must pay upfront, submit a written dispute, and enter into arbitration if CDOT and MTA cannot resolve the dispute on their own.

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