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Private Companies Face Big Fines for Commuter Rail Problems

As delays and safety issues continue on privatized transit systems, that arrangement is getting new scrutiny.

How do commuter railroads make sure their trains run on time? Many hand operations over to private companies, giving them financial incentives for on-time performance. It's a well-established practice that works most of the time.

But it hasn't been working in Boston and Denver lately, where the private companies running both regions' commuter rail lines have faced hefty fines for structural problems.

In Denver, one of the biggest challenges right now is taking place on the region's brand new line connecting downtown Denver to the airport. The problem is with the crossing gates — they stay down too long. Flaggers have been hired at crossings to make sure impatient drivers and pedestrians obey the gates and don't go around them.

The problems with the gates follow a number of other early disruptions to the much-anticipated airport rail service. At first, the gaps between power sources on the rails were too big, which could leave unpowered trains stranded. Lightning strikes also caused damage to overhead wires and, in one case, caused the line to shut down for seven hours and forced firefighters to help passengers evacuate a stranded train on an overhead pass.

While most of those issues have been resolved, Denver Transit Partners, the private company that oversees the rail, has paid at least \$78,000 for missing their marks for on-time performance. On top of that, the company has had to pay \$250,000 a month for signaling issues, or about \$1.25 million so far.

"We're in a bit of a world of hurt," said John Thompson, the executive project director of Denver Transit Partners. "There's no question about that, because we didn't see that we'd be faced with these deductions when we bid these contracts six years ago."

In Boston, the company Keolis has paid more than \$12 million in fines in its first two years of running commuter rail for the Massachusetts Bay Transportation Authority (MBTA). Now, just two months into the third year of its contract, Keolis has already paid another \$1 million in fines.

While the fines may not seem like much in the context of a 12-year deal worth roughly \$4.2 billion, Keolis has said that it is losing money on its Boston-area service.

Of late, the biggest controversy has been about the fines the company hasn't paid. The Boston Globe recently reported that MBTA waived \$839,000 in fees incurred for widespread problems on Keolis' commuter rail service during the winter of 2015. A series of storms dumped 100 inches of snow on Boston in a month, which snarled the city's transportation networks, including passenger rail. MBTA charged Keolis the maximum allowable fine during that time for poor on-time performance, but it

rescinded fees for items like dirty trains and uncollected garbage.

“During this recovery period, we prioritized our resources toward activities that would enable us to return the fleet back to full operations, an approach which the MBTA fully supported. Under the terms of our contract, when there are extreme circumstances such as what was experienced in 2015, it is permissible for the MBTA to grant us relief from certain penalties and we are grateful for this support,” said Keolis spokeswoman Leslie Aun.

MBTA’s forgiveness of the fines have angered several legislators. Fourteen lawmakers signed a letter to the state’s transportation secretary calling the decision “indefensible.” Labor unions, which have fought the transit agency over the privatization of some jobs, also criticized the decision.

But Massachusetts Gov. Charlie Baker has backed the waivers. Keolis’ contract allows waivers in the case of unforeseen circumstances, often characterized as force majeure or an act of God.

“It’s pretty hard to argue that the winter of 2015 wasn’t an act of God,” Baker told the Globe last month.

Whatever the immediate fallout, the contractors and transit agencies in Denver and Boston have a lot at stake in getting things right.

Keolis, for one, is only in the third year of an eight- to 12-year contract with MBTA. And Denver Transit Partners, which actually designed and built the commuter rail to the airport, is opening two other lines this year and is slated to oversee all three lines for 28 years.

Thompson, the executive from the consortium, is optimistic despite the first-year hiccups.

“We’ve had 20-odd days where we were really disappointed with our service, out of over 200 days of services so far,” he said. “Ridership continues to increase, so some people think we’re doing a good job and are telling others about it.”

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BY DANIEL C. VOCK | NOVEMBER 22, 2016