

ENTERED  
Office of Chief Counsel  
May 7, 2026  
Part of  
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD DOCKET NO. FD 36873

UNION PACIFIC RAILROAD COMPANY AND NORFOLK SOUTHERN RAILWAY COMPANY

## **REPLY AND MOTION FOR MODERN PUBLIC INTEREST PROTECTIONS**

FILED BY PARTY OF RECORD COLIN FINNEY

### **I. THE ANNULMENT OF HISTORICAL PRIVATE CONDUIT CLAIMS**

In the April 30 filing, Applicants propose massive corporate consolidation alongside a 40% increase in freight volume on the Lehigh Line (*App. Vol. 2, Operating Plan*). While historically managed as a private, freight only network, the Applicants' voluntary submission for federal review under 49 U.S.C. § 11324 effectively annuls those claims of private exclusivity.

Furthermore, Norfolk Southern fails to even acknowledge this fundamental jurisdictional shift, continuing instead to operate on a sense of corporate entitlement that disregards its modern obligations to the public interest.

The Applicants can no longer hide behind 1900s era logic that treats the railroad as a private backyard. Under modern federal oversight, the public interest standard must accommodate the high density suburban realities of 2026. To secure the federal blessing of an \$85 billion merger, Applicants must accept the responsibility of multimodal corridor management. This necessitates the formal recognition of the Northeastern Pennsylvania Transit Authority (NEPTA) as a sister authority to SEPTA and the facilitation of a potential expansion for the Schuylkill River Passenger Rail Authority (SRPRA). Expanding these corridors without facilitating separate, dedicated regional planning is a direct violation of the public interest mandate inherent in this federal review. Crucially this proposal treats Philadelphia region's SEPTA as a distinct, independent operational peer to ensure that the formalization of NEPTA and possible expansion of Schuylkill River Passenger Rail Authority is handled as a technical expansion of the regional network rather than a political interference with existing transit mandates.

## II. MODERN DUALTRACK UPGRADE OR MANDATORY CAPACITY CAP ULTIMATUM

The Applicants' actual traffic data in the April 30 filing confirms a projected surge to 24 daily trains, and this Party of Record moves that the Board present the Applicants with a clear regulatory choice, there is no middle ground where the Lehigh Valley is used as a high speed bypass with zero local utility.

When scrutinized under a modern capacity modeling lens, the Applicants' own data reveals that 24 trains per day on a single lane mainline constitutes practically full saturation, meaning this surge does not represent increased efficiency but rather perpetual ownership of the corridor. This saturation acts as a direct, retroactive obstruction of the Lehigh Valley Planning Commission (LVPC) Passenger Rail Study. Operational assumptions of the LVPC Phase I study are now functionally void as the projected freight volumes increase effectively erasing the capacity window upon which those findings were established.

This Party of Record moves that the Board require the Applicants to formalize their commitment through one of three regulatory frameworks in Northeastern PA: a physical Dual Use Expansion to accommodate both freight and regional transit (Option A), a strict Capacity Cap at current levels to prevent a corridor blockade (Option B), or a Public Access Mandate that legally reserves capacity for regional authorities as a condition of the merger (Option C).

- **Option A: The Dual Use Expansion.** The Applicants commit to double tracking and modernizing the Lehigh Line to support both the 40% freight surge and the Northeastern Pennsylvania Transit Authority (NEPTA). This recognizes the rail line as a public asset that must serve both transcontinental commerce and regional commuters. If the Applicants genuinely believe in the 2.1 million truck benefit, they must build the capacity to handle that volume without cannibalizing regional transit.
- **Option B: No Expansion (The Capacity Cap).** If the Applicants refuse to provide the infrastructure for a shared use corridor, the Board must cap freight volume at the current level of 17 trains per day. The Applicants cannot be permitted to use a federal merger and misinterpreted data to physically blockade a region's transit future. Their 1900s era private conduit logic has no standing in a 2026 federal review. The Applicants cannot create a capacity crisis as a strategic choice and then use that crisis to deny public interest mandates.
- **Option C: The Public Access Mandate.** If the Applicants are granted the merger without an immediate commitment to physical expansion, the Board must impose a permanent, nonnegotiable capacity reservation for the Northeastern Pennsylvania Transit Authority (NEPTA) and the Schuylkill River Passenger Rail Authority (SRPRA). This regulatory easement would legally safeguard the corridor's utility for regional transit, placing the entire operational and financial burden of congestion management on the Applicants. By establishing public access as a foundational operational constraint rather than a secondary consideration, the Board ensures that the Applicants cannot treat the public interest as residual capacity to be erased by future freight demand.

### III. SUBURBAN REALITY VS. THE INTERMODAL FALLACY

The Applicants' claim that removing 2.1 million trucks is a national level statistic that masks an environmental bait and switch for the Lehigh Valley. This macro scale abstraction must be weighed against the tangible promise of accessible, high frequency transit for a regional population approaching one million. To approve this merger without capacity protections is to prioritize marginal interstate efficiency over fundamental mobility and dignity of residents.

- **The Sacrifice of the Interurban Network:** The Lehigh Valley's legacy of robust interurban rail was systematically sacrificed to prioritize the private conduit the Applicants now seek to finalize. It is a technical fallacy to suggest that regional transit in this corridor requires a ground up build. Last mile connections, the station footprints, town center alignments, and secondary right of ways, are already physically embedded in the regional topography. These historical nodes represent a head start for regional rail that is currently being overwritten. Because the Applicants' filing promises zero local job growth or tangible goods transfer benefits to the Lehigh Valley, the Board must mandate double tracking as a nonnegotiable condition for approval; a region cannot be expected to endure total isolation for the sake of a transcontinental throughway that offers no local utility.
- **SEPTA Precedent and Fiscal Reality:** We are currently witnessing a budgeting failure where regional transit is perceived as a hyper localized Philadelphia county issue rather than a statewide economic driver. To rid Pennsylvania of this outdated anti-transit sentiment, the Board must mandate a framework of institutional redundancy. Formalizing sister authorities like NEPTA and the SRPRA transforms public transit from a city service into a fundamental right for all Pennsylvanians. By establishing these distinct authorities, we create a unified transit block that removes the political leverage used to stall funding. The inability of SEPTA to advance the King of Prussia Rail (KOP) project due to a lack of ROW protections and dedicated capital funding serves as a dire warning for the Commonwealth.
- **Zero Consumer Stake & Performative Labor Pledges:** Not a single resident in these suburban clusters is a beneficiary of the increased pass through traffic. Furthermore, the Applicants' performative job for life pledge for existing union employees is a self serving maneuver designed for political optics as it offers a "for show" claim to secure a federal blessing while providing zero structural protections for the rail corridors facing a 40% surge in traffic. The Applicants are treating the Lehigh Valley as a silent, nonconsenting pipeline that extracts regional mobility without a single point of local economic return.

With Pennsylvania's total population estimated at 13.07 million, the federal acknowledgement of a unified network would represent approximately 54% of the state's population:

| <b>Transit Authority</b> | <b>Primary Service Counties</b>                    | <b>Estimated Population Served</b> |
|--------------------------|----------------------------------------------------|------------------------------------|
| <b>SEPTA</b>             | Philadelphia, Bucks, Chester, Delaware, Montgomery | ~4,000,000                         |
| <b>PRT (Pittsburgh)</b>  | Allegheny County & Portions of Beaver/Westmoreland | ~1,250,000                         |
| <b>NEPTA</b>             | Lehigh, Northampton, Lackawanna, Luzerne           | ~1,250,000                         |
| <b>SRPRA</b>             | Berks, Schuylkill                                  | ~585,000                           |
| <b>Total</b>             |                                                    | <b>~7,085,000</b>                  |

Approving this merger without federal capacity protections for NEPTA and SRPRA is not just an infrastructure oversight, it is a disenfranchisement of the majority. The Board has the unique regulatory opportunity to ensure that the public interest standard reflects the needs of over seven million Pennsylvanians who require a multimodal alternative to the freight saturated status quo. Without a federal mandate to protect this capacity now, the state's burgeoning transit authorities will be rendered dead on arrival by outdated railroad logic before they can even secure their first capital budget. Moreover, the geographical reach of this regional network could be expanded exponentially if the Board mandates the integration of secondary and branch lines, infrastructure that remains now functionally inactive during daylight hours, allowing these underutilized assets to be upcycled to new projects into a high utility transit grid.

#### IV. ENVIRONMENTAL FALLACY VS. DECARBONIZATION

The Applicants' central environmental defense that rail is inherently greener than trucking, relies on a reductionist lifecycle assessment that ignores the localized physics of air dispersion in the Lehigh Valley. As the nation's primary arbiter of rail policy, it is the expectation of this Party of Record that the Board will look beyond these fallacies and demand a more robust win-win-win framework; one that prioritizes transcontinental commerce, regional mobility, and environmental justice simultaneously rather than treating them as mutually exclusive tradeoffs.

- **Localized PM2.5 and NOx Concentration Model:** The Applicants propose a surge of ultra long freight consists, often exceeding three miles in length. While they boast of removing trucks from the highway, replacing them with multiple diesel electric locomotives operating under maximum load in a valley topography constitutes a severe carbon reliance. This operational model guarantees localized emission pooling, where the concentrated discharge of Nitrogen Oxides (NOx) and fine Diesel Particulate Matter (PM2.5) in dense suburban corridors far outweighs the theoretical macrolevel carbon savings cited in their filing. This is not emission reduction in any way, especially as Lehigh Valley's regional topography is susceptible to temperature inversions which trap criteria pollutants.
- **Economic Opportunity Cost:** Every temporal slot occupied by diesel heavy freight is a slot physically stolen from the deployment of electrified regional rail. From an environmental engineering perspective, decarbonization relies on transitioning to grid tied electric multiple units (EMUs), which are thermodynamically vastly superior to Tier 4 diesel. This preemption has effectively strangled Transit Oriented Development (TOD). Projects like Allentown's current waterfront upgrade, situated directly adjacent to historical rail nodes are being denied their full multimodal utility. It is an administrative embarrassment that \$4 billion investments like Eli Lilly's are forced into seas of parking by private freight infrastructure. Without a federal mandate to revamp or secure public access to the ROW, these ambitious urban renewals remain disconnected from the rail network that should be their primary economic and environmental engine.
- **Environmental Justice and Public Safety:** The Applicants' reliance on three mile long freight consists represents a systemic failure in both environmental and public safety modeling, transforming the Lehigh Line into a physical barrier that severs the region's geography. Beyond creating localized emission hotspots from induced vehicular idling at grade crossings, these massive trains create an alarming emergency response paralysis where fire and EMS services are physically obstructed from reaching high density residential zones during extended crossing closures. The best practice of SEPTA utilizes short consist operations to maintain corridor permeability and safeguard lifesaving emergency response windows unlike Applicants' blockades. Approving this 40% surge without mandating parallel transit capacity and physical ROW protections is a direct violation of modern environmental justice standards, as it locks over seven million Pennsylvanians into a high emission car dependent status quo that is physically partitioned by a precedent for a diesel monopoly.

## **V. DERAILMENT RISK AND HAZMAT VULNERABILITY**

The proposed surge in traffic through the Lehigh Valley's high density residential geography creates an unacceptable escalation of derailment risk and HAZMAT vulnerability. By directing transcontinental freight through a saturated, single lane mainline, the Applicants statistically increase the probability of catastrophic mechanical failure in zones with the thinnest safety margins. This operational model treats the region as a high risk conduit for hazardous materials, forcing local communities to bear the full burden of potential environmental catastrophes while offering zero regional utility. Approving this consolidation without double tracking and modern signalization required to manage such volume is a direct failure to mitigate the preventable risk.

## **VI. DATA OBFUSCATION AND INFRASTRUCTURE UNCERTAINTY**

The heightened risks previously identified are exacerbated by a profound lack of characterization regarding the true state of the Lehigh Line. Following the 1999 Conrail split, which fragmented the Northeast's rail management, this corridor has suffered from a legacy of inconsistent capital investment. The Applicants now seek to finalize a transcontinental monopoly on infrastructure that remains an engineering mystery.

- **The Failure of Granular Disclosure:** Despite specific requests for transparency, the Applicants have failed to provide the granular capacity modeling or structural health audits required to prove this line can manage a 24 train daily saturation. Instead, Norfolk Southern relies on proprietary, macrolevel traffic projections that obfuscate the true condition of aging bridges, culverts, and ballast systems. The Applicants have provided zero geotechnical modeling to address how 40% more heavy axle loading will accelerate sinkhole formation or how vibration induced structural fatigue burdens the foundations of Allentown and Bethlehem's historically urban cores now considered as suburban.
- **Procedural Asymmetry:** This Party of Record moves that the Board reject the Applicants' black box data as technically insufficient for a federal merger review. To grant a merger of this magnitude without a verified, independent audit of the post Conrail infrastructure is to accept a blind risk. The Board must recognize that without granular data, the Applicants' claims of operational safety are merely performative assertions that ignore twenty seven years of fragmented maintenance.
- **Regulatory Oversight Mandate:** The pattern of irresponsible stewardship and strategic data suppression regarding this corridor necessitates a regulatory intervention analogous to the NJT Atlantic City oversight model. Given that the Applicants have demonstrably failed to prioritize the regional utility of this line, the Board should impose a state monitored oversight framework. This would strip the Applicants of their unilateral autonomy over corridor capacity until they meet nonnegotiable infrastructure restoration and public access benchmarks, ensuring the Lehigh Line is managed as a transparent public asset rather than a neglected private conduit.

## VIII. REGIONAL TO NATIONAL SECURITY AND CLIMATE ADAPTATION

Investing in this corridor is a critical hedge against the accelerating obsolescence of the NEC's century old, low elevation assets. It ensures that NJ Transit, SEPTA, and authorities unfounded can provide reliable statewide service on a resilient, state managed redundant loop rather than remaining captive to Amtrak's coastal infrastructure. By reclaiming the Lehigh Line as a shared utility, the Commonwealth can transform a static diesel corridor beyond providing essential passenger rail service, this reclamation facilitates the corridor's transformation into a regenerative public utility through the following integrated technical and social improvements:

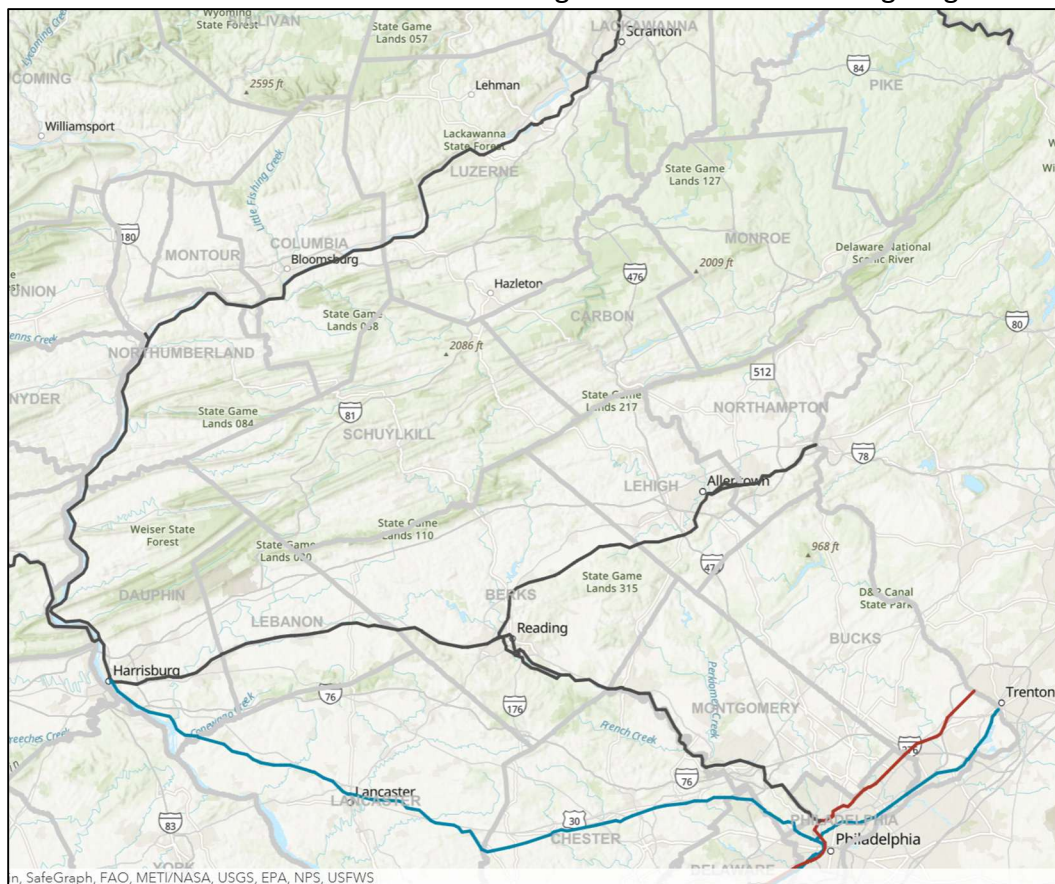
|                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Emergency Response Permeability:</b> Shared management ensures the corridor remains a permeable asset, utilizing integrated signal priority to prevent 3 mile long blockades from severing fire and EMS response routes.                                                                                                                                                    |
| <b>Operational Upcycling:</b> Inactive daylight windows turning into high frequency peak hour transit ensures rail never sits idle while regional commuters are stranded on highways.                                                                                                                                                                                          |
| <b>Hydraulic and Seismic Resiliency:</b> Bioretention and wetland systems to mitigate regional flooding, while vibration dampening subgrades protect foundations from heavy axle freight.                                                                                                                                                                                      |
| <b>Subsurface Remediation and Public Health:</b> A public mandate requires comprehensive soil audits to prevent toxin leaching into water tables and shifts toward electrification.                                                                                                                                                                                            |
| <b>Workforce Equity and Economic Mobility:</b> Reestablishing transit connectivity removes the near car ownership mandate for employment, expanding the labor pool for tech and industrial sectors without the financial burden of personal vehicle maintenance.                                                                                                               |
| <b>Innovation Pipelines and Brain Drain Mitigation:</b> Physical connectivity between the Lehigh Valley's academic institutions and the Philadelphia/New York markets creates a talent retention corridor that attracts high value corporate investment and strengthens economy.                                                                                               |
| <b>Transit-Oriented Development Anchors:</b> Formalized rail access incentivizes the remediation of postindustrial brownfields like Allentown's waterfront, pivoting into rejuvenated hubs.                                                                                                                                                                                    |
| <b>Integrated Digital and Power Corridors:</b> Public ROW ownership enables the colocation of fiber optics and renewable energy transmission lines as evidenced by the established SEPTA and PECO shared use corridors in the Philadelphia northern suburbs.                                                                                                                   |
| <b>Micro Logistics and Food Security:</b> Light freight access allows local agricultural producers to connect directly to urban markets via passenger rail, addressing regional food security gaps, such as the grocery access needs recently highlighted by Lafayette College students in Easton, while simultaneously reducing delivery van traffic and food mile emissions. |
| <b>Active Transport and Civic Data:</b> A public framework facilitates Rail-with-Trail projects for last mile connectivity and utilizes ROW for air quality, traffic, and seismic monitoring.                                                                                                                                                                                  |

## MANDATORY CONDITIONS FOR APPROVAL

To align this transaction with 21<sup>st</sup> century public interest, the Board must mandate:

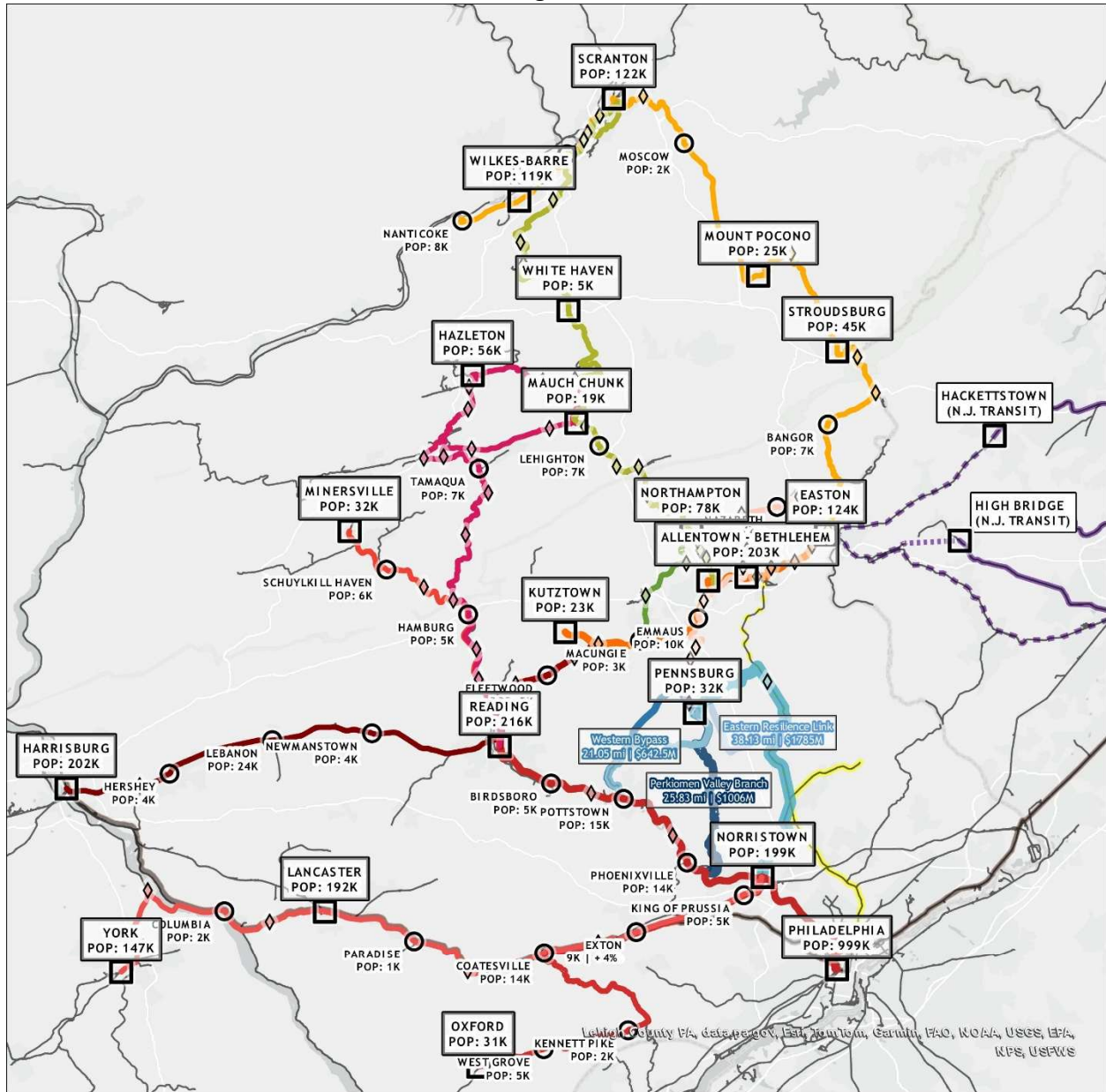
1. **Annulment of Freight Only Priority:** Formal recognition that the Lehigh Line and surrounding rail network is a Public Interest Corridor where regional passenger transit planning holds equal standing with transcontinental freight.
2. **Double Tracking Mandate:** If the 40% freight increase is approved, the Applicants must be required to double track the corridor at their own expense to ensure passenger slotting remains physically viable.
3. **Planning Easement:** A perpetual, federally protected easement for NEPTA, ensuring that no amount of freight volume can be used as a legal or physical excuse to deny passenger rail access in the future.

Figure 1: Current PA Trackage Rights



| Major Rail Lines 2021 | Class I Branch Lines | Non-Class I Lines |
|-----------------------|----------------------|-------------------|
| Operating Railroads   | Operating Railroads  | Railroad Classes  |
| AMTK                  | CRR                  | Class II          |
| CSXT                  | CSXT                 | Regional          |
| NSRC                  | NSRC                 | Short Line        |

Figure 2: Idealized NEPTA Transit Network



## **CONCLUSION**

The Applicants are seeking to use a 2026 federal merger to cement a 1900's operating model. By putting themselves up for federal review, they have submitted to a higher standard of public necessity. The Lehigh Valley will no longer be a private conduit for overhead profit; it must be a modernized corridor for the people who live and work there.

**Respectfully Submitted,**

*Colin Finney*

*Party of Record*

*FD 36873*

*Dated: May 2026*

## **CERTIFICATE OF SERVICE**

I hereby certify that on this day, May 7, 2026, a copy of the foregoing document was served electronically upon all parties of record in Docket No. FD 36873.

*Signed,*

**/s/ Colin Finney**