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VIA E-FILING

Chief of Case Administration
Office of the Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk
Southern Corporation and Norfolk Southern Railway Company, STB FD No. 36873*

Dear Sir or Madam:

I have attached for e-filing the New York State Department of Transportation's Comment on Completeness of UP-NS Amended Application in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Subash Iyer

Subash Iyer

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36873

**UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY
– CONTROL –
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY**

NYS COMMENT ON COMPLETENESS OF UP-NS AMENDED APPLICATION

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Dated: May 7, 2026

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SURFACE TRANSPORTATION BOARD**

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NYS COMMENT ON COMPLETENESS OF UP-NS AMENDED APPLICATION

The State of New York acting by and through the New York State Department of Transportation (“NYS”) submits this comment regarding the completeness of the Amended Application, UP-39/NS-37, filed by the Applicants¹ in these proceedings on April 30, 2026. The Amended Application is incomplete because it omits: (1) one of the two NS routes between New York and Massachusetts from Applicants’ network map and the Electronic Appendices supporting the Amended Application; and (2) discussion or analysis of the merger’s impacts on commuter passenger rail service on an NS-operated rail line in southern New York. Applicants should be required to address these omissions.

BACKGROUND

On April 30, 2026, Applicants re-filed an Amended Application to merge which, if the Board accepts and ultimately approves, would combine UP’s and NS’s networks and create the first American transcontinental railroad. Amended Application, UP-39/NS-37 at 1-15. As

¹ Applicants in this proceeding are Union Pacific Corporation and Union Pacific Railroad Company (collectively, “UP”) and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”).

indicated in the Amended Application’s supporting materials, NS owns or operates more than 1,000 miles of rail line in New York, *see id.* at Electronic Appendix S, thus making NYS a stakeholder in these proceedings.

The Amended Application comes after the Board previously rejected Applicants’ original Application as incomplete on several grounds, including the omission of certain data on passenger and commuter rail services. Decision No. 9, slip op. at 1-2, 14. The Board is obligated to accept or reject a merger application within 30 days of its filing. 49 C.F.R. § 1180.4(c)(7); 49 U.S.C. § 11325(a). The Board has ordered comments on the completeness of the Amended Application by May 8, 2026, 11:59 pm EDT. Decision No. 19.

NYS’s comments limited to the completeness of the Amended Application follow.

COMMENT

The Amended Application appears to omit required information relevant to understanding the proposed merger’s full impact on the New York rail network, namely: (1) one of the two NS routes through New York to New England via Massachusetts is omitted from the network map and information supporting the Operating Plan; and (2) commuter rail service on an NS-operated rail line in southern New York remains omitted from any impacts analysis or discussion. These omissions violate the Board’s merger regulations and the Board’s Decision No. 9, and must be addressed before the proposed merger is allowed to proceed.

I. The Amended Application Omits Required Information About One of Two Key NS Routes Between New York and Massachusetts

The Amended Application is incomplete because it omits one of two key NS routes between New York and New England markets from the required network map and information supporting the Operating Plan. The Board’s merger regulations require Applicants to include in their application a map clearly indicating “the line(s) of applicant carriers in their true relations

to each other.” 49 C.F.R. § 1180.6(a)(6). Applicants are also required to explain patterns of service, including the proposed principal routes and anticipated traffic densities for all main and secondary lines in the system, in their Operating Plan. *Id.* § 1180.8(b)(1). This information may be summarized in a pro forma density chart. *See id.* § 1180.8(b)(5) (requiring gross ton-mile traffic density charts for lines handling over 1 million gross-ton miles per mile road per year). Where an Application does not contain certain information required by the Board, it is incomplete. *See* Decision No. 9, slip op. at 1-2.

The Amended Application indicates that NS has rights to operate over two routes between New York and Massachusetts. UP-39/NS-37 at 2-676 to 2-677. Applicants’ Operating Plan describes two NS routes from New York to Massachusetts and New England. It states that NS’s New England access “funnels through an intermodal terminal in Ayer, Massachusetts, via PAS [Pan Am Southern] or alternatively via trackage rights on CSXT to Worcester, Massachusetts.” *Id.* at 2-677. Applicants describe PAS as a “joint venture owned by NS and CSXT and operated by the Berkshire & Eastern Railroad.” *Id.* at 2-668.

Past proceedings confirm that NS has rights to operate over two lines between New York and Massachusetts. In 2022, the Board approved NS’s acquisition of overhead trackage rights for an approximately 161.5-mile rail line between approximately Voorheesville, NY and Worcester, MA (the “Southern Route”) that is owned and operated by CSX Transportation (“CSXT”). *Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.*, FD 36472 (Sub-No. 1), slip op. at 5 (STB served Apr. 14, 2022). NS was granted overhead trackage rights for the Southern Route as part of approval of the CSX-Pan Am merger in 2022, and the agreement itself was finalized in 2024. *See id.*; Norfolk Southern Letter, FD 36472, STB ID-308323 (filed May 17, 2024). NS’s acquisition was part of a broader set of transactions that

permitted CSXT to acquire a 50% interest in PAS, the other 50% of which is owned by NS. *Norfolk Southern*, FD 36472 (Sub-No. 1), slip op. at 4-5. PAS operates a line between Mechanicville, NY and Ayer, MA, referred to as the “Northern Route” or “Patriot Corridor,” over which NS also maintains separate trackage rights. *Id.* at 4.

Although Applicants’ Operating Plan, consistent with the regulatory history, acknowledges two NS routes between New York and Massachusetts—the Northern Route and the Southern Route—Applicants’ network map and Electronic Appendices appear to only reflect NS’s trackage rights over one line, the Northern Route. *See* UP-39/NS-37 at 1-118 (excerpt reproduced in **Attachment A** with missing Southern Route highlighted in yellow), Electronic Appendix S (identified under “Corridor Name” by numbers 11050 and 11046). Moreover, Amtrak’s Lake Shore Limited intercity passenger rail service between Boston and Chicago via Albany operates over much of the Southern Route, but Applicants’ discussion of that service does not mention this line, instead focusing exclusively on an NS-owned portion of this route between Chicago, IL and Cleveland, OH. *Id.* at 2-769 to 2-770.

The omission of the Southern Route from Applicants’ network map violates the Board’s regulations at 49 C.F.R. 1180.6(a)(6) and renders the Amended Application incomplete. This same omission from the Operating Plan and the supporting Electronic Appendices, which are used to explain patterns of service, violates the Board’s regulations at 49 C.F.R. § 1180.8(b)(1) and § 1180.8(b)(5) and likewise renders the Amended Application incomplete.

The omission of the Southern Route is significant because both the Northern Route and the Southern Route could see significant increases in traffic due to the merger. The data in the Amended Application’s Electronic Appendices indicate that under Applicants’ growth scenario there will be significant increases in traffic moving east–west through New York and extending

into Massachusetts. Specifically, Applicants’ pro forma density charts show that, under the growth scenario, traffic between Binghamton, NY and the Albany/Schenectady/Mechanicville area will increase by almost 50,000 annual cars and 5 million annual gross tons, while approximately half of that traffic will continue on via the single Massachusetts route identified in Applicants’ density data. UP-39/NS-37 at Electronic Appendix S. The statements in Applicants’ Operating Plan indicate that NS “funnels [traffic] . . . via trackage rights on CSXT to Worcester, Massachusetts,” suggesting that at least some of the new traffic under the growth scenario that makes its way between Binghamton and the Albany area could also move over the Southern Route. *See id.* at 2-677. Accordingly, this omission should be rectified.

II. The Amended Application Omits Passenger Rail Service Operated over NS Lines in Southern New York

The Amended Application is also incomplete because it omits from the required analysis a discussion of impacts on passenger commuter rail service on NS-operated lines in southern New York that continues into New Jersey. The Board’s merger regulations require Applicants to detail in their Operating Plan any anticipated impacts to commuter or passenger rail services operated over Applicants’ lines. 49 C.F.R. § 1180.8(b)(2). Applicants must submit a “full system” impact analysis that demonstrates the impacts of the transaction on the provision of essential services, including passenger rail service. 49 C.F.R. § 1180.7(b). Additionally, Applicants are required in their Service Assurance Plans to “describe definitively how they would continue to facilitate” commuter service operations on applicant carrier lines. 49 C.F.R. § 1180.10(b). The Board has determined that Applicants “must also provide clarifications” regarding the omission of certain passenger rail services from their merger materials. Decision No. 9, slip op. at 2 n.3, 14. Applicants’ failure to “provide an impact analysis and Service Assurance Plan details” for the southern New York passenger commuter service means that the

Amended Application is incomplete and must be rejected until this issue is addressed. *See id.* at 14.

The Amended Application's network map and some of its associated data in its Electronic Appendices reflect that NS's existing rail network in New York includes at least part of a line between southern New York and New Jersey that travels through Suffern, NY. *See* UP-39/NS-37 at 1-118 (excerpt reproduced in **Attachment A** with relevant line highlighted in green), Electronic Appendix S (identified under "Corridor Name" by numbers 11272 and 11276). This line appears to be part of the rail line between Port Jervis, NY and Suffern, NY (the "Port Jervis Line") over which Metro-North Railroad, a subsidiary of the New York Metropolitan Transit Authority, operates commuter passenger rail service under contract for New Jersey Transit, as described in past proceedings before the Board. *See CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated R. Corp.*, 3 S.T.B. 196, 434 (1998) ("*Conrail Acquisition*"); *Metro-North Commuter Railroad Company—Acquisition and Operation Exemption—Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC*, FD 34293, slip op. at 1-2 (STB served May 13, 2003). NS acquired this line through its partial acquisition of Conrail in a proceeding approved by the Board in 1998, *Conrail Acquisition*, 3 S.T.B. at 224, and retains the common carrier rights to operate the Port Jervis Line, *see Metro-North*, FD 34293, slip op. at 3.²

Although the Amended Application appears to acknowledge that at least some of the Port Jervis Line is included in NS's rail network, it appears to omit any discussion of the commuter

² Applicants' network map indicates that line segments that connect the Port Jervis Line northeast along the New York – New Jersey border to Binghamton, NY and the rest of NS's New York rail lines are also part of NS's network. However, NYS has not yet been able to locate these line segments in the Applicant's Electronic Appendices. The absence of data regarding this line may constitute a separate grounds for incompleteness of the Amended Application.

passenger rail service that operates on this line in its discussion of passenger service in either its Operating Plan or its Service Assurance Plan. UP-39/NS-37 at 2-756 to 2-780, 2-1043 to 2-1075. Moreover, for the segments of the Port Jervis Line that are reflected in the Electronic Appendices, no passenger rail trains are acknowledged to operate on these segments. *See id.* at Electronic Appendix T.

Omitting consideration or discussion of the passenger service impacts on the Port Jervis Line or any other line over which Applicants operate constitutes a violation of the Board's regulations requiring such consideration under the Operating Plan and Service Assurance Plan, rendering the Amended Application incomplete. *See* 49 C.F.R. §§ 1180.8(b)(2), 1180.10(b). The Board has already admonished Applicants to detail any impacts anticipated on all passenger services operated on UP or NS lines. *See* Decision No. 9, slip op. at 14. The significant changes anticipated under the merger could dramatically impact passenger service on lines over which Applicants hold a common carrier obligation, regardless of who owns the line, and these impacts should be considered as part of the Board's expansive and exclusive authority over this transaction, which exempts the merger from all other conflicting laws. 49 U.S.C. § 11321. Because the Applicants have the burden of demonstrating that the merger is in the public interest, 49 C.F.R. § 1180.4(c)(8), and that essential passenger and commuter rail services are preserved, *id.* § 1180.1(c)(2)(ii), it is imperative that the Amended Application consider and discuss the impacts of the merger on all passenger and commuter rail services within the Applicants' network.

CONCLUSION

For the foregoing reasons, NYS requests that the Board consider the Amended Application incomplete until the foregoing omissions are addressed.

[Signature page follows]

Respectfully submitted,

/s/ Subash Iyer

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Dated: May 7, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of May 2026, served copies of this COMMENT by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Subash Iyer

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ATTACHMENT A

Reproduced Excerpts of UP-NS Network Map in Amended Application, p. 1-118

Missing NS “Southern Route” indicated in yellow highlight



Port Jervis Line between approximately Suffern, NY and Port Jervis, NY indicated in green highlight

