BEFORE THE SURFACE TRANSPORTATION BOARD

WASHINGTON, D.C.

Docket No. FD 36873

UNION PACIFIC CORPORATION—CONTROL—NORFOLK SOUTHERN CORPORATION

EVIDENTIARY STATEMENT OF PARTY OF RECORD, J. VANN CUNNINGHAM,

Surface Transportation Board

395 E Street, S.W.

Washington, D.C. 20423-0001

Re: Docket No. FD 36873 — Evidentiary Statement

Union Pacific Corporation and Norfolk Southern Corporation — Control

Dear Members of the Board:

I respectfully submit this Evidentiary Statement in Docket No. FD 36873 concerning the amended application filed April 30, 2026, by Union Pacific Corporation and Norfolk Southern Corporation. I write as a Party of Record and retired industry professional with more than 50 years of experience in economic development and corporate site selection, holding the IEDC Fellow designation, and as a former Assistant Vice President of Economic Development at

BNSF Railway Company. I currently serve on the Board of Trustees of OnTrackNorthAmerica (OTNA). The views expressed are my own.

Respectfully submitted,

/s/ J. Vann Cunningham

J. Vann Cunningham, IEDC Fellow

Party of Record

Arlington, Texas

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Dated: August 4, 2026

cc: All parties of record

EVIDENTARY STATEMENT

The following statement is a structural analysis of the competitive impacts on short line, regional, and interline carriers arising from the proposed UP-NS merger; analysis of interchange leverage loss, gateway consolidation, and exposure to time-limited behavioral remedies.

I. The Short Line Squeeze: What the UP-NS Merger Does to Regional and Interline Carriers

In the Surface Transportation Board Docket No. FD 36873, the proposed merger between Union Pacific Corporation and Norfolk Southern Corporation is most often argued in terms of shippers, service metrics, and network efficiency. That framing misses where the transaction's structural effects land first and hardest. Short line, regional, and interline carriers sit at the seams of the North American rail network, dependent on interchange access to both the western and eastern Class I systems for their commercial survival. A transcontinental merger does not simply add a large carrier to the map. It removes one of the two counterparties that every short line has used for decades to negotiate the terms on which it survives. That removal is the primary story of the merger. The broader competitiveness question the Board is charged with answering, whether the merger enhances or merely neutralizes competition, follows directly from it.

II. The Bridge Carrier's Leverage, and What Happens When It Disappears

To understand what the merger takes away, it helps to understand what a short line currently has. A large number of short line railroads operate as bridge carriers: they originate or terminate traffic locally, then hand it off to a connecting Class I carrier for the long haul. Many interchange with both western and eastern Class I networks, which means two large carriers compete for their business, and neither one holds them captive. That position is the source of their commercial leverage. A short line negotiating a division of revenue, a car-hire rate, or an interchange term can play one connecting carrier against another, using the credible threat of routing traffic to the competing system to extract better terms from either one.

This is more than a theoretical advantage. It is the mechanism by which small carriers with no market power of their own have historically secured commercial terms they could never have obtained through negotiating strength alone. The tension between two independent Class I systems does the work; the short line does not need scale because it has a choice.

The proposed merger eliminates that choice at a stroke. Where a short line once interchanged with an independent western system and an independent eastern system, it now interchanges with divisions of the same corporate entity on both ends. The multi-carrier gateway becomes a single-carrier gateway. Every structural pricing tension the short line relied on to protect its margin evaporates, not because Union Pacific or Norfolk Southern behaves any differently on a given day, but because the entity that used to compete for that short line's traffic no longer exists as an independent counterparty. Short lines interfacing directly with the merged UP-NS footprint lose their commercial leverage entirely and are left exposed to dictates on through-rates, route allocations, and revenue splits, terms that will now be set unilaterally by a single system. The negotiation between competing carriers that once shaped those terms no longer exists.

III. Traffic Steering and the Marginalization of Interchange Points

The loss of leverage is a passive effect of consolidation. Traffic steering is an active one, and it follows directly from the economics of controlling both ends of a corridor that used to require two independent carriers.

A combined UP-NS entity has an unmatched economic incentive to maximize its own long-haul rail miles. Every mile a shipment travels on proprietary UP-NS track is a mile the merged entity does not hand off to a short line or an independent regional carrier partway through the move. That mile is revenue the merged entity keeps in full. That incentive did not exist in the same form before the merger, because a Class I carrier handing traffic to a connecting road at an interchange was, in many cases, handing it to an entity it needed to cooperate with to serve the other half of the country. Once UP and NS are one system spanning the country, that need for cooperation disappears, and with it the reason to route traffic through an independent short-line interchange at all. Routing around it becomes the simpler operational choice.

The practical consequence is a set of pressures short lines are poorly positioned to withstand. Interchange points that were once treated as necessary connections to the broader network can be downgraded in priority. Car-blocking requirements, the rules governing how cars are grouped and released at a terminal, can be tightened in ways that make short-line interchange slower or less reliable, not because the merged carrier is targeting any particular short line, but because concentrating traffic onto heavily optimized, long-distance manifest trains is the operationally rational choice for a carrier that no longer needs the interchange to reach the other coast. Short lines that depend on multi-system routing flexibility, not a single dominant connection, are most exposed to being bypassed entirely as that optimization proceeds. None of this requires bad faith. It follows from the structure of the merger itself, which is precisely why only a structural remedy addresses it. A behavioral promise does not reach the underlying incentive.

IV. An Asymmetry of Scale, Not Just of Bargaining Position

Applicants argue that end-to-end integration removes interline hand-off friction, and on its own terms, that argument is not without merit; a single carrier moving a shipment coast to coast does eliminate certain delays and inefficiencies inherent in a handoff between two separate operating systems. But the same integration that removes friction between UP and NS creates an entirely different kind of friction between the merged carrier and every short line that depends on it for interchange.

The asymmetry here is not merely commercial. It is a matter of scale so large that ordinary bargaining dynamics no longer apply. A short line lacks the market capitalization to contest unfavorable service terms imposed at an interchange terminal, and it lacks the legal and administrative resources to challenge an arbitrary operational modification through litigation or formal complaint. While a large shipper association can fund a rate case and sustain it through years of proceedings, a regional carrier operating on thin margins cannot. The dominant transcontinental system, meanwhile, has every incentive to treat interchange terms as a matter of its own operational convenience. There is no longer an equal on the other side of that negotiation to answer to, so nothing requires the terms to be negotiated at all.

Applicants' proposed remedies and voluntary commitments, when examined against this asymmetry, generally fail to provide what is actually needed: permanent, enforceable protection for short-line interchange rights. What they offer instead is exposure. Regional networks are left vulnerable to creeping market capture, in which no single decision looks like an abuse of power, but the cumulative effect over years is a steady narrowing of the terms on which short lines are permitted to operate and a corresponding decline in the economic viability of the shippers those short lines exist to serve.

V. The July 27 Filing, Read From the Short Line's Side of the Interchange

The supplemental filing Union Pacific and Norfolk Southern submitted on July 27, 2026, in response to STB Decision No. 21, introduces several structural commitments that, at first glance, appear responsive to competitive concerns raised in the proceeding. However, read from the position of a short line, not a major shipper, the filing leaves the foundational challenges largely untouched and, in places, shows how far its remedies are calibrated to a different constituency altogether.

Expanded gateway pricing and what it still excludes. The filing expands the Committed Gateway Pricing program to cover more shipments and bulk unit trains, an expansion applicants present as a direct response to competitive concerns. The expansion carries significant product exclusions, with hazardous materials and toxic-inhalation-hazard traffic prominent among them. These are commodities many short lines handle locally as a routine part of their business. A pricing commitment that excludes the freight categories a given carrier actually moves is a commitment that does not reach that carrier. More fundamentally, expanded gateway pricing is a contractual or voluntary mechanism, subject to renewal, modification, or expiration. It is not a permanent structural cure. It does not replace, in any durable sense, the independent multi-system routing options short lines historically used to negotiate favorable interchange splits and preserve their position in the regional market.

Service protections built for someone else. The new service-level remedies and temporary alternative access rights introduced in the July 27 filing appear intended to shield major shippers experiencing severe integration delays during the merger's implementation period. These protections do not automatically extend to short lines, either in operational standing or in self-executing trackage rights that would allow a regional carrier to rescue its own delayed traffic moving across a low-density interchange. A remedy built around the needs of a large industrial shipper, with the legal staff to invoke it and the volume to make invocation worthwhile, does not translate into a remedy a short line can use.

Terminal transfers that do not reach the short lines feeding them. Earlier filings in the proceeding resolved certain terminal ownership questions, transferring specific joint terminal interests to third-party carriers such as CN. These transfers address a real structural concern at the Class I level, but they offer no guarantee that the independent short lines feeding those same gateways will be protected from being sidelined or from disadvantageous car-blocking rules imposed by the dominant transcontinental system once the terminal question at the Class I level has been settled. Solving the problem between large carriers does not solve the problem between the merged carrier and the small ones that depend on it.

Burden-shifting dressed as oversight. The filing's new post-merger rate relief processes and accountability frameworks are presented as proactive competitive safeguards. Structurally, they function as reactive remediation: the administrative and financial burden of identifying, documenting, and formally challenging anti-competitive behavior is shifted back onto the market participants experiencing it. That burden falls hardest on the parties least equipped to carry it. Smaller regional short lines and their captive shippers typically lack the legal and economic resources to make effective use of complex, post-implementation regulatory dispute channels. As a result, a remedy that looks even-handed on paper will, in practice, be available mainly to the shippers large enough to afford to invoke it. Short lines, the parties most exposed to the merger's structural effects, are the parties least able to use the mechanism offered as their principal protection.

VI. What This Means for the Competitiveness Standard the Board Must Apply

Everything described above is, first and foremost, a short-line and regional-carrier problem. It is also, inescapably, a competitiveness problem in the sense that the STB's major merger rules are designed to address. Under those rules, applicants bear the burden of affirmatively demonstrating that a transaction enhances competition; neutralizing or offsetting competitive harm with efficiency gains is not sufficient to meet that standard.

The short line ecosystem is where that standard should be tested most carefully, because it is where the gap between applicants' efficiency claims and the lived commercial reality is widest. The empirical record on single-served locations, including evidence submitted by major industrial shipper associations such as the American Chemistry Council among others, documents a long-term disparity in rate growth between competitive rail locations and captive facilities served by only one carrier, with captive rates historically climbing at a pace that outstrips competitive paths by a wide margin. That disparity exists independent of this merger. It is the baseline against which the merger's effects should be measured, and short lines facing the loss of their last competitive connection are the carriers most likely to be pushed into exactly the captive position that record describes.

Opposing parties argue, with good reason, that removing the last competitive alternative on a corridor does not translate operating efficiency into savings passed on to shippers; it converts efficiency into monopoly rent captured by the merged entity. A shipper or a short line locked into a single-line relationship loses the one thing that disciplines rates and terms in a competitive market: a credible option to route around the incumbent. Once that option is gone, the pricing tension that kept both rates and interchange terms honest goes with it.

The behavioral remedies applicants have proposed to address these concerns share a common structural flaw, regardless of which constituency they nominally protect: they are time-limited, expiring at the end of an oversight period, after which the underlying market power remains fully intact, and they include commodity carve-outs that exclude entire categories of traffic, including intermodal, automotive, and hazardous materials, from the protections that do apply. The inclusion of rigid regulatory termination thresholds, including Schedule 5.8's walk-away rights, confirms that the transaction's financial logic depends on preserving market dominance intact. Trading away any meaningful share of that dominance is not part of the deal's structure. Applicants have structured the deal so that any concession genuinely capable of injecting durable structural competition into the combined footprint would trigger a walk-away right rather than a renegotiation.

VII. The Burden Still Unmet

None of this forecloses the possibility that a transcontinental merger could someday satisfy the enhancement standard the STB's rules require. But FD 36873, as filed and as supplemented on July 27, asks the Board to treat the position of short line, regional, and interline carriers as a secondary concern to be managed through voluntary commitments, while the primary structural change, the disappearance of the two-system gateway that has protected these carriers for decades, proceeds unaddressed. The commodity exclusions, the service remedies calibrated to large shippers, the terminal transfers that stop short of the small carriers feeding them, and the burden-shifting dispute mechanisms all point to the same conclusion: applicants have designed a set of protections for the parties best equipped to use them, and left the parties most exposed to the merger's structural effects with the least ability to invoke any protection at all.

The applicants have not met their statutory burden. They describe a network reconfiguration that serves their commercial interests, offers remedies tailored to the constituency best able to contest them, and asks the Board to treat the resulting arrangement as an enhancement of competition. What it actually represents is the removal of the structural conditions, including dual-gateway access and independent interchange leverage, that have allowed short line, regional, and interline carriers to operate on anything approaching competitive terms. Applicants fail to demonstrate that the transaction enhances competition across the rail industry, especially for short line and regional carriers, who are most vulnerable to its effects.

Respectfully submitted,

J. Vann Cunningham, IEDC Fellow, Party of Record

Arlington, Texas

Dated: August 4, 2026

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2026, I served copies of the foregoing Evidentiary Statement upon the following parties, by email where email service is acceptable and by first-class mail otherwise:

- Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590
- Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530
- Michael L. Rosenthal, Covington & Burling LLP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001 (Counsel for Union Pacific)
- Raymond A. Atkins, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005 (Counsel for Norfolk Southern)
- Hon. Jenifer Soulikias, Administrative Law Judge, alj.soulikias.inbox@stb.gov
- All parties designated as Parties of Record on the service list for Docket No. FD 36873

/s/ J. Vann Cunningham

J. Vann Cunningham

Party of Record