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

CSX TRANSPORTATION, INC.'S DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATIONS

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CSXT submits this Description of Anticipated Responsive Applications identifying those conditions it anticipates seeking in this proceeding for which a responsive application is necessary. As described more fully below, CSXT anticipates it may seek partial divestiture of UP's parallel line between East St. Louis and Kansas City along with a yard and terminal in Kansas City, trackage rights on NS in Eastern Pennsylvania, and trackage rights on lines of NS and its subsidiary the Norfolk & Portsmouth Belt Line Railroad Company ("NPBL") to access the Norfolk International Terminals ("NIT").

* * *

UP and NS seek the Board's approval for the most consequential—and potentially damaging—consolidation of the rail industry in American history. Their merger would take the largest Class I railroad and make it far larger, creating an unprecedented level of industry dominance and market power. Without competition constraining this degree of market power, any purported shipper benefits are illusory. Thus, as CSXT will demonstrate in its Comments, the permanent, structural harm this transaction would cause to the nation's freight rail network would outweigh any transitory benefits—and no set of conditions that the Board could impose could prevent that harm. The proposed merger would therefore not be in the public interest, and CSXT intends to ask the Board to deny the Application outright.

CSXT reiterates that the Application does not present a *prima facie* case under 49 C.F.R. § 1180.4(c)(8) and Board precedent, and should be summarily denied. If the Board nevertheless proceeds to consider the Application, CSXT anticipates requesting, through responsive applications, certain conditions that the Board must impose on its approval in order to preserve and enhance competition, in at least some respects. As required by Decision 30, CSXT describes those anticipated responsive applications below. But CSXT emphasizes that these conditions, together with any others the Board might impose, could only serve to partially mitigate, not remedy, the merger's harms. Those harms would be pervasive, not confined to any limited set of corridors or markets that could be addressed with surgical remedies. The proposed merger would forever change the competitive balance that exists today, fostered over decades by the Board's careful oversight, in exchange for purported benefits which—to the extent they are actually realized—could largely be accomplished without a merger or would flow to the Applicants and not to shippers. The Board adopted the 2001 Rules' heightened burden to avoid this very tradeoff. *Major Rail Consolid. Procs.*, 5 S.T.B. 539, 546-48, 554, 560-61, 581-83 (2001) ("2001 Rules") (recognizing there was a history of "over-promised and under-delivered" claims of benefits in major mergers, and as the industry approached its structural "end-game," the consequences of mistaken approval would be severe and irreversible).

The 2001 Rules' animating concern was that any future mergers of Class I carriers may reduce competition in ways conventional remedies could not prevent. 2001 Rules, 5 S.T.B. at 554. And the Board has since increasingly focused on the threat of vertical competitive harm posed by end-to-end mergers. *Can. Pac. Ry.*

Ltd.—Control—Kans. City S., Decision No. 35, FD 36500 (S.T.B. served Mar. 15, 2023) ("*CP/KCS*"), slip op. at 65-66 ("adverse impacts may arise where ... a carrier that once provided neutral access to multiple competing railroads is then acquired by one of those competitors and has an incentive post-merger to favor its own new single-line routing over interline alternatives."). *See also Can. Nat'l Ry. Co.—Control—Iowa N. Ry. Co.*, Decision No. 3, FD 36744 (S.T.B. served Jan. 14, 2025) ("*CN/IANR*"), slip op. at 7-9. Notably, UP itself, less than two years ago, relied on *CP/KCS* to underscore that "the Board has recognized [that] even end-to-end transactions create a risk of vertical foreclosure[.]" *Union Pac. R.R. Co.'s Comments and Req. for Conditions*, *CN/IANR*, FD 36744 (Apr. 29, 2024) at 4.

Applicants' proposed merger, unlike *CP/KCS* or *CN/IANR*, would not be a combination of two smaller carriers, where vertical foreclosure risks were confined to a single gateway. It would affect every major gateway and give one carrier control of at least half of all U.S. rail traffic. The resulting industry structure would create ubiquitous opportunities for Applicants to foreclose competing alternatives and exploit their market power. There would be too many tools such a dominant firm could use to foreclose, too many ways to evade scrutiny, and too many parts of the nation's transportation network where it could wield its power, to even identify upfront, much less to protect against, such anticompetitive conduct through conditions.

Nevertheless, CSXT anticipates that it will seek conditions where CSXT is uniquely positioned to preserve part of the competition that a merged UP/NS would otherwise extinguish, and where UP/NS's dominance would be most aggressively weaponized against competing carriers and the shippers that depend on them. Even though these conditions cannot repair the structural damage the merger would cause, they represent remedies CSXT has identified as necessary and achievable to protect competition where the merger's harm would be most concrete and immediate.[1]

CSXT anticipates that it may submit responsive applications seeking: (1) a 50% divestiture of UP's Jefferson City Line (Jefferson City, Sedalia, and River Subdivisions), full divestiture of UP's Neff Terminal and partial divestiture of Neff Yard in Kansas City, MO; (2) trackage rights on NS from Chambersburg, PA through Harrisburg and Allentown, PA to Manville, NJ; and (3) trackage rights on NS and NPBL lines from CSXT's connection at Seaboard Junction through to NIT.[2]

1. Kansas City – East St. Louis Divestiture

UP's own statements and conduct leave no doubt that the merger eliminates meaningful competition on the Kansas City–East St. Louis ("KC-ESL") corridor—and that a structural remedy for that harm is not only appropriate, but already anticipated by Applicants themselves. On UP's second quarter 2026 earnings call,

[1] Pursuant to the Board's Decision No. 30, CSXT includes in this Description those conditions that require a responsive application. CSXT also anticipates that it may seek other conditions that do not require a responsive application, which it will address in its forthcoming Comments consistent with the Board's procedural schedule.

[2] CSXT reserves the right ultimately to seek less restrictive alternative interests (*e.g.*, trackage rights or lease in lieu of divestiture) shown to be suitable means to protect competition.

CEO Jim Vena acknowledged that UP and NS "have a significant overlap" in the KC–ESL corridor and explained that UP sought an arrangement with Canadian National ("CN") concerning that corridor because it was "prudent … not to be too concentrated."[3] Mr. Vena further confirmed that "we knew we were going to have to do that," to which UP CFO Jennifer Hamann added: "access into Kansas City was … part of what we knew we were probably going to have to do something to address."[4] Yet having conceded the need for a structural remedy, Applicants have proposed to address this harm by granting rights to a carrier unlikely to meaningfully challenge the combined UP/NS's competitive dominance, not the carrier best positioned to restore the competition in the KC-ESL corridor that would be eliminated by their merger.

CSXT is the only railroad that can restore the east/west competition over this corridor that the merger would destroy. Today, shippers benefit from a genuine competitive choice on the KC–ESL corridor: UP's KC–ESL service can be paired with CSXT in the East, while NS's KC–ESL service can be paired with BNSF or CPKC in the West. The merger eliminates that choice by placing both lines under common UP/NS control, extinguishing the independent eastern-railroad alternative that currently disciplines pricing and service across the corridor. CSXT, whose

[3] Transcript, Union Pac. Corp. Q2 2026 Earnings Call (July 23, 2026) (S&P Global Market Intelligence) at 8 (statement of J. Vena); *see also* Transcript, Union Pac. Corp. Special Call (Bernstein Fireside Chat) (Sept. 1, 2026) (S&P Global Market Intelligence) at 7 (explaining of the UP and NS parallel lines between St. Louis and Kansas City, that "right from the very start, we knew we needed to fix that and that's what we've done.") (statement of J. Vena).

[4] *Id.* at 9.

eastern network most directly overlaps with NS, is uniquely positioned to step into NS's competitive role and preserve that dynamic for shippers. CN cannot. CN's eastern network does not replicate NS's competitive footprint in the affected eastern markets.

Access for a carrier that does not substantially overlap with either merging carrier would restore none of the competition that would be lost and do nothing to protect eastern shippers from the foreclosure of their competing alternatives. The appropriate remedy, instead, is a structural divestiture to the carrier that does substantially overlap with NS and could restore at least some of that otherwise lost competition. Thus, CSXT may seek a 50% divestiture and dispatch control of UP's line between East St. Louis, Illinois / St. Louis, Missouri and Kansas City, Missouri (together, the "Kansas City Line"); and divestiture of UP's Neff Terminal and partial divestiture of its Neff Yard in Kansas City, Missouri. With a direct ownership interest in the Kansas City Line, CSXT can build a complete business connecting Kansas City with its entire eastern network via the East St. Louis gateway, restoring precisely the alternative Kansas City service that the merger would eliminate. CSXT anticipates requesting rights covering the following:

- UP's Jefferson City, Sedalia, and River Subdivisions in Missouri;
- UP's Neff Yard and Neff Terminal in Kansas City, Missouri
- Any rights UP may grant to CSXT, including by virtue of Applicants' momentary or enduring control of the Kansas City Terminal Railway Company ("KCT") (including without limitation the KCT ownership interest currently held by NS), necessary to admit CSXT to the Kansas City Line and to the Neff Yard and Terminal, including to any segment where UP is a co-owner or a tenant. *See Applicants' Second Response to Decision No. 21* (UP-80/NS-78), *Union Pac. Corp.–Control–Norfolk S.*

Corp., FD 36873 (July 27, 2026), at 204-05 (Attachment 1, at 2-3) (warranting ability to confer all rights necessary to admit carrier to operate using relevant properties). *See, e.g., id.*, at 206-07, 215-17 (Attachment 1, at 4-5, 12-14) (conferring certain such rights).

2. Eastern Pennsylvania Trackage Rights

NS dominates Eastern Pennsylvania—a dominance that commentators have characterized as a "practical monopoly," and one that NS itself acknowledges.[5] *See, e.g.*, NS_STB_00001343 at -1358 ({{"______________"}}), -1375 ({{"____________________"}} in part due to a {{"_________________________"}}). Eastern Pennsylvania is among the most critical freight and intermodal markets in the country. It is located within a day's drive of one-third of the U.S. population, making it a hub for shippers and intermodal companies that have established major distribution and logistics operations throughout the region, and a gateway between the East Coast metropolitan areas and the rest of the country. NS is the only Class I that owns tracks serving this market—and by extension, it controls access to Eastern Pennsylvania for any carrier seeking to serve the shippers concentrated there.

Because of NS's dominance in Eastern Pennsylvania, it already has the structural ability to foreclose BNSF from interline traffic into this region. What it currently lacks is any incentive to preference UP over BNSF. The merger would eliminate that neutrality. Post-transaction, a combined UP/NS would have a

[5] Comment on Docket No. 36873 – Finney, *Union Pac. Corp.–Control–Norfolk S. Corp.*, FD 36873 (Jan. 29, 2026) at 1 (NS "holds a practical monopoly on rail movement through our valley. This lack of competition has created a dynamic where the railroad has no incentive to compromise with our community.").

powerful and direct financial incentive to exploit NS's Eastern Pennsylvania dominance by degrading interchange with BNSF—through differential pricing, slower service, less favorable scheduling, and preferential routing—to divert transcontinental traffic that currently moves on BNSF's western lines onto UP/NS single-line service.

To ensure that shippers west of the Mississippi continue to benefit from competitive options, CSXT anticipates that it will seek trackage rights on NS from Chambersburg through Harrisburg and Allentown to Manville. These rights would enable CSXT to access an independent terminal in Bethlehem, PA to preserve interline optionality. Moreover, CSXT trackage rights in Eastern Pennsylvania would enhance competition by introducing new rail-to-rail competition and providing shippers with effective rail alternatives. CSXT anticipates requesting trackage rights covering the following rail lines:

- NS's Lurgan Branch between Chambersburg, PA and Harrisburg, PA;
- NS's Harrisburg Line between Harrisburg, PA and Wyomissing Junction, PA;
- NS's Reading Line between Wyomissing Junction, PA and Bethlehem, PA;
- NS's Lehigh Line between Wyomissing Junction, PA, Allentown Yard, PA, and Bethlehem, PA; and
- NS's Lehigh Line between Bethlehem, PA and Manville Yard, NJ.

3. Trackage Rights over NS and NPBL to NIT

NIT is among the most strategically significant deepwater intermodal terminals on the East Coast—a gateway through which transcontinental traffic moving on the networks of UP, BNSF, CPKC, and other carriers is interchanged with NS at inland points. NS dominates rail access to NIT. NS is the only Class I railroad with direct on-dock rail access to NIT, and its control of NPBL—approved by the Board in Decision No. 14 in Docket No. FD 36836—gives it exclusive control over the only line by which a competing carrier could otherwise access NIT by rail. As CSXT demonstrated in that proceeding, NS has used its control of NPBL to impose artificial operating barriers, leaving CSXT with a disproportionately low share of on-dock rail intermodal traffic at NIT and forcing it to continue to rely on drayage subsidized by Virginia International Terminals ("VIT") to provide service to NIT.

The proposed UP/NS merger, by which UP would acquire control of NPBL, would transform NS's existing structural dominance at NIT into a direct and imminent foreclosure threat. Today, NS moves traffic for interchange at gateways with UP, BNSF, and CPKC, whose transcontinental traffic moves through NIT. NS currently has no systematic incentive to foreclose any of them from efficient interline access. The merger would eliminate that neutrality entirely. Post-transaction, a combined UP/NS would have both the ability and incentive to exploit NS's exclusive on-dock rail access to NIT—and its control of the only line available to any competing carrier—to steer transcontinental traffic onto UP's network and away from BNSF and CPKC. The conditions the Board imposed in the NPBL Control proceeding were designed to maintain the competitive status quo between NS and CSXT. They were not designed for, and would not constrain, the post-merger incentive of a combined UP/NS to disadvantage interline movements that would otherwise move on BNSF's, or CPKC's western networks. The Virginia Port Authority, the owner of NIT, has itself expressed concern about the lack of competitive rail access at its terminal. *Va. Port Auth. Letter*, *Norfolk S. Ry. Co.—Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (Mar. 5, 2025) at 6 ("Although VPA enjoys a healthy partnership with NSR, it seeks more opportunity for efficient rail access at NIT for the benefit of its customers.").

This is a concern that the merger makes considerably more acute. Accordingly, CSXT anticipates that it may submit a responsive application seeking trackage rights and conditions covering:

- NPBL's line between Seaboard Junction and NS Junction;
- NS's lines between NS Junction and Portlock Yard;
- NS's line through Portlock Yard;
- NS's line between Portlock Junction and QM Junction through to NIT;
- NS's line segments starting at West Junction and ending at QM Junction, including all three legs of the wye at QM Junction; and
- NS's line between NS Junction and Carolina Junction (currently discontinued), including restoration of the double diamond at NS Junction and connection to Carolina Junction.

[Signature page follows.]

Respectfully submitted,

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Dated: September 9, 2026

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CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of September, 2026, I caused a true and correct copy of the foregoing CSX Transportation, Inc.'s Description of Anticipated Responsive Applications to be served 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.

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