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November 12, 2026
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**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

**FD NO. 36873**

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

# COMMENTS AND REQUEST FOR CONDITIONS OF THE COMMUTER RAIL COALITION

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Pursuant to 49 U.S.C. § 11325 and Decision No. 30 in the above-captioned proceeding, the Commuter Rail Coalition ("CRC") hereby submits comments and requests for conditions on the proposed acquisition of control (the "Transaction") of Norfolk Southern Corporation and Norfolk Southern Company ("NS") by Union Pacific Corporation and Union Pacific Railroad Company ("UP"; collectively, the "Applicants"), as reflected in the Amended Railroad Control Application filed April 30, 2026, as supplemented July 7 and July 27, 2026 (collectively, the "Application").

The Applicants must demonstrate that the Transaction will advance the public interest. The unprecedented size and scope of this private railroad merger, which is projected to profoundly change the country's transportation network in many respects, necessitates safeguarding the public interest, which includes the "vital public service"[1] of commuter rail transportation provided by public regional operators to serve individual passengers. The nationwide reach of the Transaction demands an objective nationwide approach to the Applicants' engagement with commuter rail

[1] *Union Pac. R.R. Co. v. Surface Transportation Board*, Case No. 25-2919, slip op. at 4 (8th Cir. 2026) (quoting *Commuter Rail Div. of the Regional Transp. Auth., d/b/a Metra – Terminal Trackage Rights – Union Pac. R.R. Co.*, STB FD No. 36844, slip op. at 27 (Service Date Sept. 3, 2025)).

operators and project proponents in regional centers across the U.S. CRC proposes conditions that will create a coherent nationwide framework to support the goals of the Transaction to improve freight rail service while (a) permitting existing commuter service to continue and (b) providing a mechanism to establish terms for expanded service to meet growing passenger rail demands. Even without the merger in play, CRC's members exist in an environment in which the economic power imbalance between host railroads and commuter rail operators already puts the public passenger rail providers at a disadvantage in negotiations for access to the network. In the face of a merger that would create a Class 1 behemoth of unprecedented size and geographic reach, this Board's general authority over rail transportation[2] and broad mandate to protect the public interest[3] demands that any approval of the Transaction (a) preserve existing commuter rail operations and (b) dynamically accommodate expansion of such service.

The CRC is an association representing the interests, needs and benefits of the nation's commuter railroads. CRC was formed by industry leaders to engage and educate stakeholders and to advocate for the resources necessary to sustain and improve commuter rail assets. The CRC represents 19 major commuter rail/transit agencies that collectively employ thousands of people in the commuter rail industry and provide passenger rail service to half a billion riders each year, 98.5% of all commuter rail passengers in the U.S.[4] CRC, its member agencies, and the passengers they serve have a significant stake in how the Transaction will continue to accommodate the efficient operation and expansion of passenger commuter rail service.

[2] 49 U.S.C. § 10101.
[3] 49 U.S.C. § 11324(c).
[4] https://www.commuterrailcoalition.org/.

**Commuter passenger rail service is integral to the public interest.**

The Eighth Circuit Court of Appeals recently upheld a decision of this Board granting terminal trackage rights to the Commuter Rail Division of the Regional Transportation Authority ("Metra") in the Chicago area because granting such rights would "ensure the provision of adequate rail service to the public."[5] The Eighth Circuit framed individual commuters as analogous to the shipping public in the freight context since both commuter passengers and shippers require "service between desired points".[6] This clear and simple articulation of the public interest embodied in a region's rail passengers serves as a useful measure of the Applicants' statutory obligation to demonstrate that the Transaction is consistent with the public interest.

The service economy continues to expand, and with it so does the demand for transportation options for workers in that sector. This Board must ensure that the operations of a merged railroad do not preclude either improvements to existing passenger commuter rail service or expansion of passenger systems.

The largely privately-owned national rail network is an integral component of the multi-modal U.S. transportation ecosystem. UP and NS benefit from significant public investment in that network. Just in the past year, grant funding from the Federal Railroad Administration ("FRA"), Federal Transit Administration ("FTA"), and Federal Highway Administration ("FHWA") for improvements to the nation's rail infrastructure totaled almost $16 billion. By contrast, UP's FY 2026 capital expenditures ("cap ex") program is $3.5 billion[7] and NS' is $2.1 billion.[8]

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[1] *Id*.
[6] *Id*. at 7.
[7] https://investor.unionpacific.com/news-releases/news-release-details/union-pacific-reports-third-quarter-2026-results.
[8] https://fortune.com/company/norfolk-southern/earnings/q3-2026/.

**More robust modeling of existing commuter rail operations and proposed expansion will provide this Board with the insight it requires.**

Throughout, the Application consistently states that the Transaction will not adversely impact existing passenger rail service, but does not support this assertion with any specificity or address anticipated passenger service expansion. For instance, the Applicants assert broadly that "[t]he UP/NS merger will not result in any adverse impact to passenger operations,"[9] and, as a discrete example, a discussion of impacts to Metra's service declares that "UP's route has sufficient capacity to support the projected freight increase while maintaining the current passenger service levels."[10] This brief, generalized characterization is typical throughout the Application, and does not address foreseeable passenger rail expansion as reflected in individual state rail plans, other medium-range planning documents, or among projects that have been awarded federal grants for planning, development, or construction.

The analysis Krystof Zetenyi offered in his Verified Statement dated July 20, 2026, employs generalized retrospective regression models to evaluate the relationship between passenger train delays and freight capacity utilization. Dr. Zetenyi's methodology is designed to analyze economic behavior and trends in a variety of contexts and does not provide particular insights applicable to the rail industry. Furthermore, the analysis is observational rather than predictive; it does not take into account forward-looking operational changes such as the longer freight trains the Applicants propose or expanded passenger service.

More robust modeling would yield the finer-grained analysis that would allow the Board and industry participants to understand the implications of the Transaction in a dynamic future. As one recent example, RTC modeling became a particular focus in this Board's proceeding to resolve

[9] Application, Vol. 2, p. 1044.
[10] Application Vol. 2, p. 758.

issues relating to the re-establishment of Amtrak's Gulf Coast Service, now operating as the Mardi Gras, over NS' track. Neither NS, the host railroad, nor Amtrak, had performed modeling to evaluate the impact of re-established passenger service on the route, and the Board found this omission hindered its ability to build a record and render a well-supported decision. The Board noted that it "expects that evidence on the service's potential effects on freight transportation, such as an RTC study or other study or studies, will be part of the record in this proceeding, as well as any competing studies or other competing evidence, together with all the inputs, assumptions, and methodologies underlying any study results, including all relevant traffic projections." *Application of the Nat'l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. & Norfolk S. Ry. Co.*, FD 36496, slip op. at 7 (STB served Aug. 6, 2021) ("*Gulf Coast*"). Moreover, the Board noted that those studies should take into account "the line's present and future traffic volumes and engineering design and conditions" to account for "the specific service" proposed. *Id.*

Analysis of the quality the Board demanded in *Gulf Coast* for a sample of geographically-diverse commuter properties would go a long way to establishing credibility in the Applicants' approach to protecting the vital public interest of passenger commuter rail. The Applicants have offered generalized, backward-looking analysis to support broad assertions that the Transaction will not impede existing passenger rail service, an approach that does not support this Board's efforts to understand the actual impacts of the Transaction on existing commuter rail service, let alone foreseeable future impacts of the Transaction.

**Capital projects and ongoing operations both require an objective nationwide approach.**

A longstanding concern among commuter rail providers pursuing capital projects is that it is impossible to predict how responsive a host Class 1 railroad will be when a project proponent

attempts to propose collaboration and coordination on project design and development in a manner that allows the project sponsor to meet its deadlines and commitments to the general public, federal grantmaking agencies, providers of financing, and other project partners. The creation of a continent-spanning rail enterprise requires a coherent nationwide approach to engaging with public entities in a prompt, efficient, and consistent manner for day-to-day operations and long-range project planning and development.

A dedicated, responsive business unit with expertise in passenger-specific transactions and coordination, familiarity with federal grant programs and principles, and the authority to move forward with design review, engineering coordination, construction administration, and daily operational troubleshooting with commuter rail partners will be an essential component of the merged organization. Since the consolidation of staff that inevitably accompanies a merger is likely to cause disruption to existing relationships and workflows, the creation of a group dedicated to sustained, reliable coordination with commuter rail operators in advance of such organizational change must be a condition of the merger.

UP's utility permit program[11] is a discrete example of a framework that could scale effectively to meet this circumstance: UP's process is straightforward, sets out predictable review windows, employs well-defined criteria and standard forms, and is supported by a well-designed web portal. Dedicated teams in the Applicants' organization who understand the nuances of interacting with passenger rail providers, including the mechanics of federal grants and public procurement requirements, can adapt this existing framework to provide knowledgeable support to see projects through successfully.

[11] https://www.up.com/real-estate/utilities.

Similarly, on the operations side, teams focused on the distinctions between commuter and freight rail operations will be able to resolve dispatching misalignments, scheduling disputes, service disruptions, network fluidity, and similar day-to-day coordination matters efficiently.

Both long-term planning and day-to-day coordination will benefit from regular coordination meetings focused on improving procedures and communications, providing advance notice of projects or operational changes, and analyzing indirect impacts to both freight and passenger performance such as digestion at yards and how that impacts mainline operations. Such coordination meetings can address system bottlenecks and potential infrastructure or operational improvements to resolve them, and identify ways to ensure on time performance for individual passengers.

**Developments external to the four corners of the Application may have a bearing on this proceeding.**

CRC notes two developments beyond the technical merits of the Application on which CRC reserves the right to provide further comment: (1) On November, 4, 2026, the Board issued a Decision in this proceeding noting that it had received allegations of threats of intimidation against actual or potential parties to the proceeding by UP CEO Jim Vena, warning that such conduct threatened the Board's confidence in the record if prospective commenters felt constrained from commenting, providing additional opportunities for parties to enter notices of intent to participate, soliciting evidence of threats, and issuing its own interrogatories to UP for information that would allow the Board to evaluate the extent of any intimidation efforts by UP. (2) On November 5, 2026, Sen. Richard Blumenthal, Ranking Member of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Government Affairs, issued letters to individuals and firms who gave private donations for construction of the White House

ballroom, including to Jim Vena in his capacity as UP CEO, instructing the recipients to provide information about their donations prior to January 4, 2027, at which time the current minority will assume Chairmanship of the Subcommittee and the discretion to exercise subpoena power. Given that UP and its CEO have yet to respond to these directives, CRC anticipates it may have comments on those responses.

**PROPOSED CONDITIONS**

In reviewing a proposed merger of two Class I railroads, the Board is required by statute to determine whether the proposed merger is in the public interest. 49 U.S.C. § 11324(c). To determine whether such a merger is in the public interest, the Board is required by statute to consider "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1). This requirement for a broader consideration of the public interest in assessing mergers between at least two Class I railroads sets the standard for the Board's considerations apart from transactions involving smaller Class II and Class III railroads, which focus public interest considerations more squarely on competition for shippers. *See Commuter Rail Div. of the Reg'l Transp. Auth. v. STB*, 608 F.3d 24, 33 (D.C. Cir. 2010).

To determine whether the Application is in the public interest, the Board must perform a balancing test that weighs potential benefits to applicants and the public against the potential harm to the public. 49 C.F.R. § 1180.1(c). Potential harm to the public includes consideration of reduction of competition and harm to essential services. 49 C.F.R. § 1180.1(c)(2). The Board must ensure that essential passenger and commuter rail services are preserved wherever feasible. 49 CFR 1180.1(c)(2)(ii). An existing service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available. 49 CFR 1180.1(c)(2)(ii).

When the Board updated its major consolidation procedures in 2001, it explained that the current rules "substantially increase the burden on applicants to demonstrate that a proposed transaction would be in the public interest, by requiring them, among other things, to demonstrate that the transaction would enhance competition where necessary to offset negative effects of the merger, such as competitive harm or service disruptions." STB, *Major Rail Consolidation Procedures*, Final Rules, 66 Fed. Reg. 32582 (Jun. 15, 2001).[12]

As part of their application, applicants must submit full system impact analyses that demonstrate the impacts of the transaction on the provision of essential services, including passenger services. 49 CFR 1180.7(b). Further, railroads proposing major or significant transactions must prepare an operation plan that "[i]f commuter or other passenger services are operated over the lines of the applicant carriers, detail[s] any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations." 49 C.F.R. § 1180.8(b)(2). Finally, if Amtrak or commuter services are operated over the lines of the applicant carriers, the applicants must provide a service assurance plan that "describe definitively how they would continue to facilitate these operations so as to fulfill existing performance agreements for those services." 49 CFR 1180.10(b).

The Board is authorized by statute to impose conditions governing approval of railroad mergers and will condition the approval of Class I combinations to mitigate or offset harm to the public interest.. 49 U.S.C. § 11324(c); 49 CFR 1180.1(d). The Board has "extraordinarily broad discretion in deciding whether to impose protective conditions in the context of railroad

[12] The 2001 rules no longer expressly require that each condition be shown to remedy a particular impact of the consolidation. Instead, they authorize conditions designed to mitigate or offset merger-related public-interest harms and expressly contemplate competition-enhancing conditions, subject to operational feasibility, net public benefits, and the requirement that conditions not undermine or defeat an otherwise beneficial transaction. *Compare* 49 CFR 1180.1(d) (2026) *with* 49 CFR 1180.1(d) (2000).

consolidations." *Commuter Rail Div. of the Reg'l Transp. Auth. v. STB*, 391 U.S. App. D.C. 102, 109, 608 F.3d 24, 31 (2010); see also *Village of Barrington v. STB*, 892 F.3d 252, 269 (7th Cir. 2018). The Board's selection of conditions is afforded "great deference" by reviewing courts, which will deny a petition for review of the Board's decision as long as that decision is supported by substantial evidence in the record and was reached by reasoned decision-making. *Village of Barrington*, 892 F.3d at 269. The principal harms for which conditions are appropriate include the loss of the ability to provide essential services. *Canadian Natl. Ry. Co. et al. – Control – Illinois Central Corp. et al.*, 4 S.T.B. 122, 141 (1999).

CRC requests that the STB attach the following conditions to protect the vital public interest in robust commuter rail operations in the event it approves the Transaction. We intend these conditions to be practical, enforceable, and commercially reasonable. Clear expectations and objective criteria will allow both the Applicants and their commuter rail partners to focus on providing the safest, most efficient service for their customers.

1. **Requested Condition #1: Require the merged railroad to create a business unit dedicated to coordination with commuter passenger operators on capital projects and daily operations:** The Board should require the Applicants to establish a dedicated, responsive business unit with expertise in passenger rail transactions and coordination, familiarity with federal grant programs and principles, and the authority to move forward with design review, engineering coordination, construction administration, and daily operational troubleshooting with commuter rail partners. Coordination at key milestones, for instance a requirement to respond within 30 days to an inquiry about an emerging operational pattern or new capital project, should reside at the core of this unit's operating procedures. Examples of projects this group

is likely to encounter on a regular basis include improvements to shared corridors, passenger station improvements, and highway-rail at-grade crossing improvements. On the continuum from project to operations, this group should also be the lead contact for operating issues that require resolution in real time. Finally, this business unit should be required to (a) maintain familiarity with all state rail plans, or other medium- to long-range plans, as such plans are created or updated and (b) reach out affirmatively to commuter rail properties to coordinate on each commuter rail operator's operational or capital plans so that the host railroad can allow for passenger service expansion without additional costs to the commuter operator aside from capital expenditures. The Board's Passenger Rail Advisory Committee ("PRAC") should actively convene coordination meetings and establish a working group to support ongoing coordination between the merged railroad and commuter rail operators, and to ensure that the railroad cannot preclude the execution of planned commuter rail improvements.

2. **Requested Condition #2: Establish Objective Project Coordination Criteria and Predictable Processes:** The Board should require the Applicants to establish a project development protocol and comply with objective timelines for responding to and coordinating with project sponsors. Failure of the parties to achieve results through direct negotiation and collaboration within specified timeframes should trigger action by the Board to establish relevant parameters. Negotiations to establish terms of access to the Applicants' facilities, including compensation and indemnification, should also be subject to specified timeframes and Board-directed outcomes if the parties fail to reach agreement within the allotted time.

3. **Requested Condition #3: Incorporate Objective Benchmarks for Operations and Service Quality:** Require the Applicants to coordinate with commuter rail operators to adapt the existing shipper-focused regulatory requirements to establish benchmarks for service to individual passengers, including on-time performance metrics, through a passenger service assurance plan. The STB's regulations require that the Applicants provide a Service Assurance Plan "identifying the precise steps they would take to ensure adequate service and to provide for improved service" and are required to "provide service benchmarks, describe the extent to which they have entered into any arrangements with shippers and shipper groups to compensate for service failures, and establish contingency plans that would be available to mitigate any unanticipated service disruption." 49 CFR 1180.1(h)(1).

4. **Requested Condition #4: Establish Ongoing Operations Coordination Protocols:** The Board should require the Applicants to establish a program for their merged network to provide for regular coordination meetings on long-range and day-to-day operational matters to share in planning efforts and resolve conflicts. This series of railroad-to-railroad efforts is separate from PRAC-sponsored coordination as described in Requested Condition #1.

5. **Requested Condition #5: Require Robust Modeling:** The Board should, as it indicated in *Gulf Coast*, require Applicants, as part of the Application, to perform modeling to gain a true understanding of the range of potential impacts of the Transaction. CRC requests that the Board require the Applicants to identify between three and five major commuter operations with anticipated expansions to model using RTC or other predictive methods that (a) provide an iterative analysis of varying

operational patterns using current operating data and (b) test both existing service and planned passenger-service scenarios. Such an effort will establish a baseline condition for existing service and provide initial indications as to options for future expansion. This Board should require modeling for significant operational changes or capital improvements above a certain threshold at least throughout the post-merger monitoring period.

6. **Requested Condition #6: Performance Monitoring and Reporting:** For a minimum of ten years after approval of the Transaction, the Board should require the Applicants to provide all commuter rail partners and the Board with regular reports sufficient to identify Transaction-related effects on each passenger rail operator's service. The reports should address, for instance, on-time performance, delay minutes and causes, freight-train interference, terminal holds, blocked or occupied main tracks, blocked at-grade crossings, slow orders, maintenance windows, dispatching conflicts, and compliance with agreed passenger operating windows.

7. **Requested Condition #7: Continuing Oversight and Enforcement:** The Board should retain jurisdiction for ten years to enforce these conditions and promptly address material, transaction-related degradation of commuter rail service. During that period, commuter rail operators should be permitted to petition for expedited relief upon a showing that merger-related traffic, terminal operations, dispatching practices, or noncompliance with an imposed condition has materially impaired existing or planned passenger service.

## CONCLUSION

For the reasons outlined above, CRC respectfully requests that the Board only approve the Transaction if it imposes the requested conditions.

Respectfully Submitted,

THE COMMUTER RAIL COALITION
By Counsel



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Date: November 12, 2026

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of November 2026, I caused the foregoing Comment and Request for Conditions by the Commuter Rail Coalition to be served on all parties of record in this proceeding.

Dated: November 12, 2026

By: */s/ Allison I. Fultz*
Allison I. Fultz
Partner
Kaplan Kirsch LLP

cc: All Parties of Record (via email or first class mail)