BEFORE THE
SURFACE TRANSPORTATION BOARD

312872

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Office of Chief Counsel
November 16, 2026
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Public Record

FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-CONTROL-

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

JOINT OPENING COMMENTS OF COLORADO PACIFIC RAILROAD LLC, COLORADO PACIFIC RIO GRANDE RAILROAD LLC, AND COLORADO PACIFIC SAN LUIS RAILROAD LLC

Colorado Pacific Railroad LLC ("CXR"), Colorado Pacific Rio Grande Railroad LLC ("CXRG"), and Colorado Pacific San Luis Railroad LLC ("CXSL") hereby jointly submit Opening Comments in this proceeding opposing the proposed merger of Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS"). CXR, CXRG, and CXSL are affiliated Class III short line railroads in Colorado that are subsidiaries of KCVN LLC and the Soloviev Group, the latter of which is a multifaceted company that is dedicated to the development of sustainable agriculture in the western United States and providing the farmers who produce agricultural commodities in that region access to markets for their products. CXR, CXRG and CXSL assert that the merger should be denied because UP already exerts its market power to restrict competition and the development of the agricultural industry through onerous interchange commitments. The merger of UP and NS would only increase the merged railroad's market power

to impose such restrictions, which are detrimental to short line railroads and agricultural producers and would advance only the interests of the merged UP/NS railroad.

I. Identity and Interest of CXR

CXR owns and operates a 121.9-mile railroad line that runs between at point in the vicinity of Towner, Colorado – near the Colorado-Kansas border - to an interchange with UP and BNSF Railway Company ("BNSF") also in Colorado known as NA Junction. *See* Attachment A (map). CXR's track, historically known as the Towner Line, was acquired by CXR in January 2018 pursuant to the Board's "feeder line" procedures under 49 U.S.C. §10707 and 49 C.F.R. Part 1151.1[1] after the prior owner allowed the line to fall into disrepair and cease freight rail service over it.

At Towner, CXR's track connects to a line of railroad owned by UP it leases to the Kansas & Oklahoma Railroad ("K&O") that extends east from Towner to Scott City, Kansas, where it connects to K&O-owned track continuing further east, and to other track covered by the same UP lease extending from Scott City to Healy, Kansas.[2] The legality of an interchange commitment inserted by UP into the lease with K&O beginning in 1997 – and amended in 2019 -that effectively prevents traffic originating or terminating on the leased UP track from being interchanged between CXR and K&O at Towner has been the subject of extensive litigation before the Board in Docket Nos. FD 36849 (Sub No. 1) *Kansas & Oklahoma Railroad, LLC – Lease with Interchange Commitment – Union Pacific Railroad Company*; FD 36849 (Sub No. 1) *Kansas & Oklahoma*

[1] *See, e.g.,* Docket No. 36005, *KCVN and Colorado Pacific Railroad, LLC – Feeder Line Application – Line of V and S Railway, LLC Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado* (served July 31, 2017).

[2] *See* Attachment A. The Towner Line and leased track were once part of the same approximately 825-mile railroad line owned and operated by the Missouri Pacific Railroad that once extended from St. Louis, Missouri to Pueblo, Colorado.

Railroad, LLC – Lease with Interchange Commitment – Union Pacific Railroad Company; and FD 34030, *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, LLC.* The parties are currently awaiting a final decision from the Board on whether the interchange commitment should be permitted to remain in place.

CXR presently transports grain products for interchange with UP or BNSF at NA Junction, and some railcars are transported east to K&O, but CXR's efforts to further develop the Towner Line have been thwarted by the presence of the interchange commitment that prevents traffic originating or terminating on the leased line in Kansas from moving west to Colorado.

II. Identity and Interest of CXRG

In 2022 CXRG acquired out of bankruptcy the track and other assets of the San Luis & Rio Grande Railroad, Inc. ("SLRG") in STB Docket No. FD 36656, *Colorado Pacific Rio Grande Railroad LLC, Acquisition and Operation Exemption – San Luis & Rio Grande Railroad, Inc*. (served January 5, 2022).[3] The SLRG originally acquired these tracks from UP in 2003.[4] In the 2003 transaction UP imposed a two-part interchange commitment on SLRG comprised of a "steel" barrier (by retaining ownership of the last five miles of its track leading an interchange with BNSF in Walsenburg, Colorado), and a "paper" barrier (where UP also imposed a contractual ban on

[3] *See* Attachment B (map). The assets acquired from SRLG were (1) from milepost 299.30 near Derrick, CO, to milepost 180.00 near Walsenburg, CO, comprising SLRG's Alamosa Subdivision, and (2) between milepost 251.7 at Alamosa, CO, and milepost 281.78 at Antonito, CO (the Antonito Subdivision), a total distance of approximately 149.38 miles. CP Rio Grande also acquired overheard trackage rights conveyed to SLRG by UP in the vicinity of Walsenburg between milepost 180.00 and milepost 175.00.

[4] *See* Finance Docket No. 34350, *San Luis and Rio Grande Railroad Company – Acquisition and Operation Exemption – Union Pacific Railroad Company*, Verified Notice of Exemption, Filed June 20, 2003.

SLRG interchanging with BNSF at Walsenburg).[5] CXRG inherited the restrictions imposed on SLRG when it acquired the assets because the bankruptcy trustee and UP could not reach agreement on how to amend them.

Today, CXRG could physically interchange cars with BNSF at Walsenburg absent the interchange commitments, but their presence means that for CXRG's customers to ship on BNSF their cars must first be delivered by CXRG to UP in Walsenburg. UP then transports the railcars – for a charge - nearly 50 miles north to Pueblo, where they are then interchanged with BNSF for further transportation on BNSF's system. The inability to directly interchange with BNSF at Walsenburg, combined with the additional cost for UP to transport the cars to Pueblo, have discouraged the transportation of agricultural commodities and other products from the San Luis Valley by railroad, and forced growers to use commercial trucks.

Identity and Interest of CXSL

In 2024 CXSL acquired all the track and other assets of the San Luis Central Railroad Company ("SLC"), which consisted of 13.0 miles of track extending from Sugar Junction (east of Monte Vista, Colorado) connecting at approximately MP 269.0 of the main line of CXRG at the SLC's track's endpoint near Center, Colorado. Docket No. FD 36794, *Colorado Pacific San Luis Railroad LLC—Acquisition and Operation Exemption—San Luis Central Railroad Company* (served September 6, 2024). Attachment B (map). The SLC was constructed in 1913 and for many years the railroad transported potatoes and other agricultural commodities from producers along its line to interchange with the former Denver and Rio Grande Western Railroad (now CXRG). After investing in repairs and upgrades to the track, CXSL transports railcars of

[5] These interchange commitments were discussed in CXRG's Petition for Order Directing UP to Supplement its Response to Decision No. 3, CXRG-2, filed November 19, 2025.

commodities to its sole interchange with CXRG, so it is also subject to the interchange commitment barriers erected by UP at Walsenburg.

III. The Board Must Deny the Amended Merger Application

CXR, CXRG, and CXSL all acquired short line railroads that were on the verge of disappearing. Each railroad was purchased for the purpose of restoring its place in the national rail system to serve primarily farmers and agricultural producers located Kansas and Colorado and to give them railroad options for getting their products to markets. Their parent company has expended tens of millions of dollars to accomplish this overall objective. Yet, the ability of each railroad to attract and grow business from farmers and other shippers has been stymied by the exercise of market power by UP in the form of interchange commitments that have created significant disincentives for traffic to move by railroad instead of truck, and on railroads other than UP. These interchange commitments preceded CXR, CXRG, and CXSL, and they undoubtedly played a large role in their predecessor railroads' inability to sustain themselves. The elimination of these interchange commitments by the Board would re-establish optionality for shippers and competition between BNSF and UP in the western and midwestern United States, result in more commodities being shipped by railroad instead of commercial truck, and more traffic to sustain these short lines long term. As stated, the interchange commitment that harms CXR is currently being litigated before the Board, and in United States Federal District Court in Kansas.[6] CXRG and CXSL are also committed to causing the removal of the steel and paper barriers erected by UP at Walsenburg or otherwise obtaining access to the BNSF Walsenburg railyard.

The Board could address the elimination of these and other interchange commitments in

[6] Civil Action No. 26-cv-02053-JAR-GEB, pending in United States District Court for the District of Kansas.

this proceeding in the form of placing conditions on its approval of the merger. However, because the merger of UP and NS will vastly increase the market power that UP has already exercised in the United States to restrict competition, CXR, CXRG and CXSL believe the course of action in this proceeding that would be most consistent with the public interest would be for the Board to deny the Amended Railroad Control Application, keep UP and NS as separate Class I railroads, and to then aggressively pursue the identification, evaluation and elimination of interchange commitments that have been imposed on transactions between short lines and UP, NS, and all other Class I railroads.

Respectfully submitted,

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November 16, 2026

ATTACHMENT A



Colorado Pacific Railroad System Map

(with Freight Railroads)
2024

CXR
BNSF
UP
K&O
UP Trackage Rights

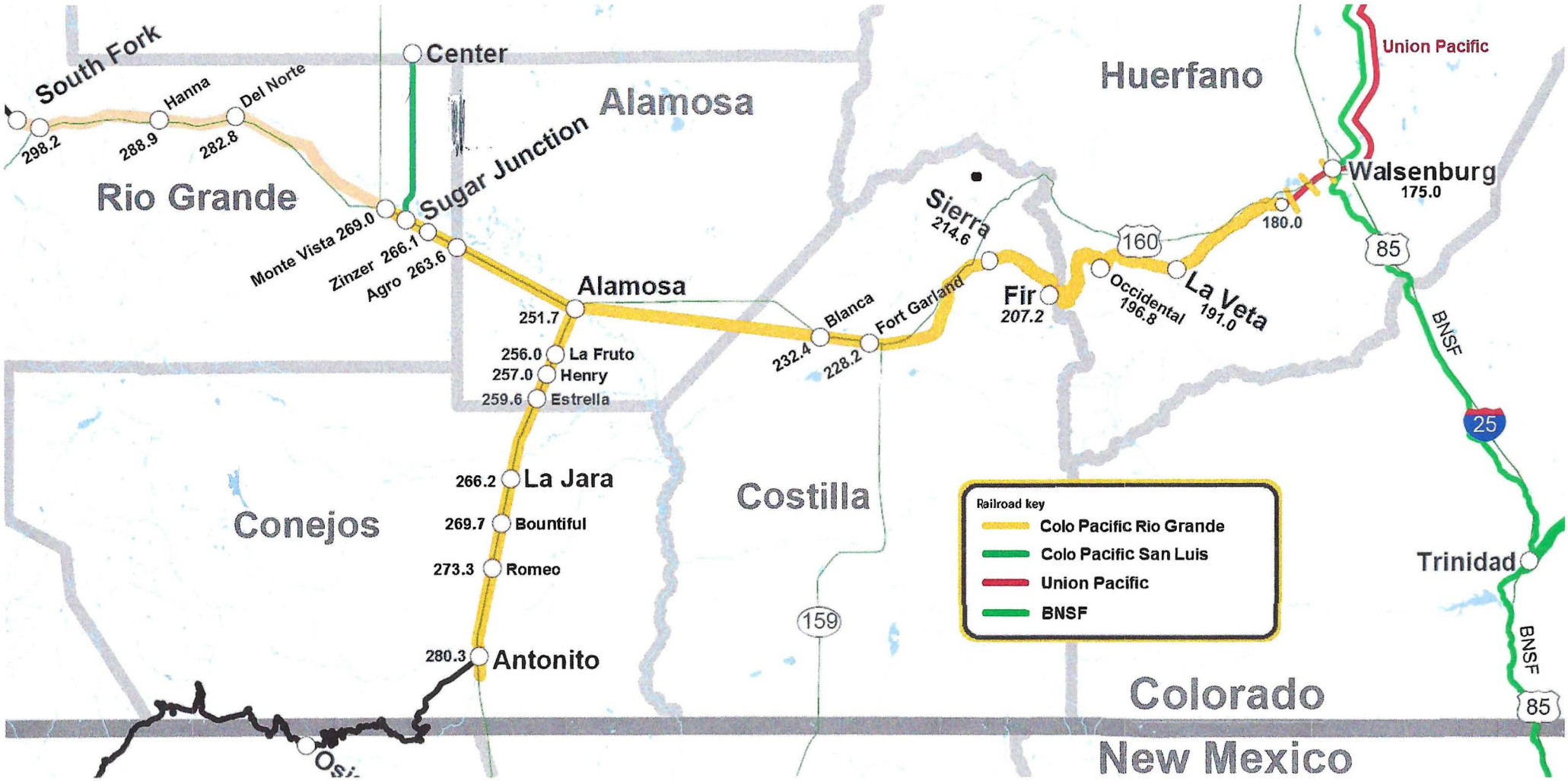
CXRG
Cimarron Valley RR
Garden City Western (Out of Service)
Highways

Connections:
CXR – BNSF at NA Junction
CXR – UP at NA Junction
CXR – K&O at Towner, CO.
CXRG – UP at Walsenburg

CXR Headquarters - 601 State Ave, Alamosa, CO 81101

Colorado Pacific Railroad (CXR) - Sidings and Spur Tracks(TF)	
Stuart Siding	6,236
Sheridan Lake Grain Elevator Track	1,780
Brandon Elevator Spur Tracks	1,120 and 1,080
Chivington Siding	6,350
Eads Sidings	6,520, 980 and 1,880
Haswell Sidings	6,694 and 3,100
Arlington Spur Track	500
Adobe Creek Siding	6,568
Sugar City Grain Elevator Siding	3,070
Ordway Siding and Spur Track	7,409 and 880
Crowley Spur Track	820
Olney Springs Spur Track	730
Pultney Siding	6,238
NA Junction Sidings	7,650 and 2,680

ATTACHMENT B


South Fork
298.2
Hanna
288.9
Del Norte
282.8
Rio Grande
Center
Alamosa
Sugar Junction
Monte Vista 269.0
Zinzer 266.1
Agro 263.6
Alamosa
251.7
256.0 La Fruto
257.0 Henry
259.6 Estrella
266.2 La Jara
269.7 Bountiful
273.3 Romeo
280.3 Antonito
Conejos
Costilla
Blanca
232.4
Fort Garland
228.2
Sierra
214.6
Fir
207.2
Occidental
196.8
La Veta
191.0
180.0
Huerfano
Union Pacific
Walsenburg
175.0
160
85
BNSF
25
Trinidad
BNSF
85
159
Colorado
New Mexico
Railroad key
Colo Pacific Rio Grande
Colo Pacific San Luis
Union Pacific
BNSF

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November 2026, a copy of the foregoing Opening Comments was served on all parties of record on the official service list for Docket No. FD 36873, and Administrative Law Judge Soulikias.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox