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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

Comments of the National Coal Transportation Association on Coal Service Protection

Union Pacific Corporation and Union Pacific Railroad Company Control Norfolk Southern Corporation and Norfolk Southern Railway Company

NOVEMBER 16, 2026

Executive Summary

The National Coal Transportation Association takes no position at this time on whether the proposed Union Pacific–Norfolk Southern transaction should be approved. NCTA's concern is narrower and practical. If the Board approves the transaction, the approval should protect coal producers and consumers (such as electric utilities) from merger-integration service failures before those failures occur—not merely offer a path to litigate over losses afterward.

Coal transportation is not simply a larger version of ordinary manifest service. Coal commonly moves in dedicated unit trains, in privately supplied equipment, under confidential contracts or tariff arrangements, between facilities that may have no practical transportation substitute. Utilities and other coal consumers also finance on-site inventories to manage both seasonal demand and unreliable delivery. These characteristics concentrate operational risk. When rail service deteriorates, a coal customer cannot readily put a unit train on a truck, move a mine or power plant, or replace a depleted stockpile overnight.

The applicants have proposed competition and service measures, and their July 2026 submission expanded a gateway-pricing proposal to include certain bulk unit trains. But their principal service remedies leave a gap at the center of the coal market. The proposed damages program excludes contract traffic. The proposed access program excludes unit trains from its performance metrics, excludes contract service, is limited to eligible terminal-area carload facilities, provides a cure period before relief, and offers no monetary remedy. The result is that the coal traffic most exposed to an integration failure is not assured a coal-specific performance standard, an automatic remedy, a demonstrated reserve of crews and locomotives, or a funded recovery backstop.

NCTA's request: If the Board approves the transaction, it should require the applicants to develop, subject to stakeholder comment and Board approval, coal-specific service standards, automatic remedies, resource-contingency requirements, and an adequately funded assurance mechanism applicable to unit-train and contract (and some tariff) traffic. No material operating integration affecting coal service should begin until the Board has approved that plan.

This request is neither an endorsement nor an attack on the transaction. It is a request that the costs of integration risk be placed with the parties that propose and control the integration, the applicants (UP-NS), rather than with mines, utilities, industrial consumers, electricity customers, and communities that cannot control it. That is sound transportation policy and sound policy for an American economy facing rapidly rising electricity demand.

NCTA's Position

The Board's rules for major railroad consolidations require more than a showing that a transaction will not injure competition; the applicants must demonstrate that the transaction will enhance competition. NCTA recognizes that the record contains competing claims about the transaction's competitive effects and that several proposed commitments are intended to address them.[1]

NCTA does not ask the Board to resolve the entire case through the lens of one commodity. Nor does NCTA presently support or oppose approval. Its members occupy different locations, use different carriers, and may reasonably assess the transaction differently. They share, however, a legitimate interest in avoiding another period in which railroads lack the

[1] 49 C.F.R. § 1180.1(c)(2), https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-B/part-1180.

crews, locomotives, operating discipline, or recovery capacity needed to move essential fuel, as was demonstrated following previous rail mergers.

Accordingly, NCTA asks the Board to separate two questions. First, has the transaction satisfied the legal standard for approval? Second, if approval is granted, what protections are needed so that the process of combining two immense rail systems does not externalize service risk onto coal shippers? NCTA addresses the second question.

Coal Transportation Has a Distinct Operating and Commercial Structure

Coal Traffic Is Concentrated in Unit Trains and Private Equipment

The 2024 Public Use Waybill Sample shows the scale and concentration of rail coal transportation. NCTA's analysis estimates approximately 3.51 million coal carloads and 410.4 million tons. Approximately 64.4 percent of expanded coal carloads moved in privately owned equipment, and 97.1 percent appeared on waybills of 67 cars or more—a practical indicator of unit-train-sized movements.[2]

Coal rail structure in 2024 Public Use Waybill Sample	NCTA estimate
Expanded coal carloads	3.51 million
Expanded coal tons	410.4 million
Carloads in private equipment	64.4%
Carloads on waybills of 67 or more cars	97.1%

That structure matters. A unit train is planned as a single operating package: locomotives, crews, cars, origin loading, main-line capacity, destination unloading, and return movement must align. A missed cycle can affect the next cycle. Private-car ownership also means that the customer has capital tied up in equipment even when the railroad is not moving it productively or sometimes even at all. Service failure therefore reaches beyond a late shipment; it can immobilize a customer-financed transportation system, that in turn impacts customers of the coal shipper.

Coal Traffic Moves Predominantly Under Contract

Public data on current contract penetration are limited because rail contracts are confidential. The most recent nationwide public analysis located by NCTA found that 94 percent of coal ton-miles moved under contract in 2014. The exact current percentage may differ, but the basic commercial structure remains important: much coal service is governed by privately negotiated rates, volumes, operating commitments, and remedies rather than published common-carrier terms.[3]

Contracts can provide valuable certainty. They can also produce a merger-protection gap. A customer whose existing contract was negotiated for a pre-merger railroad may not have bargained for system-integration risk, network-wide crew shortages, information-system cutovers, or a service-recovery plan that reallocates scarce resources across a newly combined railroad. Saying that the customer retains its contract rights does not answer whether those rights are adequate for a risk created later by the transaction.

[2]Surface Transportation Board, Carload Waybill Sample, https://www.stb.gov/reports-data/waybill/. NCTA applied the published expansion factor to coal records, used the car-ownership field, and treated waybills of 67 or more cars as unit-train-sized movements. The public file describes industry structure, not individual lanes.

[3]U.S. Government Accountability Office, Freight Rail Pricing, GAO-17-166, at 13–14 (Dec. 2016), https://www.gao.gov/assets/gao-17-166.pdf (94 percent of coal ton-miles under contract in 2014).

Many Coal Facilities Have No Practical Transportation Substitute

Coal transportation choices are defined by physical infrastructure. Mines, loading loops, utility plants, industrial boilers, unloading facilities, and track connections are fixed in place. Trucking is not a realistic substitute for sustained unit-train volumes over long distances, and another railroad cannot serve a facility merely because its main line appears nearby on a map. Public economic research commissioned by the Board found that coal rates generally were lower where railroad competition existed and higher where a movement was served by a single railroad.[4]

NCTA therefore uses the term captive rail customer with care. Captivity is not a label that can be assigned reliably to every coal waybill from the public data. It is a practical condition at a particular origin, destination, or lane. But it is common enough to define the risk: when a facility has one viable railroad, poor service is not disciplined by the customer's ability to shift the movement elsewhere. Put another way, when there is no rail-to-rail competition, the shipper has no other viable option.

Stockpiles Are a Consumer Funded Reliability Buffer

Coal consumers maintain inventories because demand varies and rail delivery is not perfectly reliable. Those piles occupy land, require handling equipment and labor, tie up working capital, and can lose value through weathering and repeated handling. The cost sits with the consumer and, for a utility, ultimately with its electricity customers. A shipper also does a great deal of planning and procurement of resources, and may enter in certain agreements for equipment and supplies that can all be directly impacted by any failure of the carriers to deliver the coal supply within an agreed upon schedule.

The 2022 national freight-rail service crisis showed both the value and the limit of that buffer. Arizona Electric Power Cooperative testified that it had maintained a large stockpile to guard against delivery inconsistency, but that the pile began shrinking in summer 2021 and did not recover as service problems continued. Other testimony described national utility coal inventories at levels not seen since 1978 and many plants with fewer than 40 days of burn at full capacity. A stockpile can buy time. It cannot manufacture transportation capacity.[5,6] Many utilities during the 2022 rail service crisis were forced into coal stockpile conservation practices if they had that option. This involved measures such as power purchases or higher cost natural gas purchases to help conserve coal inventories for the more volatile winter/summer market demand periods. Costs of these efforts went directly to utilities' bottom lines and in many cases were never fully recovered by regulated entities that could not simply pass these costs to their customers.

Coal Shippers Face Distinct Service and Economic Risks

Captive Traffic Can Bear a Disproportionate Share of Fixed Costs

Railroads have high common and fixed costs. Economic pricing principles allow carriers to recover more of those costs from traffic with fewer transportation alternatives. Public studies describe this as differential pricing and show that shippers with limited alternatives can face higher markups over variable cost. Coal's density, scale, and dependence on rail make it an important contributor to the network even as total coal volume changes.[7]

That relationship creates a policy imbalance if captive coal customers are asked to help support the railroad's fixed-cost base but receive no tailored protection when a voluntary merger destabilizes service. NCTA is not asking the Board to regulate contract rates in this filing. It is asking the Board to recognize that customers with limited exit options should not become the residual risk-bearers for integration decisions made by the applicants.

Stockpiles Can Conceal Service Failure

A utility may avoid an immediate outage by drawing down inventory. From a systemwide railroad perspective, that can make deficient service appear tolerable: the plant is still operating, so the shipment failure has not yet produced the most visible consequence. From the utility's perspective, however, reliability has already deteriorated. The consumer-paid

[4]Christensen Associates, A Study of Competition in the U.S. Freight Railroad Industry, vol. 2, ch. 12, at 12-22 to 12-24, and ch. 15, at 15-2 to 15-3 (prepared for the Surface Transportation Board, 2008), https://www.stb.gov/wp-content/uploads/files/docs/competitionStudy/Volume%202.pdf.

[5]Id. at 643–45 (testimony concerning national utility coal inventories).

[6]Urgent Issues in Freight Rail Service, Docket No. EP 770, Hearing Transcript, Apr. 27, 2022, at 636–39 (AEPCO testimony), https://www.stb.gov/wp-content/uploads/304765-2.pdf.

[7]GAO, Freight Rail Pricing, GAO-17-166, at 7–10, 20–21; Christensen Associates, Competition Study, vol. 2, chs. 10 and 15. "Disproportionate" is used in the economic sense of higher markups over variable cost.

emergency reserve is being depleted, replacement options are narrowing, and the potential cost of a forced curtailment are rising.

The wrong test is whether a plant has already run out of coal. A service standard that waits for that event treats the consumer's prudence as permission for delay. The better test measures railroad performance against the accepted operating plan and intervenes while the stockpile still provides recovery time for all stakeholders, the railroad, utility, and ultimately the electricity end-users.

Service Recovery Can Transfer Railroad Risk to Coal Customers

During a broad service disruption, a railroad must triage scarce crews, locomotives, yard capacity, and train starts. Stockpile information can be useful in preventing an immediate emergency. But if recovery decisions repeatedly defer a coal consumer because it invested in inventory, the inventory becomes an uncompensated extension of the railroad's operating plan. The prudent coal consumer effectively subsidizes recovery for the network.

NCTA does not suggest that carriers should ignore imminent emergencies at other facilities. It does suggest that a merger condition should prevent prolonged under-service from being normalized merely because a customer still has coal on the ground. Objective service measures, automatic consequences, and recovery obligations should operate before inventory reaches a crisis threshold.

The Current Proposal Does Not Protect the Coal Market

The applicants have proposed a Damages ADR Program for certain merger-related service failures. It would apply during the three-year integration period (under the Board's oversight) to non-exempt commodities moving under common-carrier service. A claimant would need to show a substantial service deterioration, merger implementation as the proximate cause, and direct damages. The program includes a 30-day cure period, limits recovery to direct damages, caps monetary relief at $2 million, and does not authorize injunctive or equitable relief. Most importantly for coal, contract traffic is not eligible.[8]

The applicants also propose a Targeted Access Program. Its service metrics exclude unit and intermodal shipments. Eligibility is limited to common-carrier carload traffic at sole-served facilities in qualifying terminal areas; contract traffic is excluded. The carrier receives an opportunity to cure before switching relief is available, arbitration is case specific, and monetary relief is unavailable. Those design choices may fit some manifest customers. However, they do not fit the predominant operating and commercial structure of coal.[9]

Upon the Board's request, the applicants expanded their Committed Gateway Pricing proposal to include certain bulk unit trains. But a pricing option is not a service-assurance plan. It does not guarantee that crews and locomotives will be available, that accepted coal train schedules will be met, that a deteriorating cycle time will trigger relief, or that funds will be available to the shipper to address the consequences of an integration failure.[10]

The proposal therefore contains a mismatch. Coal unit trains are recognized when the applicants describe a potential pricing benefit, but largely disappear when the applicants define enforceable service protections. Contract coal customers are told to rely on pre-existing bargains even though the merger would introduce a new, applicant-controlled operational risk. The Board should close that gap as a condition of any approval.

Coal Service Is a National Economic and Energy Security Concern

The Board need not choose winners among energy generation technologies to recognize the transportation interest at stake. Coal remains a large, dispatchable, domestically supplied part of the electric system and an important industrial and export commodity. The 2024 public waybill data reflect more than 410 million tons of rail coal traffic. A disruption at that scale affects mines, railroad employees, utilities, industrial facilities, ports, electricity customers, and the communities connected to them.

The country is also entering a period of unusually strong electricity demand growth. In September 2026, the Energy Information Administration forecast that U.S. electricity generation would rise 2.2 percent to a record 4,368 billion

[8]Applicants' Second Response to Decision No. 21, Finance Docket No. 36873, UP-80/NS-78, at 118–26 (filed July 27, 2026), https://assets.up-nstranscontinental.com/stb-hub/UP80_NS78%20Applicants%27%20Second%20Response%20to%20Decision%2021_PUB.pdf.

[9]Id. app. A, at 187–94.

[10]Id. at 17–20, 251–68.

kilowatt-hours in 2026 and another 1.7 percent in 2027. EIA identified data-center development and increased manufacturing activity as important drivers. EIA forecast coal to provide 16 percent of generation in 2026 and 14 percent in 2027. A national percentage does not capture coal's larger role in particular regions, seasons, plants, or system-stress events.[11,12]

Current federal policy expressly links coal generation and fuel security to economic and national security. A February 2026 executive order declares it the policy of the United States that coal is important to national and economic security and emphasizes generation resources with abundant fuel supplies capable of extended operations. The Board need not adopt every premise of that policy to recognize a straightforward supply-chain point: on-site fuel security depends on reliable delivery before the coal pile is built and reliable replenishment after the coal pile is drawn down.[13]

At a time when electricity demand is rising to support artificial intelligence, advanced manufacturing, and ordinary household and commercial needs, transportation policy should not create an avoidable weak link in domestic fuel supply. American consumers should not learn during a heat wave, cold snap, or grid emergency that a merger protection applied to manifest carloads but omitted the unit trains supplying the power system.

As current federal policy has specified, coal fueled utilities have become a major domestic economic security resource that must provide reliable energy to the country, yet many utilities often are in a position of being precariously served by a fuel delivery system via the nation's railroads that can be unreliable and not held accountable for its failures. This situation could be made even worse by a rail merger that has high potential for creating disruption and associated higher costs for coal shippers.

NCTA's Request for a Coal Service Assurance Plan

If the Board approves the transaction, it should condition approval on development of a Coal Service Assurance Plan. The applicants should propose the plan on a Board-established schedule; coal producers, consumers, ports, short lines, labor, and other interested parties should have a meaningful opportunity to comment; and the Board should approve the final plan before any material operating integration affecting coal service begins.[14]

NCTA does not ask the Board to set every threshold in this comment. The applicants possess the detailed operating data, resource plans, and integration schedule necessary to make an initial proposal. A transparent Board process can then test whether the proposal is measurable, workable, and commensurate with the risk. At minimum, the plan should contain the following elements.

Scope That Matches the Coal Market

The plan should cover coal unit trains and coal moving under common-carrier and contract arrangements. Because contract transportation has a distinct statutory status, the condition should require the applicants to offer each contract coal shipper an enforceable service-assurance rider or equivalent merger commitment approved by the Board. Participation should not require a customer to reopen unrelated commercial terms or surrender existing remedies.[15]

Coal Specific Service Standards

Standards should measure performance that matters to a coal supply chain, including accepted train-plan fulfillment, trains originated and delivered, cycle time, terminal and line-of-road dwell, cancellations, constructive placement, and delays attributable to crew or locomotive unavailability. Baselines and thresholds should be facility specific where necessary, but calculated under a common, auditable method. A railroad should not be permitted to improve its metric by declining traffic that it previously accepted into the operating plan.

[11]Id. (forecasting coal shares of 16 percent in 2026 and 14 percent in 2027).

[12]U.S. Energy Information Administration, EIA Expects Record Electricity Generation in 2026 and 2027 (Sept. 9, 2026), https://www.eia.gov/pressroom/releases/press592.php.

[13]Exec. Order No. 14386, Strengthening United States National Defense with America's Beautiful Clean Coal Power Generation Fleet, §§ 1–2 (Feb. 11, 2026), https://www.whitehouse.gov/presidential-actions/2026/02/strengthening-united-states-national-defense-with-americas-beautiful-clean-coal-power-generation-fleet/.

[14]49 C.F.R. § 1180.1(h)(5).

[15]49 U.S.C. § 10709(c)(1). NCTA proposes an enforceable, Board-approved rider or equivalent merger commitment—not revision of existing contracts.

Automatic and Escalating Remedies

A demonstrated miss should produce a prompt consequence without requiring a full damages case. Remedies should escalate with the duration and severity of the failure and could include service credits, reimbursement of defined emergency transportation and handling costs, priority recovery plans, and temporary alternative service or access where operationally feasible. The plan should distinguish unavoidable force-majeure events from resource shortages or integration decisions within the applicants' control.

Resource Contingency Requirements

Before each material integration step, the applicants should demonstrate that they have sufficient qualified crews, locomotives, maintenance capacity, dispatching capability, information-system readiness, and surge resources to execute the coal operating plan while absorbing predictable complications. The plan should identify reserve resources, activation triggers, and accountable officers. If coal performance falls below an approved threshold, affected integration steps should pause until service recovers and the independent monitor confirms readiness to proceed.

An Adequately Funded Assurance Mechanism

The applicants should fund a segregated, replenishing assurance account, bond, letter of credit, or comparable mechanism sufficient to make automatic remedies credible throughout integration. The amount should be calibrated through the stakeholder process using coal volumes, plausible disruption duration, emergency replacement and handling costs, and the applicants' integration risk analysis. Funds should not be treated as a license to fail; service restoration remains the first obligation.

Independent Monitoring and Transparent Reporting

An independent monitor should receive confidential facility-level data, validate the metrics, review resource readiness, and report regularly to the Board. Public reporting can be aggregated to protect contracts and commercially sensitive information. The Board should retain jurisdiction to revise thresholds, extend protections, replenish the assurance mechanism, or order additional operational relief if experience shows that the plan is not working.

Protection Before Integration

The value of these measures is preventive. Damages after a stockpile is depleted or a plant curtails operations are an incomplete remedy. The plan should therefore be approved and funded before coal-affecting integration begins, remain in effect through a sustained period of stable post-integration performance, and include an orderly process for termination only after the applicants demonstrate that the combined network can meet its commitments.

Conclusion

NCTA neither supports nor opposes the proposed transaction in these comments. It asks the Board to recognize that coal shippers are structurally different from the manifest and intermodal customers that dominate much of the public discussion. Coal moves overwhelmingly in unit-train-sized shipments, frequently in customer-financed cars, predominantly under confidential contracts, and often over lanes with no practical transportation substitute. Coal consumers also maintain costly stockpiles that protect the public from service variability but can conceal deterioration until recovery options are dangerously narrow.

The applicants' current service proposals do not provide a complete answer for that market. Contract traffic is outside the damages program; unit-train and contract traffic are outside the targeted-access metrics and remedy; and gateway pricing is not a resource or service guarantee. The gap is especially consequential after the country's recent experience with widespread freight-rail service failures and while electricity demand is accelerating.[16]

If the Board approves the transaction, it should require the applicants to develop, subject to Board approval and stakeholder comment, coal-specific service standards, automatic remedies, resource-contingency requirements, and an adequately funded assurance mechanism applicable to unit-train and contract traffic. That measured condition would not

[16]Surface Transportation Board, Urgent Issues in Freight Rail Service, Docket No. EP 770, Hearing Transcripts, Apr. 26–27, 2022, https://www.stb.gov/news-communications/transcripts-statements/; STB Requires Service Recovery Plans and Additional Reporting (May 6, 2022), https://www.stb.gov/news-communications/latest-news/pr-22-28/.

prejudge the merger's overall merits. It would simply require the parties seeking the benefits of integration to manage its risks in a way that protects American energy reliability, industrial production, and consumers.

Respectfully submitted,

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DATED: November 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2026, I served a copy of the foregoing comments of National Coal Transportation Association in Finance Docket No. 36873 upon all Parties of Record in this proceeding by electronic mail.



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