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November 17, 2026

VIA ELECTRONIC SUBMISSION
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001.

Re: Docket No. FD 36873 - Union Pacific Corporation and Union Pacific Railroad Company - Control - Norfolk Southern Corporation and Norfolk Southern Railway Company

Comments from the New Jersey Department of Transportation

To Whom it May Concern:

Submitted with this letter, please find comments in the above captioned matter by the New Jersey Department of Transportation. Please also find below a certification of service.

Respectfully submitted,

JENNIFER DAVENPORT
ATTORNEY GENERAL OF NEW JERSEY

By: _____
David Kahler, Deputy Attorney General

Attachment
c. w. attachment: All parties of record

Certification of Service

I hereby certify that on November 17, 2026, I caused a copy of this letter, with its attachment, to be sent by email or first-class mail, as applicable, to all parties of record, the Secretary of Transportation, the Attorney General of the United States, Judge Soulikias, and counsel for the applicants.

_____
David Kahler, Deputy Attorney General

State of New Jersey
DEPARTMENT OF TRANSPORTATION
P.O. Box 600
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SHIRLEY EMEHELU
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PRIYA JAIN
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November 17, 2026

Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: Docket No. FD 36873 - Union Pacific Corporation and Union Pacific Railroad Company - Control - Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Chief of Case Administration:

The New Jersey Department of Transportation ("NJDOT" or the "Department") submits these comments regarding the proposed acquisition of Norfolk Southern by Union Pacific (the "Transaction"). NJDOT has a direct and substantial interest in the outcome of this proceeding. The Department is responsible for supporting a safe, efficient, and resilient statewide transportation system, of which rail service is a critical component. New Jersey's extensive freight and passenger rail network provides critical connections between the largest port on the East Coast, Delaware River terminals, various vital industries, major distribution facilities, and diverse communities with national and international markets while also providing critical transit access to the largest metro region of the United States, New York City and Philadelphia. A reliable and efficient rail network is critical to the economic success of New Jersey, and NJDOT has long played a critical role in supporting that network through substantial investments in freight and passenger rail infrastructure. The Department also has important responsibilities maintaining the State's roadway network and regulating highway-at-grade crossings and other rail safety programs, which may be directly affected by changes in freight rail operations as a result of the Transaction.

New Jersey is a major hub for freight rail activity and a critical gateway to national and international markets. According to the Association of American Railroads, approximately 753,500 carloads and intermodal units originated in New Jersey in 2025, representing roughly 3% of nationwide rail originations, while another 782,900 terminated in the State.[1]

[1] Association of American Railroads, *Freight Rail in New Jersey*, at 1 (2025 traffic data), https://www.aar.org/wp-content/uploads/2025/01/AAR-New-Jersey-State-Fact-Sheet.pdf; Association of American Railroads, *AAR Reports Weekly Rail Traffic for the Week Ending January 3, 2026* (Jan. 7, 2026), https://www.aar.org/news/aar-reports-

The Port of New York and New Jersey, the nation's third-largest container port, further underscores the State's significance, having handled approximately 8.7 million TEUs and 639,657 rail lifts in 2024.[2] Given the scale of this activity, the Applicants' limited assessment of New Jersey's existing freight operations and the Transaction's potential impacts to the region raises significant questions that warrant further examination. NJDOT strongly supports a growing and competitive freight rail industry and modal shift from highway to rail for both carload and intermodal traffic. The Department has visibly demonstrated this commitment through substantial investments in freight rail infrastructure throughout recent years, active collaboration with the industry through the Department's Federally approved Statewide Freight Plan, an active State Freight Advisory Committee, the USDOT/FHWA 23 USC Section 130 - Railway-Highway Crossings Program, and rail planning and construction partnerships with the Port Authority of New York and New Jersey and South Jersey Port Corporation. Over the past decade, NJDOT has invested $253 million in New Jersey's freight rail infrastructure through the state's legislatively established Rail Freight Assistance Program, particularly in short-line and port terminal facilities, in partnership with railroads and infrastructure owners/operators. Under this program, $25 million is dedicated annually to freight rail improvements statewide[3]. NJDOT has previously played an active role in major freight railroad merger proceedings, including the acquisition of Conrail by CSX and Norfolk Southern, during which NJDOT presented testimony on the transaction before Congress, established principles to protect freight competition and passenger rail operations,[4] and, alongside Governor Christie Whitman, negotiated an agreement with the carriers to safeguard New Jersey's rail interests.[5] The Department would generally welcome any Transaction that demonstrably improves freight service, attracts new rail business, strengthens connections with the State's ports, terminals and short-line network, reduces truck traffic on New Jersey's highways and provides for a safer transportation system. These are outcomes that NJDOT has worked for years to advance.

The Applicants contend that the single-line service resulting from the Transaction will create a seamless transcontinental service that improves network efficiency and diverts substantial freight traffic from highways to rail. NJDOT recognizes the potential appeal of those benefits. However, while the Applicants seek to make this case on a national level, their projections have not been translated into a sufficiently detailed account of what the Transaction will mean for New Jersey.

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weekly-rail-traffic-for-the-week-ending-january-3-2026/. The approximately 3% figure is calculated using New Jersey's 753,500 originating carloads and intermodal units against the reported national total of 25,564,430 for 2025.

[2] Port Authority of New York and New Jersey, *2024 At a Glance*, at 1–2 (2025), https://www.panynj.gov/content/dam/port/our-port/PONYNJ_AtAGlance2024.pdf (reporting 8,698,526 TEUs and 639,657 rail lifts in 2024, and ranking the Port third nationally by container volume).

[3] N.J.S.A. 27:1B-21(k), as amended by P.L. 2019, c. 196, § 5 (originally enacted by P.L. 2016, c. 56, § 4).

[4] Conrail Merger Implications: Hearing Before the Subcomm. on Transportation and Related Agencies of the S. Comm. on Appropriations, 105th Cong. 21–23 (1997) (statement of John J. Haley, Jr., New Jersey Department of Transportation).

[5] New Jersey Department of Transportation, Whitman and Haley Announce New Jersey Supports Conrail/CSX/Norfolk Southern Merger (Feb. 7, 1998), https://www.nj.gov/transportation/about/press/1998/020798.shtm

Even after the revised application and supplemental submissions, the record does not allow the Department to determine with confidence how the merger will impact the State, specifically where merger-related traffic will move, which New Jersey customers and facilities will benefit, whether existing infrastructure can accommodate the projected growth, or what investments and operating protections will be needed. Similarly, while the Department supports improved, expanded and enhanced freight rail service in New Jersey, the State must be assured that such benefits don't come at the expense of other important priorities, including public safety, improved public transit and intercity passenger rail service, and healthy and prosperous communities.

Those omissions have practical consequences, particularly given the significant share of merger-related traffic growth that is projected in New Jersey. Of the fifteen additional intermodal trains identified in the Applicants' Growth Plan, six would originate or terminate at the Croxton intermodal terminal in Northern New Jersey. This represents 40% of the projected new intermodal trains, with Croxton receiving more traffic than at any other intermodal terminal identified in the Growth Plan. Despite the significance of this projected increase, the Applicants have not provided a sufficiently developed operating and capital plan explaining how the additional traffic will be accommodated. The record additionally leaves unresolved potential effects of the merger on the structure of Conrail Shared Assets ("CSAO" or "Conrail"), short-line access and connectivity, traffic to the Port of New York and New Jersey ("PANYNJ" or "Port"), shared freight and passenger corridors, and highway-rail crossings. It also does not establish whether traffic could shift toward inland transload facilities and place additional trucks on New Jersey roads for last-mile delivery, notwithstanding the Applicants' claims of national truck-to-rail diversion.

This lack of information is concerning from the perspective of an agency that has invested heavily in freight rail and could be a constructive partner in realizing the Applicants' stated goals. Under the Board's 2001 major merger rules, the burden rests with the Applicants, not the State or its communities, to demonstrate that the Transaction serves the public interest and enhances competition. NJDOT has, in this case, been left to construct its potential effects from insufficient data modeling, inferences about what post-merger operations could look like, and the submissions of other participants. This stands in stark contrast to information and engagement provided to the Department by Applicants during the Conrail transaction in 1997, which, while vitally important to New Jersey, was much smaller in scope and impact nationally than this proposed Transaction. The Department was an active participant in the Board's proceedings in 1997 and 1998 and worked with the Applicants and others to help develop the Shared Assets Area concept, which improved competition and safeguarded both freight and passenger rail service in New Jersey, and participated in the Board's oversight efforts following approval. [6]

The Department is not opposed to freight rail growth, nor does it categorically reject the potential benefits of single-line service. Rather, the Applicants have yet to provide the evidence or commitments necessary for the Department to conclude that those benefits will be realized in New Jersey without undermining existing service, competitive access, public infrastructure investments, or community safety. The Department remains willing to engage constructively, but believes that given the present record,

[6] STB Finance Docket No. 33388 (Sub-No. 38) (1997).

additional information and enforceable commitments are necessary to ensure that the Transaction creates immediate and long-term benefits for New Jersey.

NJDOT therefore respectfully asks the Board to take one of two approaches as it considers this Transaction. The first approach would be to require the Applicants to provide, prior to the Board's final consideration of the merits, a comprehensive and verifiable assessment of how the Transaction would specifically affect New Jersey's freight rail network and related assets. Such an assessment should provide specific information on impacts to Norfolk Southern and Conrail operations, existing infrastructure, and the competitive landscape, including addressing the Department's many concerns as laid out herein. This information, coupled w ith an appropriate extension of the proceeding to account for the production and review of additional information, would allow the Department and other New Jersey stakeholders to thoroughly analyze the Transaction's potential specific impacts and develop a clearer view as to whether it is in the public interest and creates enhanced competition, as required.

The second, and more conventional, approach, given that the Applicants have already had the benefit of receiving guidance from the Board on its expectations and been ordered to resubmit their initial application, is for the Board to consider the application as is. If the Board ultimately approves the Transaction without the benefit of the detailed information on network impacts in states like New Jersey, then that approval should include clear and enforceable conditions within the Applicants' control to address the potential and foreseeable harms that risk the public interest. These conditions should protect competitive and shared-use rail access to the State's rail-served facilities, prevent merger-related growth or operating changes from outpacing necessary capacity improvements or impacting passenger train performance, address grade-crossing and local roadway impacts, and provide for meaningful oversight, reporting, and corrective actions. The Department's principal concerns and the information and safeguards it requests are described below.

I. NJDOT'S PRINCIPAL CONCERNS

NJDOT has an ongoing responsibility to safeguard and enhance the State's transportation system and the communities it serves, regardless of whether the Transaction proceeds. These concerns outlined below reflect real questions about how the proposed Transaction could affect New Jersey's publicly funded rail infrastructure, freight and passenger operations, highway safety, and local communities. It is the Applicants who have chosen to pursue this consolidation, and it is their responsibility to demonstrate that these critical State interests will be protected. The information provided by the Applicants to date remains insufficient for the Department to assess the potential consequences of the Transaction, leaving the State to piece together impacts that the Applicants themselves should have clearly explained. This is an unacceptable burden to place on New Jersey in a merger proceeding that seeks to establish the largest rail carrier in the history of our nation.

Additionally, NJDOT supports the comments of NJ TRANSIT and the PANYNJ, as they also seek to identify and address the potential impacts of the Transaction on passenger rail operations and port competitiveness, respectively. The Department's concerns are complementary to those raised by its public partners and reflect NJDOT's broader responsibility to protect the State's transportation network and ensure that existing public investments are not undermined by the Transaction.

In summary:

1. Prior to the Board's decision, NJDOT seeks additional information. NJDOT respectfully asks the Board to require the Applicants to produce a sufficiently detailed and verifiable record of the Transaction's likely impacts on New Jersey, with an appropriate opportunity for NJDOT and other affected parties to examine and respond to that information.
2. Should the Board allow the Transaction to proceed, the Department requests that the Board impose enforceable conditions to ensure that New Jersey's transportation interests are protected. NJDOT requests clear and enforceable protections to mitigate merger-related risks as detailed herein and directed at obligations within the Applicants' control.

A. The Applicants have not adequately explained how new traffic will move through New Jersey.

The Applicants claim that the Transaction will result in traffic growth and network efficiencies at a national level, but they have not adequately explained how that growth would be accommodated within New Jersey's rail network, including where additional traffic would originate and terminate, which routes trains would use, when the trains would operate, and what their characteristics would be. Their Growth Plan projects six additional trains each day serving the Croxton intermodal terminal, with three inbound and three outbound movements. Despite projecting such a significant traffic increase, the record does not adequately explain how those trains will be accommodated given the footprint of Croxton Yard, the operational challenges of integrating additional freight traffic along the Lehigh Line corridor, and the capacity constraints throughout the broader North Jersey terminal network.

The Applicants have also failed to analyze how projected traffic growth would affect major New Jersey terminals that handle Norfolk Southern traffic but are not directly owned by the railroad, including the large facilities owned by CSAO and PANYNJ. This omission is particularly concerning as it relates to the Port, as Applicants have claimed the Transaction will generate significant intermodal traffic growth and improve rail connectivity to ports across the country. Without accounting for the capacity and operating constraints of these facilities, the Applicants have not clearly demonstrated that New Jersey's rail network can either be a source of such traffic or accommodate their projected growth.

B. The claimed commercial and truck-diversion benefits to New Jersey remain unproven.

The Department strongly supports the goal of shifting freight from highways to rail, but it cannot accept the Applicants' national truck-diversion estimate as concrete evidence of a positive outcome on New Jersey roads. Due to its proximity to the largest metropolitan area in the country, New Jersey is a major destination and distribution market. What matters to New Jersey is understanding whether freight will continue to move by rail to facilities within the State or if it will instead be transferred to trucks elsewhere, and how those routing decisions affect local businesses, highway traffic, and freight-dependent employment.

The combined carrier could have a financial incentive to route freight to an inland transload facility in Pennsylvania, for instance, rather than continue by rail into New Jersey via Conrail, allowing it to retain the financial benefits of a UPNS-only movement and, over the long term, stranding its competitor and CSAO co-owner, CSX, with a higher proportional cost burden related to Conrail. If the Applicants pursue this routing strategy, it could shift freight from rail to trucks for the final leg into New

Jersey, increasing last-mile truck traffic on the State's highways. Further, even if additional freight reaches a New Jersey rail terminal, local drayage and truck circulation may increase around that facility. The Applicants have not supplied an adequate State-level localized assessment of these potentially competing effects. Broad claims of mode shift leave the Department unable to determine whether the Transaction will reduce truck activity on New Jersey roads or preserve the value of rail investments already made by the State.

C. The application does not resolve risks to Conrail, short lines, and meaningful competition.

CSAO is an essential component of New Jersey's freight rail network. Conrail is jointly owned by NS and CSX (the "parents") and provides a neutral operator through which both Class I carriers can access New Jersey's major rail terminals, customers, and connecting short-line railroads, making it one of the few markets in the country where such head-to-head competition exists. Despite NS being a 50% owner, Applicants treat Conrail as an independent third party. Conrail's unique structure means that this classification is misleading, as the parents directly oversee its operations through their representation on Conrail's Board and Norfolk Southern trains directly serve customers on CSAO infrastructure. By treating Conrail as a third-party entity, the Applicants have avoided any statements regarding their commitments to Conrail's neutrality and existing competitive arrangements following the merger and have not conducted appropriate analysis of how traffic would flow to and from Conrail-owned territory. Preserving the competitive structure of Conrail and the access it provides is critical to New Jersey and is a non-negotiable priority for the Department.

NJDOT is also concerned that the proposed Committed Gateway Pricing (CGP) framework to reduce commercial foreclosure risk for customers seeking interline rates after the Transaction may not provide meaningful protection for rail traffic in New Jersey. The Applicants' CGP proposal remains narrowly defined, applying only to certain interline movements through designated gateways and excluding significant traffic categories, including intermodal shipments, finished vehicles, certain hazardous materials, dimensional loads, storage-in-transit movements, and traffic involving railroad-owned facilities. The proposal also excludes short-line traffic where the short line has access to more than one Class I railroad. The Department is concerned that these narrow pricing assurances without effective long-term remedies are insufficient to offset the potential competitive harm of one Class I railroad controlling over 50% of rail market share, particularly when the proposed CGP protections would expire at the conclusion of the Board's oversight period. Separately, the Applicants have not demonstrated that the merged carrier would maintain incentives to cooperate with competing carriers rather than favor routes that maximize its own length of haul.

D. The Applicants have not adequately assessed impacts to New Jersey communities and local highway safety.

Additional or longer freight trains can affect the frequency and duration of highway-rail crossing blockages, contributing to long traffic queues that can harm response times for emergency vehicles and create safety and quality of life concerns for motorists, pedestrians, and neighboring communities. The Applicants' capacity analysis does not adequately address how projected increased freight rail traffic could affect specific highway-rail crossings and roadway congestion in New Jersey. The Department needs crossing-specific information about where additional trains may operate, whether existing road

configurations and emergency-response arrangements can safely accommodate them and any related system-wide cascading effects.

The application does not provide the location-specific New Jersey assessment necessary to answer those questions. Nor does it sufficiently distinguish highway impacts caused by rail crossing activity from impacts caused by truck movements at terminals and inland transfer points. If incremental public costs arise from the Transaction, New Jersey citizens and municipalities should not simply be expected to absorb them without an informed assessment of mitigation and responsibility.

E. The Port of New York and New Jersey face unresolved routing and access risks.

The Port is a significant regional economic driver and a vital component of both the national logistics system and the State's freight network. Better transcontinental service could create opportunities for the Port, but it could also change the incentives governing which gateways receive dockside container traffic and how that traffic is moved across the country. The Applicants have not adequately shown whether the proposed Transaction will strengthen competitive access to the Port or encourage shipments to move through alternative East Coast ports, West Coast gateways, or inland transload facilities rather than through New Jersey rail terminals.

These are substantial concerns for a State and its public partners that have invested in freight rail infrastructure at the Port. Additionally, Applicants have failed to provide sufficient information to assess how changes in freight traffic volumes and railroad operations could affect the Port's future growth or assess how changes in train operations over movable rail bridges that cross the Port's surrounding waterways could affect maritime navigation. NJDOT does not presume that every operational change would be harmful, but the Department needs to see a transparent account of these consequences before it can determine if this Transaction is in the commercial and public interest for New Jersey and its businesses and residents.

F. The Applicants have not established practical protections for passenger rail operations.

Freight operations in New Jersey are closely intertwined with existing passenger service. In the Applicants' supplemental filings, they provided a capacity assessment of the Conrail Lehigh Line segment between Control Point (CP) Aldene and CP Newark shared with NJ TRANSIT's Raritan Valley Line only after being ordered to do so by the Board. That assessment, however, is insufficient as it relies principally on an estimate of the line's theoretical capacity over a twenty-four-hour period. It does not resolve the more pertinent questions of when incremental freight trains would operate, how terminal delays could affect the shared corridor, or whether NJ TRANSIT's peak period operations and reasonable future passenger expansion would be protected.

In the time since Applicants conducted their supplemental analysis, NJ TRANSIT has determined that the information provided by the Applicants is insufficient to gauge the impacts of the Transaction on their service. NJDOT supports NJ TRANSIT's effort to develop a more detailed technical record and appropriate operating safeguards. From NJDOT's statewide perspective, the failure to connect the Applicants' freight growth assumptions with real-world operational considerations, especially on shared passenger corridors, raises an additional public-interest concern. NJDOT believes that projected freight growth should be accommodated in a manner that maintains the reliability of existing passenger rail operations and protects opportunities for future passenger service expansion.

G. The Applicants have not identified New Jersey investment or service commitments commensurate with projected growth.

Applicants have identified New Jersey as one of the areas expected to experience the most substantial merger-related traffic growth, particularly for intermodal traffic. Of the fifteen new intermodal trains outlined in the Applicants' Growth Plan, six of them (40%) are profiled to originate or terminate at Croxton Yard in Jersey City. This makes Croxton the intermodal terminal that is expected to see the most significant traffic increase under the Growth Plan on the entire combined system. Despite this, Applicants have made no capital commitments to improve the State's rail infrastructure beyond a single terminal reactivation. They have not adequately explained how this growth will be accommodated on existing publicly and privately owned infrastructure, nor have they committed to measurable service improvements for New Jersey shippers or meaningful in-State employment gains. Given the Department's longstanding investment in freight rail infrastructure, NJDOT believes the Applicants should demonstrate a corresponding commitment to improvements necessary to accommodate merger-related growth, rather than relying primarily on existing public investments.

NJDOT already faces difficulties securing timely railroad support for public infrastructure projects that interact with NS operations, including the availability of flagging personnel, engineering reviews, construction work windows, and escalation of urgent issues. A much larger enterprise with fewer local decisionmakers could compound these issues. The Applicants have not demonstrated how they intend to prevent this or made any commitments to maintain a significant enough local presence to conduct efficient coordination with the State and to maintain NJDOT's annual Capital Program goals. Taken together, these omissions leave the Department struggling to identify the benefits created by the Transaction.

II. INFORMATION AND CONDITIONS REQUESTED

NJDOT seeks affirmative commitments from the Applicants to provide the necessary information and implement appropriate mitigations or protections related to issues set forth herein. Where such information and/or commitments are not adequately provided, the Department requests that the Board impose enforceable conditions to ensure that New Jersey's transportation interests are protected if this Transaction is allowed to proceed. To accomplish this, the Department respectfully asks the Board to require the Applicants to produce a sufficiently detailed and verifiable record of the Transaction's likely impacts on New Jersey, with an appropriate opportunity for NJDOT and other affected parties to examine and respond to that information. Conditions imposed after approval are not substitutes for the ability to make informed decisions on the Transaction's merits. Nevertheless, if the Board determines that approval is warranted, NJDOT requests clear and enforceable protections to mitigate merger-related risks and directed at obligations within the Applicants' control. The State should not be placed in the position of bearing public consequences first and seeking a remedy only after detrimental effects arise.

A. Require a New Jersey traffic, terminal, and capital investment plan.

Before approval, the Applicants should provide a clearly outlined New Jersey operating and investment plan addressing the traffic they project under their Base, Optimized, and Growth Plans. It should show how additional trains would move through the State, where they would originate and terminate, and their expected lengths and operating times. The analysis must extend beyond the

Applicants' own property to encompass the major New Jersey terminals owned by Conrail and third parties. In particular, it should address the ability of Croxton, the Lehigh Line, Conrail's North Jersey terminal network, and facilities serving the Port of New York and New Jersey to handle projected volumes, including changes in switching, staging, terminal dwell, and local truck activity.

The plan should identify corridor and terminal constraints, and the improvements needed to overcome them, outlining estimated costs, responsible owners, and implementation schedules for capacity improvements. Where projected growth would create capacity problems, the Applicants should commit to appropriate capital improvements before putting the additional traffic into operation. The operating and investment plan should identify the capacity improvements necessary to accommodate projected merger-related traffic growth, including the potential projects identified in Section II.G.

Where capacity constraints remain, Applicants should also establish contingencies for times when Croxton or another terminal cannot accept trains, so that freight back-ups do not impair operations at congested terminals or on shared passenger corridors. Any material change in the assumed routing or volume of merger-related traffic should require advance consultation and an updated assessment.

B. Demonstrate New Jersey commercial benefits and address adverse shifts to trucking.

In accordance with the STB's 2001 rules governing major Class I mergers that require parties to explain how a proposed Transaction increases competition, the Applicants should demonstrate which New Jersey customers and facilities would directly benefit from the claimed single-line service and explain why those benefits could not reasonably be achieved through existing interline arrangements. The required assessment should specifically identify the types of traffic expected to move to and from New Jersey, and what the traffic shift will look like for competing carriers, Conrail-served facilities, and/or New Jersey short lines. Impacts, positive or negative should be modeled, and mitigated, if the impacts are detrimental to the public interest. Further, it should specifically address whether the combined carrier expects to route traffic to inland Pennsylvania or other transload facilities or alternative gateways rather than continuing by rail to New Jersey customers and terminals.

The Applicants must distinguish national long-haul truck-to-rail diversion from its effects on truck movements within New Jersey. A shipment moved cross-country by rail but trucked into New Jersey from an inland terminal does not reduce the State's highway burden. NJDOT requests reporting on actual New Jersey rail traffic, employment, use of publicly funded facilities, and local drayage. Where evidence establishes a merger-related loss of viable rail service or additional public roadway costs, the Applicants should be required to provide proportionate service or mitigation commitments.

C. Preserve Conrail neutrality, short-line access, and practical competition.

Conrail cannot be treated as a conventional third-party railroad partner since it is jointly owned by NS and CSX, and its operations are governed directly through a board composed of representatives of those two parents. The Conrail Shared Assets structure provides one of the few opportunities for direct head-to-head Class I competition in the country, which is a practice that must continue no matter the outcome of this proceeding. The Applicants must therefore commit to maintaining Conrail's neutral operating and dispatching functions, available local staffing and coordination, and existing investment and cost-sharing arrangements. Given how much New Jersey's freight rail network depends on Conrail,

approval should prohibit actions within the Applicants' control that would weaken Conrail's neutrality or reduce their support for the shared-assets network.

The Applicants must also provide more protection for New Jersey shippers and receivers who face potential commercial foreclosure for interline movements to and from the West once the merged carrier controls a single-line route. The Applicants' Committed Gateway Pricing proposal is inadequate as it excludes significant traffic categories, including intermodal shipments, finished vehicles, certain hazardous materials, dimensional loads, storage-in-transit movements, and traffic originating and terminating at railroad-owned facilities. Short-line traffic is also excluded where the short line has access to more than one Class I carrier. NJDOT therefore requests that the traffic eligible for CGP be broadened, and that CGP be supported by enforceable commitments to commercially reasonable pricing, reliable interchange service, and effective dispute resolution.

Similarly, having seen the risks of service disruptions firsthand during the Conrail integration in 2000, the Department is very concerned that the implementation of this proposed Transaction not create disruption to transit times, reliability, car supply, passenger operations, communication related to NJDOT capital construction and operations or other temporary impacts that degrade service. While the Applicants have committed to minimizing these impacts during integration, the proposed remedies do not appear sufficiently broad or enforceable to adequately protect affected shippers should service disruptions occur. These remedies are limited in scope and eligibility and lack clear service-performance standards or assurances of timely corrective action if service deteriorates. The Board should require Applicants to address these shortcomings, and these protections should remain in effect, at a minimum, for the entirety of the Board's extended post-merger oversight period, as we've proposed below, to address the lasting competitive impacts of the Transaction.

The Applicants should also maintain identifiable senior and local contacts responsible for New Jersey operations, along with adequate field and engineering personnel and a defined escalation process to ensure that urgent matters requiring railroad coordination can be conducted in a timely fashion. This should include continued sales and marketing support for New Jersey short lines and customers. Because NS and CSX share responsibilities for Conrail, any enforceable condition should require the Applicants to cooperate and carry out their own obligations, without binding non-Applicants absent their participation.

D. Protect highway-rail crossings, emergency access, and local roadways.

Before approval, the Applicants should conduct a railroad crossing-impact assessment for New Jersey where merger-related changes in train operations could materially increase crossing blockages and create direct or downstream safety risks. That review should identify locations where roadway queues and emergency response times will be impacted most significantly.

As part of this review, NJDOT, municipalities, and first responders should be consulted on high-risk locations rather than expected to infer local consequences from national traffic forecasts.

Where the assessment shows substantial merger-related impacts, the Applicants should participate reasonably in targeted mitigation, including crossing and signal improvements, roadway upgrades, emergency-response measures, and grade separations where warranted. Conditions should also provide notice of material operating changes to communities and first responders. Existing crossing,

right-of-way, maintenance, and cost-sharing agreements must be reviewed before assigning new obligations. Changes in terminal-related truck traffic, emissions, noise, and road wear should be examined through the Board's environmental process, with mitigations put in place to address any demonstrable deteriorating conditions.

E. Protect port rail service and address maritime operations.

The Applicants should provide a specific account of how the merger would affect traffic serving the Port of New York and New Jersey and Delaware River port terminals, including expected traffic volumes, information on how Port traffic will be routed, if they expect to require an increase in terminal demand, and if they anticipate a traffic shift toward competing ports or inland transload facilities. This assessment should address the potential for demarketing or diversion of traffic from both port regions in favor of routes served exclusively by the merged carrier. With respect to Delaware River port terminals, the assessment should also account for the significant growth in energy-related rail traffic along the Penns Grove Secondary. The Applicants should explain whether the existing rail network can support the claimed growth and what investments would be required to maintain or expand rail service. NJDOT requests a commitment to preserve existing rail access to these port facilities and to consult with PANYNJ and relevant facility owners before material changes affecting port operations, taking into account the interests of both rail and maritime stakeholders.

The assessment should also address movable-bridge operations where an increase in train frequency or length could interfere with maritime navigation in and around the Port. If projected operations affect the HACK, Upper Bay, or Staten Island bridge facilities, the Applicants should help develop a coordination plan to avoid unnecessary delays to marine traffic. Any condition should respect United States Coast Guard requirements and the operators' respective legal responsibilities.

In addition, the PANYNJ owns the Hudson River rail-float operation connecting Jersey City to Brooklyn which provides the only double-stack cleared route to the East of the Hudson River today. NJDOT and the Port have invested tens of millions of dollars in this operation which has become a vital link between New Jersey and New York; its operations and potential for growth must be preserved.

F. Protect current and future passenger rail service on shared corridors.

The Applicants' July supplemental filing estimated a theoretical capacity of approximately 116 trains per day on the six-mile Conrail Lehigh Line segment between CP Aldene and CP Newark and concluded that four to five additional freight trains could be accommodated alongside 52 weekday NJ TRANSIT trains, in part based on routing assumptions involving the Port Reading Secondary. That daily calculation does not demonstrate that the added trains can operate without affecting Raritan Valley Line service during the morning and evening peak periods, when half of NJ TRANSIT's weekday movements occur. Before approval or implementation, the Applicants should conduct a detailed, time-of-day operating analysis of the shared Lehigh Line segment that accounts for fluctuations in freight and passenger traffic throughout the day, including potential delays caused by congestion at North Jersey terminals.

The analysis must demonstrate that projected freight growth can be accommodated without interfering with NJ TRANSIT's existing peak-period Raritan Valley Line operations or constraining reasonably anticipated future passenger service expansion.

If approved, the Transaction should be conditioned on advance coordination with NJ TRANSIT before material operating changes to ensure that appropriate peak-period passenger protections are in place. Applicants should also be required to submit a North Jersey terminal contingency plan that prevents freight trains from backing up onto shared trackage and gives Conrail dispatchers authority to hold trains out of the territory if it becomes congested. The Applicants should monitor passenger performance against a pre-merger baseline and take corrective action for demonstrated merger-related deterioration. NJDOT supports specific operating safeguards and related capital improvements informed by NJ TRANSIT's separate technical evidence.

G. Commit to evaluating and supporting specific New Jersey rail investments.

The Applicants project substantial rail traffic growth in North Jersey but have not identified a corresponding capital program, beyond a single proposed terminal reactivation, to demonstrate how that growth would be supported. NJDOT requests that the Applicants evaluate specific capital improvements that could accommodate projected freight growth, improve service reliability, and expand opportunities for rail transportation in New Jersey. NJDOT has identified the following infrastructure improvements that Applicants should evaluate to accommodate projected freight growth and improve network capacity:

- **Lehigh Line Third and Fourth Tracks** between CP Newark and CP Aldene to increase capacity and separate freight and passenger operations.
- **Hunter Flyover** to improve freight and passenger rail operational fluidity.
- **Double-Stack Access to South Jersey** through clearance and infrastructure improvements in the Philadelphia region.
- **Port Reading Secondary Improvements** to increase capacity and provide additional freight routing flexibility.
- **Port Newark to Garden State Secondary Connection** to establish a southbound rail connection and expand routing options from the Port.

The Applicants should assess these projects in coordination with NJDOT, relevant public agencies and railroad owners, identify their potential operational benefits, and commit to support and financial participation where improvements are necessary to accommodate merger-related growth.

The Applicants should identify which projects could address merger-related capacity limits, expand viable competitive routes, and establish a schedule for evaluating feasibility, ownership, funding, and implementation. Where their Growth Plan creates a demonstrated need, the Board should require appropriate financial or operational participation rather than leave the costs to New Jersey taxpayers. NJDOT does not ask the Board to mandate every candidate project without evidence of its feasibility or a nexus to the Transaction, but it does seek commitments proportionate to the growth the Applicants propose.

H. Require operational readiness, extended Board oversight, and corrective action.

Before implementing major merger integration steps affecting New Jersey, the Applicants should demonstrate operational readiness and provide contingency procedures to ensure any disruptions to terminals, interchanges, dispatching, safety and shared passenger routes are mitigated. They should notify NJDOT and other affected operators of material changes and identify personnel authorized to resolve service failures promptly. These requirements should be tested against operating performance, with clear and affirmative coordination protocols and remedies, not left to be addressed after difficulties occur.

Given the scale of the proposed Transaction and the uncertainty surrounding its long-term consequences, NJDOT requests that the Board retain extended oversight without an automatic expiration date. While the seven-year oversight period established in the CP/KCS merger provides a relevant precedent, the Applicants should bear the burden of demonstrating to the Board that continued oversight is no longer necessary. NJDOT requests extended Board oversight with measurable performance standards, periodic reporting and clear mechanisms for corrective action. Oversight should address service reliability, competitive access, safety, passenger rail impacts and compliance with merger commitments. Affected states should have the opportunity to raise concerns and seek appropriate solutions through whatever process the Board sees fit to establish in order to ensure timely and responsive implementation and performance of the Board's imposed conditions. The Board should retain authority to impose additional corrective measures if merger-related service disruptions, competitive harms, or other adverse consequences emerge.

NJDOT also requests that the Applicants participate in regular meetings with the Department and relevant freight stakeholders to review railroad performance, anticipated operating changes, infrastructure needs, and outstanding coordination issues. These meetings could be conducted through NJDOT's existing Freight Advisory Committee structure and should provide an ongoing opportunity to identify and address merger-related impacts before they result in significant disruptions. Just as the Applicants propose to grow, the Board itself, should it approve the Transaction, may need to expand its own capabilities and the utilization of its regulatory power to ensure that it is not outmatched by the sheer size and scope of the new carrier.

III. REQUESTED BOARD ACTION

NJDOT respectfully asks the Board to require the Applicants to remedy the New Jersey-specific gaps described above, to provide the supporting information in a form that can be independently evaluated, and to allow affected public agencies a meaningful opportunity to respond before the Board resolves the merits of the Transaction. The fact that Croxton is projected to handle more new trains than any other intermodal terminal in the Applicants' Growth Plan underscores the significance of the Transaction's potential impacts on New Jersey and the need for a detailed, State-specific assessment before the Board reaches a decision. If the Applicants do not provide a sufficient record to demonstrate public benefits and enhanced competition, the Department asks the Board not to make the affirmative public-interest findings necessary for approval. The State's ability to protect its transportation infrastructure and communities should not be conditioned on assumptions that the Applicants have declined to substantiate.

If the Board determines that approval of the Transaction is warranted, NJDOT requests the tailored, enforceable conditions set forth above, including protections for freight and passenger service, competition and access, highway and grade-crossing safety, port connectivity, necessary capital investment, local railroad responsiveness, and continuing Board oversight. As a state transportation agency with a longstanding commitment to freight rail, NJDOT remains ready to work with the Applicants and its public and private partners to realize genuine benefits. Constructive engagement, however, requires disclosure, accountability and a fair allocation of responsibility. The burden of proving and delivering the promised benefits must remain with the Applicants.

Respectfully submitted,



Priya Jain, Commissioner
New Jersey Department of Transportation