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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

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

COMMENTS OF MARATHON PETROLEUM CORPORATION IN OPPOSITION TO THE PROPOSED TRANSACTION AND, IN THE ALTERNATIVE, REQUEST FOR CONDITIONS

November 17, 2026

VIA E-FILING

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

Re: Union Pacific Corp. & Union Pacific R.R. Co.—Control—Norfolk Southern Corp. & Norfolk Southern Ry. Co., Docket No. FD 36873

Dear Chairman Fuchs and Members of the Board:

Marathon Petroleum Corporation ("Marathon") respectfully submits these comments pursuant to the procedural schedule adopted in Decision No. 30 in the above-captioned proceeding. Marathon opposes the application of Union Pacific Corporation and Union Pacific Railroad Company (together, "UP") and Norfolk Southern Corporation and Norfolk Southern Railway Company (together, "NS," and with UP, "Applicants") for authority under 49 U.S.C. §§ 11323–25 for UP to acquire control of NS (the "Transaction"). Marathon urges the Board to deny the Revised Application. Should the Board nonetheless be inclined to approve the Transaction, Marathon requests, in the alternative, that the Board impose the broad, permanent, and enforceable conditions described in Part IV below.

I. INTRODUCTION AND SUMMARY

At the outset, Marathon wishes to be clear about what these comments are not. Marathon is not opposed to rail mergers as a matter of policy. Marathon depends on a competitive, reliable, and efficient freight rail system, and it recognizes that consolidation can, in an appropriate case, serve the public interest when applicants

demonstrate measurable, durable, and enforceable public benefits. Marathon opposes this Transaction for a narrower and more fundamental reason: Applicants have not carried their burden of demonstrating that the Transaction will enhance rail-to-rail competition or otherwise satisfy the heightened public-interest standard that governs major rail consolidations.

The Board's 2001 Major Merger Rules were written for precisely this moment. They provide that the Board "does not favor consolidations that reduce the transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved." 49 C.F.R. § 1180.1(a). They require applicants to propose measures that would enhance competition, not merely preserve it, *id*. § 1180.1(c)–(d), and they reflect the Board's considered judgment that "it is increasingly difficult to remedy certain competitive harms directly and proportionately" as the industry consolidates. Major Rail Consolidation Procedures, 5 S.T.B. 539, 554 (2001) ("Major Merger Rules"). This proceeding, the first major transaction reviewed under those rules, and one that would create the nation's first single-system transcontinental railroad, is the test of whether that standard has meaning.

Measured against that standard, the Revised Application falls short in five independent respects, each of which Marathon addresses below:

- **First**, the Transaction does not enhance rail-to-rail competition. Applicants' case rests predominantly on truck-to-rail diversion and traffic growth. Those claims do not answer the competitive question that matters to Marathon and other industrial shippers whose refinery and terminal movements are operationally, economically, or physically dependent on rail. Marathon does not expect this merger to cause it to shift material truck volumes to rail.
- **Second**, Applicants' projected benefits are forecasts, not enforceable outcomes. The structural change the Transaction would affect is permanent; the benefits on which Applicants rely are contingent and may never materialize.
- **Third**, Applicants' sole proposed competitive enhancement, Committed Gateway Pricing ("CGP"), is too narrow to address Marathon's network-wide needs and too temporary to offset a permanent loss of competition. Marathon's own analysis estimates total modeled exposure exceeding $618 million over five years across captive-lane and gateway scenarios.
- **Fourth**, reciprocal switching is not a substitute for competition between independent railroads. Marathon's own experience under the conditions imposed in the UP/SP merger demonstrates how switching remedies can be rendered commercially useless in practice.
- **Fifth**, the service benefits Applicants claim can be achieved through commercial cooperation short of merger, as the wave of interline agreements announced since the application was filed confirms, and the Transaction

would concentrate unacceptable operational risk over critical energy supply chains.

For these reasons, the Board should deny the Revised Application. At a minimum, it should not approve the Transaction unless Applicants demonstrate broad, permanent, enforceable, and operationally effective competitive enhancements that satisfy the Board's heightened standard and fully protect critical industrial shippers.

II. MARATHON'S INTEREST IN THIS PROCEEDING

Marathon is a leading integrated downstream energy company that operates refineries, terminals, and associated logistics assets across the United States. Rail service is essential to the safe and continuous operation of those facilities and to the supply chains they serve, including the movement of liquefied petroleum gas ("LPG"), refined products, petrochemicals, and other fuel-related commodities. Marathon's refineries and terminals are fixed assets: they cannot readily relocate, many lack access to competing railroads, and many of their movements cannot be shifted economically or safely to another mode.

Marathon ships substantial volumes over both the UP and NS networks and through the gateways, including East St. Louis and Chicago, at which UP and NS today interchange with, and compete against, other carriers. Marathon is therefore directly and materially affected by the Transaction, and its experience as a captive shipper and as a user of merger-imposed switching remedies bears directly on the questions before the Board. Marathon has filed a Notice of Intent to Participate and is a party of record in this proceeding.

III. ANALYSIS

A. The Governing Standard Places the Burden on Applicants to Demonstrate Enhanced Competition.

Section 11324(c) of Title 49 requires the Board to approve a major transaction only if it finds the transaction "consistent with the public interest," taking into account, among other factors, "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. § 11324(b)(5), (c). The Board may impose conditions it finds necessary to protect the public interest, *id.* § 11324(c), but conditions are a means of remedying identified harms; they do not relieve applicants of their affirmative burden.

The Major Merger Rules sharpened that inquiry. The Board adopted them to place "greater emphasis in the public interest assessment on enhancing competition while ensuring a stable and balanced rail transportation system." Major Merger Rules, 5 S.T.B. at 546. Applicants must therefore propose conditions that would "enhance competition," 49 C.F.R. § 1180.1(c), in ways that "strengthen and sustain

the rail network as a whole," *id.* § 1180.1(d). Benefits that could be realized through means short of merger do not count. *id.* § 1180.1(a). And because the Board recognized that applicants have every incentive to overstate the benefits of their proposals, it requires them to propose "additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner." *id.* § 1180.1(c)(1).

Applicants will no doubt characterize the Transaction as an "end-to-end" combination of "complementary" networks with minimal horizontal overlap. That framing is beside the point. The Board's rules expressly recognize that "[a]ny railroad combination," including an end-to-end combination, "entails a risk that the merged carrier would acquire and exploit increased market power." 49 C.F.R. § 1180.1(c)(2)(i). The question is not whether UP and NS can integrate two networks or build a coast-to-coast system; it is whether the resulting combination will leave shippers like Marathon with more, not fewer, effective competitive options. Applicants have not made that showing.

B. The Transaction Does Not Enhance Rail-to-Rail Competition, and Truck-Diversion Claims Cannot Fill the Gap.

The centerpiece of Applicants' public-benefit case is modal. Applicants project that the combined system will divert some 2.1 million truckloads annually to rail and generate roughly $3.5 billion in annual shipper savings. Whatever the merit of those projections in the aggregate, and the Board has already directed Applicants to explain whether they account for competitive responses by other railroads and motor carriers, they say nothing about competition among rail carriers, which is the competitive dimension the statute and the Board's rules make central.

For Marathon, competition from trucking is not an adequate measure of competitive discipline. Many refinery and terminal movements are operationally, economically, or physically dependent on rail. Marathon will not move material trucked volumes to rail because of this merger. Applicants' truck-to-rail conversion claims therefore offer Marathon no meaningful competitive benefit and cannot offset the loss of railroad options, gateway flexibility, rate discipline, and service accountability that the Transaction threatens.

The Applicants' projected truck-to-rail conversions should not substitute for a careful examination of how the transaction will affect existing rail-dependent customers. The efficiencies associated with eliminating interchange and creating longer single-line routes may provide meaningful opportunities for intermodal and unit-train traffic, but those benefits do not themselves demonstrate improved service or enhanced competition for manifest shippers. Marathon and similarly situated refiners depend on consistent first- and final-mile execution, predictable switching, and reliable car movement to support continuous industrial operations. For these customers, the value of a larger network is ultimately determined not simply by its geographic reach or ability to attract freight from highways, but by whether the combined railroad will provide reliable service and meaningful competitive benefits at the local level. A transaction of this magnitude should enhance competition for all

classes of rail customers, regardless of whether their freight moves in intermodal service, unit trains, or manifest service. Accordingly, the Board should evaluate not only whether the merger may generate new rail traffic or eliminate interchange for certain movements, but also whether it will enhance competition and preserve or improve service for the manifest customers already dependent upon the Applicants' networks. Benefits accrued primarily to intermodal or unit-train traffic should not overshadow, or serve as a proxy for, the merger's competitive and service impacts on rail-dependent manifest shippers.

The proper inquiry focuses on the Transaction's effect on railroad routing options, alternatives, interchange alternatives, gateway access, commercial leverage, rates, and service. By consolidating two of the nation's largest networks, the Transaction would reduce the number of independent carriers available to serve key lanes and facilities. Today, NS has independent incentives to compete for Marathon's traffic, not only against UP, but in partnership with whichever western carrier best meets Marathon's needs. The Transaction would extinguish that independence permanently. An outcome that reduces independent rail alternatives cannot be squared with a requirement to enhance competition absent durable and effective countervailing benefits, and Applicants have offered none.

C. Applicants' Projections Are Not Enforceable Outcomes.

Applicants' case relies throughout on forecasts of efficiency, growth, service improvement, and truck diversion. Forecasts are not commitments. The competitive structure the Transaction would create is permanent; the benefits Applicants claim may not materialize as projected. The history of rail consolidation, including the service crises that followed the mergers of the 1990s and prompted the Board to adopt the Major Merger Rules, counsels considerable skepticism toward projected benefits that are untethered to binding obligations.

The Board's rules embody that skepticism. They demand that applicants identify what will happen if their projected benefits fail to materialize. 49 C.F.R. § 1180.1(c)(1). The Board should accordingly give substantially greater weight to enforceable outcomes, measurable service standards, and remedies available directly to affected shippers than to aspirational projections. Where, as here, the asserted benefits are largely predictive and the protections offered are largely voluntary and time-limited, the balance tips decisively against approval.

D. Committed Gateway Pricing Is Too Narrow and Too Temporary to Remedy a Permanent Structural Harm.

CGP is the only competitive enhancement Applicants have proposed. The Board itself has already observed that CGP "appears to exclude a significant amount of traffic hauled or proposed to be hauled by Applicants, terminates with the conclusion of the Board's oversight period, and may harm some shippers by incentivizing UP/NS to compete less aggressively for some traffic." Decision No. 21,

slip op. (STB served May 28, 2026). Marathon's experience confirms each of those concerns.

1. CGP is too narrow.

CGP does not cover the full range of Marathon's facilities, lanes, products, and interchange needs. A limited set of protected movements cannot substitute for commercially viable gateway access across the combined system. Marathon's supply chains are integrated networks, not a collection of isolated lanes; protecting some movements while leaving others exposed simply relocates the merged carrier's leverage rather than neutralizing it.

2. CGP is too temporary.

Applicants propose that CGP last only five years. A temporary commitment cannot offset a permanent structural change. Once a competitive routing option or independent commercial alternative is lost, recreating it may be difficult or impossible. Applicants may respond that the Board retains oversight jurisdiction and can revisit conditions if harm emerge. But the Board's own rules recognize that competitive harms become harder to remedy as consolidation proceeds, Major Merger Rules, 5 S.T.B. at 546, and a remedy that expires on a date certain, while the competitive harm it is designed to address continues indefinitely, is not a remedy at all.

3. The loss of gateway competition will impose substantial and quantifiable harm.

Gateway competition at locations such as East St. Louis and Chicago currently restrains rates, preserves routing options, and strengthens shipper bargaining power. Once those competitive checks disappear, the merged railroad could gain substantially greater pricing power over captive traffic, with particular impact on LPG, refined products, petrochemical, and fuel-related supply chains. Marathon's analysis estimates total modeled exposure exceeding $618 million over five years across captive-lane and gateway scenarios, with downside cost increases of approximately $99 million depending on how aggressively the merged carrier exercises its pricing power.

Those figures, though significant, understate the harm. The fundamental injury is not merely higher rates; it is the permanent loss of the competitive leverage that today keeps rates, routing options, and service negotiations in balance. Any gateway protection intended to remedy merger-related harm must therefore be broad, permanent, non-discriminatory, commercially viable, and supported by effective enforcement.

E. Reciprocal Switching Is Not a Substitute for Competition Between Independent Railroads.

Applicants and their supporters may contend that any residual competitive harm can be addressed through reciprocal switching or similar access remedies. Marathon respectfully disagrees, and it speaks from experience. Obtaining and using switching relief can require a shipper to prove eligibility, resolve operational disputes, manage additional handoffs, and potentially seek regulatory intervention. Those burdens delay relief and erode its commercial value.

Marathon's experience at its Salt Lake City facility under the conditions imposed in the UP/SP merger is instructive. Those conditions have not adequately addressed the harm inflicted at a Marathon facility that was reduced from two-carrier to one-carrier service. A switching carrier can develop operating plans that are ill-suited to the shipper and that discourage use of the reciprocal switch. Marathon's SLC refinery processes at least six different commodities daily, the product mix is essential to the operation and requires a corresponding mix of tank cars. Marathon has attempted to use the reciprocal switch to serve a single high-volume commodity. In practice, the switching carrier (UP) brings into the refinery all cars of that single commodity coming off the reciprocal switch, while refusing to bring in other commodity cars urgently needed that day. That service plan renders the reciprocal switch useless, because the harm caused by not receiving the cars Marathon needs exceeds the benefit of using an alternate carrier for line-haul business.

The lesson is straightforward. A condition that depends on continued oversight and case-specific enforcement cannot replicate the discipline created by two independent railroads competing for a shipper's business. Conditions may mitigate harm at the margins, but they do not establish that the merger itself enhances competition, which is what the Board's rules require. The Board should be particularly wary of any remedial architecture that, as here, would place on captive shippers the burden of policing the merged carrier's conduct facility by facility.

F. Applicants' Stated Objectives Can Be Achieved Without Eliminating an Independent Class I Railroad.

The Board's rules exclude from the public-benefit calculus benefits that "cannot otherwise be achieved." 49 C.F.R. § 1180.1(a). Railroads routinely cooperate through interchange, haulage, run-through service, joint marketing, coordinated schedules, technology connections, and other commercial and operating agreements. Those tools can improve end-to-end service without transferring permanent control of one major railroad to another.

The record developed since the application was filed makes the point concretely. Numerous new agreements have been concluded among Class I railroads, including between BNSF and CSX, and indeed Applicants' own agreements with Canadian National. These arrangements demonstrate that seamless coast-to-coast service and many of the operational efficiencies Applicants tout are attainable

through cooperation that preserves independent rail competition. Applicants contend that alliances with unaffiliated carriers are inferior because partners retain separate interests. But that independence is precisely what disciplines rates and service for shippers. If the benefits Applicants claim can be achieved through less anticompetitive alternatives, the merger is not necessary, and those benefits may not be credited in its favor. Applicants should be required to explain, with specificity, why cooperation and enforceable agreements cannot produce their stated service benefits.

G. The Transaction Would Concentrate Unacceptable Risk Over Critical Energy Supply Chains.

Rail service is operationally critical to the energy industry. Because refineries and terminals are fixed assets that often lack access to competing railroads, and because many of their movements cannot be shifted economically or safely to another mode, they are uniquely exposed to a single carrier's pricing, operating, and service decisions. The Transaction would expand UP's influence over critical energy corridors and increase the number of movements subject to those decisions.

That concentration magnifies exposure to service interruptions, commercial disputes, and network-level decisions that may not account for the operating requirements of an individual refinery. The energy supply chain requires redundancy, optionality, and meaningful carrier accountability. These are not merely private commercial concerns: reliable movement of refined products, LPG, and petrochemicals underpins fuel supply, manufacturing, and the broader economy, and is squarely within the "adequate service" and "effective competition" considerations the Board must weigh.

H. Service Failures Can Shut Down Industrial Operations, and the Board Should Evaluate Risk at the Facility Level.

Marathon's experience at its Martinez facility demonstrates that inadequate rail service can create consequences far beyond transportation inconvenience. When rail service is not reliable, refinery inventories, production plans, storage capacity, regulatory obligations, and continuity of supply are all affected. In an extreme case, a railroad can effectively constrain or shut down an industrial operation by failing to provide the service needed to move essential inputs or outputs.

Applicants' service case is framed in terms of average network performance. But averages obscure the consequences of failure at individual facilities, and it is at the facility level that service failures inflict their gravest harm. The Board should therefore evaluate the Transaction not only by reference to systemwide metrics, but by the consequences of failure of individual facilities. Integration risk, reduced carrier alternatives, and greater dependence on a single railroad are especially significant where uninterrupted rail service is essential to safe and continuous operations, as it is at Marathon's refineries and terminals.

IV. REQUESTED RELIEF

For the foregoing reasons, Marathon respectfully requests that the Board deny the Revised Application. The Transaction, as presented, does not demonstrate that it will enhance rail-to-rail competition or serve the public interest. Its asserted benefits rest substantially on truck diversion and projected efficiencies, while its competitive protections are narrow, temporary, and dependent on regulatory remedies that do not replace independent railroad competition.

In the alternative, should the Board consider approval, Marathon requests that the Board condition any approval on broad, permanent, enforceable, and operationally meaningful protections, including at a minimum:

1. **Gateway access.** Commercially viable, non-discriminatory gateway access across the combined system, including at East St. Louis and Chicago, covering all of Marathon's affected facilities, lanes, and products, rather than a limited set of protected movements.
2. **Competitive routing.** Preservation of competitive routing options and interchange alternatives for movements that today benefit from independent UP and NS routings.
3. **Service reliability.** Measurable, enforceable service standards evaluated at the facility level, including car-supply and commodity-mix obligations that prevent the kind of operating practices that have rendered switching remedies ineffective.
4. **Rate discipline.** Effective protections against the exercise of increased market power over captive traffic.
5. **Transparency.** Reporting sufficient to permit shippers and the Board to monitor compliance with each condition.
6. **Shipper remedies.** Expedited and directly accessible remedies for affected shippers that do not depend on protracted, case-by-case regulatory litigation.
7. **Duration.** All conditions to apply for the life of the merged system, rather than expiring at the end of a five-year oversight period.

Marathon reserves the right to supplement these comments, to submit verified statements and supporting evidence, to respond to the filings of Applicants and other parties, and to participate in any hearing in this proceeding.

V. CONCERN REGARDING RETLIATION AND SHIPPER PARTICIPATION

Marathon also believes the Board should take seriously the concern that rail customers may fear commercial retaliation for opposing this transaction or for otherwise expressing views contrary to those of the Applicants.

For Marathon, the concern extends beyond any explicit or readily identifiable act of retaliation. Retaliation by a railroad with substantial market power need not take the form of an express threat or an action labeled as retaliatory. At locations where Marathon has limited or no practical competitive rail alternative, UP exercises substantial influence over the rates Marathon pays, the service plans available to its facilities, operating arrangements, accessorial charges, and other commercial terms. In that environment, distinguishing retaliation from an otherwise permissible pricing, service, or operating decision can be extraordinarily difficult. A carrier need never say that a particular rate increase, service change, loss of operating flexibility, or other unfavorable commercial decision resulted from a shipper's participation before the Board. That is precisely what makes the concern so difficult for a captive or otherwise rail-dependent shipper to prove.

Marathon therefore respectfully submits that the relevant question is not simply whether a shipper can ultimately prove a discrete retaliatory act. The Board should also consider whether the combination of significant railroad market power and the practical difficulty of proving retaliatory intent can reasonably chill shipper participation in the first place. Marathon chose to participate despite that concern, but the concern will not disappear when this proceeding concludes. Whether the proposed transaction is approved or denied, Marathon will continue to depend on UP at locations where competitive transportation alternatives are limited. The possibility that a shipper's participation in a regulatory proceeding could later affect its pricing, service, operating plans, or other commercial treatment is therefore an ongoing concern.

A regulatory process intended to assess the public interest cannot function as designed if customers believe that speaking candidly may expose them to commercial consequences that are difficult to identify, even more difficult to prove, and potentially impossible to avoid.

VI. CONCLUSION

Marathon is not against rail mergers. It is against this merger, because Applicants have not shown that it will enhance rail-to-rail competition or serve the public interest. The Transaction would permanently expand market concentration while offering protections that are too narrow, too temporary, and too dependent on regulatory intervention. The service goals Applicants describe can be pursued through cooperation between carriers without eliminating an independent competitor. The Board should deny the Revised Application.

Respectfully submitted,

John F. Hack
John F. Hack (Nov 17, 2026 12:04:05 CST)

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November 17, 2026

Certificate of Service

I certify that on this day, the 17th day of November, copies of this document were served upon all parties of record in this proceeding by electronic service.

/s/ John F. Hack
John F. Hack