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BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY – CONTROL – NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY	)	Finance Docket No. 36873

COMMENTS IN OPPOSITION

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COMMENTS IN OPPOSITION

Olin Corporation ("Olin") submits these Comments in Opposition in response to the revised, primary application (the "Revised Application") by Union Pacific Corporation and Union Pacific Railroad Company (collectively, "UP") for authority to acquire control (the "Transaction") of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") (collectively, "Applicants").

SUMMARY

The proposed Transaction seeks to create the first transcontinental railroad and would concentrate an unprecedented share of the Nation's rail traffic in a single carrier. Olin, a captive shipper in a highly consolidated rail market, depends on rail service to operate its manufacturing facilities and meet its customers' requirements. If approved, the Transaction would place over 60 percent of the rail volume originating at Olin's manufacturing facilities under the control of one dominant carrier. The competitive balance between carriers and shippers is already tilted heavily in the railroads' favor. The proposed Transaction would further erode competitive options, leaving Olin vulnerable to unilateral rate increases, degraded service reliability, restrictive rate bundling, and diminished routing options. Rather than enhancing competition as required under the Board's merger standards, the Transaction

would concentrate control over most of Olin's originating traffic in a single carrier with unprecedented network-wide leverage, exposing Olin to heightened pricing power and reduced service accountability that could significantly disrupt its supply chain and undermine its ability to compete in key markets.

The Board's rules require Applicants to prove substantial, demonstrable public benefits that outweigh potential harms, a standard Applicants have failed to meet. Far from advancing the public interest, placing more than 60 percent of Olin's originating rail traffic under the control of a single transcontinental carrier magnifies the competitive and service risks Olin already faces as a captive shipper. If approved, the Transaction would significantly harm Olin, its chlor-alkali customers, and the public generally by reducing competition and threatening reliable rail transportation service for critical and essential commodities including chlorine and caustic soda, while increasing Applicants' leverage over rates, routings, and service.

Because Applicants' claimed efficiencies fall well short of outweighing these anticompetitive risks, the proposed Transaction fails the statutory public interest standard and should be denied. Should the Board nevertheless approve the Transaction, Olin urges the Board to impose the protective conditions proposed by the Joint Shipper Associations ("JSA"), supplemented by Olin's additional protections against rate bundling and for enforceable service standards, as minimum safeguards against the resulting competitive and service harms. Even those conditions cannot fully offset the competitive harms or cure the structural consequences of this unprecedented consolidation in an already highly concentrated industry.

IDENTITY AND INTEREST

Headquartered in Clayton, Missouri, Olin is a publicly traded company listed on the New York Stock Exchange with over 7,800 employees at 54 locations worldwide. Olin has three business segments: Chlor Alkali Products and Vinyls, a leading producer of bulk chlorine, caustic soda, bleach, and other chemicals in North America; Epoxy, a leading producer of epoxy products; and Winchester Ammunition, a leader in small-caliber ammunition production and a supplier to U.S. law enforcement and the military. Olin currently ships approximately 30,000 railcars of chlor-alkali commodities annually from its various North American manufacturing locations, each of which is captive to a single railroad.

Rail transportation is one of Olin's largest costs in its production and distribution process. All 11 of Olin's rail-served facilities in North America are captive to a single rail carrier, and 7 of those 11 facilities are served by either UP or NS. The proposed consolidation would create a single, massive railroad that would originate over 60 percent of Olin's total rail traffic. For a rail-dependent shipper already captive at every plant gate, concentrating that much originating traffic in one carrier would materially increase Applicants' leverage over Olin's rates, routings, and service. Olin therefore has a direct and substantial interest in the Transaction and its outcome.

COMMENTS

A. Under the Public Interest Test, the Transaction Must Enhance Competition and Protect Service

Under 49 U.S.C. § 11324(c), a proposed Class I railroad merger will be approved only if it is in the public interest. Following the 1990s rail consolidation wave, subsequent

service meltdowns, and fears of further industry consolidation, the Board adopted new merger rules. *Major Rail Consolidation Procedures*, EP 582 (Sub-No. 1), 5 S.T.B. 539 (2001) ("*2001 Rules*"); 49 C.F.R. Part 1180. These rules replaced prior pro-consolidation presumptions with a heightened burden of proof and a "skeptical 'show me'" approach toward claimed efficiencies. *Id.* at 546, 549; Decision No. 21, at 18.

Under 49 C.F.R. § 1180.1(c), applicants must prove that substantial, demonstrable public benefits outweigh potential harms. The *2001 Rules* place particular weight on enhanced competition and contemplate competitive enhancements where necessary to offset merger-related harms that cannot readily be remedied directly or proportionally. 49 C.F.R. § 1180.1(d); *2001 Rules*, 5 S.T.B. at 555. Alongside that competitive standard, 49 U.S.C. § 11324(b)(1) and 49 C.F.R. §§ 1180.1(c)(2)(i), 1180.1(h) require the Board to consider harm to essential services and require Applicants to address the substantial risk of transitional service disruptions through a detailed Service Assurance Plan. *2001 Rules*, 5 STB at 559–61.

As the Board has reiterated, the governing major-merger rules impose a "heavier burden" on Applicants. Decision No. 21, at 18. Applicants must substantiate their claims of public benefits, enhanced competition, and service adequacy with sufficient evidence and analysis.

B. The Transaction Will Competitively Harm Olin and Is Contrary to the Public Interest

Applicants have failed to meet their heightened burden under the Board's rules to prove that the proposed Transaction will enhance competition and adequately protect service. Applicants attempt to redefine the Board's legal standards by conflating single-line

convenience with enhanced competition while offering weak service commitments backed only by capped, hard-to-obtain post-hoc remedies. Combining two major railroads into a single transcontinental carrier that would control over 60 percent of Olin's originating volume creates significant competitive and operational risk for a shipper already captive at every originating facility.

1. The Transaction Weakens Competition Rather Than Enhancing It

Olin is a captive shipper operating in a highly concentrated market for rail service where effective competition simply does not exist. All 11 of Olin's North American rail-served facilities are physically captive to a single railroad at the plant gate. Over the longer term, rail rates have increased materially, including periods in which industry-wide rates and Olin's TIH rate escalations have outpaced general inflation, without commensurate improvements in the reliability and quality of rail service. The incentives inherent in the highly concentrated rail market and the current state of rail regulation already encourage the exercise of market power, with substantial ramifications for Olin and its customers competing in downstream markets.

Because captive shippers have few alternatives when contract talks stall, Olin relies on the few structural tools available to seek cost-effective service. Much of Olin's interline traffic moves under so-called "Rule 11" rates, which enable Olin to price each carrier's segment separately and evaluate different gateways or connecting railroads. Merging UP and NS would materially diminish that flexibility and remove an independent carrier option when Olin makes decisions about customer orders, contract renewals, and plant growth.

The real harm of this merger goes far beyond routes where UP and NS currently connect. Because every Olin plant is served by only one railroad, Olin cannot utilize head-

to-head rail competition at any facility to restrain rates. Instead, one of the few ways Olin can push back on high rates is to use different connecting gateways or direct future growth to whichever carrier offers better terms. Today, UP and NS operate as separate companies that must win Olin's business independently when Olin allocates customer orders, negotiates renewals, or decides where to expand production. Merging them into a single carrier controlling over 60 percent of Olin's originating shipments would put those choices under one roof, eliminate an important source of independent competition for Olin's volume, and further shift bargaining leverage toward the railroad across Olin's network.

Additionally, Applicants emphasize their plan to aggressively market and implement new single-line service across their combined system, contending that single-line service will enhance competition. But the same extended hauls Applicants tout as a competitive benefit create the means and incentive to suppress competition, as the combined UP/NS seeks to redirect traffic away from competing carriers and gateways.

Without adequate safeguards, the loss of an independent connecting carrier for interline movements reduces competition and risks less efficient rail service and higher rates for Olin. While it may be commercially natural for UP/NS to prefer the long haul and the enhanced revenues generated by single-line service to its preferred terminals and ports, unconstrained pursuit of that business plan could divert competitive traffic away from rival railroads and competing ports. Without strict limitations, UP/NS could effectively discriminate against competing interline routes by closing gateways, degrading service over competing routes, or rendering them economically noncompetitive by raising its rates for the competing interline segment, leaving shippers like Olin with fewer routing choices and degraded service.

Further, Olin's commercial experience demonstrates how originating carriers use rate bundling and artificial routing restrictions to neutralize even theoretical competitive options. For example, where Olin serves one or more destination customers that enjoy physical access to two railroads, the originating carrier frequently insists on contractual restrictions, including volume restrictions and multi-lane rate bundling arrangements, that effectively preclude Olin from routing traffic to competitive interchange points and thereby using available competitive routings. These railroad-imposed restrictions can transform physical access to a second railroad into little more than a theoretical competitive option. Placing over 60 percent of Olin's originating rail volume under a single transcontinental carrier would magnify that problem. The combined UP/NS could use its increased leverage to tie captive-plant rates to multi-plant volume commitments, restrict Olin's routing choices, and capture traffic that otherwise would move over competing carriers. Such tying would extend the competitive harm beyond Olin's captive facilities by foreclosing competitive options elsewhere across Olin's network.

2. The Transaction Creates Heightened Service Risks

Applicants rely heavily on projections of reduced average transit times from combining UP and NS into a single-line network, yet those projections are unsupported by reliable operational evidence and run directly counter to the well-documented experience of prior Class I rail mergers. As the Board recognized in adopting its *2001 Rules*, past major consolidations – including *Union Pacific/Southern Pacific* (FD 32760) and *CSX/NS/Conrail* (FD 33388) – repeatedly failed to deliver promised transit efficiencies and instead caused widespread service meltdowns, acute terminal congestion, crew shortages, and prolonged network gridlock. *2001 Rules*, 5 S.T.B. at 540–42, 558–60. Under 49 C.F.R. §§

1180.1(c)(2)(i), 1180.1(h), and 1180.10, Applicants must make an affirmative, verifiable showing of concrete service improvements and integration safeguards, a showing they have not made.

Even if Applicants could realize some single-line transit efficiencies, they would be marginal at best and would not address Olin's core operational needs. For continuous-process chemical manufacturing, reliability matters far more than a modest improvement in averages. Transit predictability and consistency drive production scheduling, customer reliability, inventory levels, and railcar fleet sizing. Across Olin's network, transit-time standard deviation is approximately +/- 4.5 days, dwarfing any modest improvement in average transit speed. Nor does eliminating an intermediate interchange solve first- and last-mile switching failures, crew constraints, yard congestion, or communication breakdowns, or materially reduce the complexity of managing Olin's multi-carrier rail network.

Olin's recent 2026 operating record illustrates the severe financial consequences of rail service breakdowns and underscores the integration risks of merging UP and NS without enforceable up-front service standards and appropriate service failure recourse and remedies:

- McIntosh, Alabama (NS): A three-month NS service breakdown caused by crew shortages, congestion, and track work forced Olin to curtail plant production for 14 days, divert 12 emergency loads to truck at an incremental cost of $8,700, and suffer unrecovered lost sales.
- Santa Fe Springs, California (UP): A two-month UP service breakdown caused by communication failures forced production curtailments and lost sales at this single-served facility maintaining only a one-day operational buffer.

Virtually all of Olin's rail traffic moves under confidential contracts that contain no enforceable service standards and exclude carrier liability for service failures. In a consolidated market, railroads simply do not offer any service standards to most shippers.

Concentrating over 60 percent of Olin's originating volume in a merging carrier magnifies the transitional service risks 49 C.F.R. § 1180.1(h) was designed to prevent, while leaving Olin with no enforceable service benchmarks up front and no effective commercial recourse when service collapses.

3. Applicants' Proposed Remedies Are Structurally Defective and Fail to Protect Olin's Service

Applicants' voluntary package, including adoption of the open gateway commitments imposed in the CPKC merger, Committed Gateway Pricing ("CGP"), a Targeted Access Program ("TAP"), a damages arbitration program, and a Service Assurance Plan, fails to satisfy 49 C.F.R. §§ 1180.1(c), (d), and (h). Rather than binding Applicants to clear, enforceable standards up front, these proposals offer weak benchmarks, narrow coverage, and capped, hard-to-obtain remedies:

a. Applicants' Gateway Commitments Do Not Create or Protect Competition

Applicants admit that CGP "was not intended to create competition with post-merger single-line traffic" and concede it "is designed to provide benefits to customers with the highest rates in relation to comparable traffic" rather than to produce competitive rates. UP-80/NS-78 at 43. CGP thus, at most, preserves, and does not enhance, competition. CGP applies to only four connecting gateways rather than all UP/NS interchanges, is restricted to traffic interchanged with only two railroads, BNSF and CSX, and excludes TIH/PIH shipments altogether, thereby excluding Olin's chlorine traffic from the program. Also, CGP sets gateway rates at the uncompetitive 70th percentile of Applicants' own comparable rates,

fails to stop UP/NS from discounting single-line rates to squeeze out interline routes or from slowing interchange switches, and expires once the Board's oversight period ends.

The CPKC open gateway commitments Applicants adopt contain no objective standard and depend on costly lane-by-lane shipper challenges that captive shippers cannot practically bring. Nor do they address bundling, which would allow a combined UP/NS steer Olin's traffic onto its long-haul routes without ever raising a gateway rate.

b. TAP and Damages Arbitration Shift the Burden Onto Injured Shippers

TAP sets unfairly high triggering thresholds that make reciprocal switching extremely difficult to obtain; reaches only sole-served shippers in terminal areas; excludes contract traffic; and provides switching for only limited periods. Because nearly all of Olin's rail traffic moves under contract, TAP offers Olin little protection. Applicants' damages arbitration program is no better. It also excludes contract traffic and caps recovery, leaving almost all of Olin's traffic outside its protection. Even if available, for Olin's single-served facilities, which can run only for very limited periods without rail service before shutting down, a limited after-the-fact damages claim does nothing to keep those plants operating or to provide adequate protection against service failures.

c. The Service Assurance Plan Lacks Binding Up-Front Standards and Offers No Permanent Protection

Under 49 C.F.R. §§ 1180.1(h) and 1180.10, Applicants must establish concrete, verifiable measures to prevent service degradation and deliver affirmative service improvements. Instead, Applicants offer an unenforceable plan that relies on internal alarms and is devoid of binding up-front service standards, measurable operational benchmarks, or automatic consequences when service fails. Specifically, the plan imposes no enforceable

requirements governing transit-time predictability, local switch performance, interchange dwell, or first- and last-mile coordination with connecting Class II and Class III railroads – the types of operational failures that disrupted Olin's McIntosh and Santa Fe Springs facilities in 2026. Nor does the plan obligate UP/NS to provide immediate service restoration or make injured shippers whole when merger integration disrupts plant operations. It instead leaves shippers to pursue slow, capped, after-the-fact remedies. Worse still, the Service Assurance Plan's commitments are temporary, offering no permanent service protection against a permanent transcontinental railroad.

C. If the Transaction Is Approved, It Should Be Conditioned on the Implementation of Appropriate Safeguards

Under 49 U.S.C. § 11324(c), the Board possesses broad statutory authority to "impose conditions governing the transaction" when approving a rail consolidation, and under its *2001 Rules* (49 C.F.R. §§ 1180.1(d) and (g)), the Board may exercise continuing oversight and impose structural or operational conditions to offset competitive harms and protect the public interest. *2001 Rules* at 555–57. While the Application fails to meet the public interest requirements, should the Board nevertheless decide to approve the Transaction, Olin urges the Board to impose the protective conditions proposed by JSA as minimum safeguards:

- **Competitive Access**: Reciprocal switching at prescribed rates for traffic originating at captive UP/NS facilities in terminal areas served by another Class I carrier, where the merged carrier obtains a longer haul as a result of the Transaction.

- **Removal of Paper Barriers**: Elimination of anticompetitive interchange restrictions that prevent or limit short-line railroads connected to Applicants from interchanging with other carriers.

- **Bottleneck-Rate Protections**: Enforceable maximum rates for captive bottleneck segments, using gateway-rate benchmarking based on comparable Class I gateway movements, so that a combined UP/NS cannot economically foreclose connecting carriers by inflating local proportional rates.

- **Enhanced Service Disruption Remedies**: Applicants' liability for direct and indirect damages from merger-related service disruptions, including for contract traffic, resolved through the Board's arbitration program.

- **Arbitration of Disputes**: Optional binding arbitration of disputes over the switching, paper barrier, and bottleneck-rate conditions.

In addition to the JSA's proposed conditions, Olin requests that the Board impose the following conditions to address the harms described above:

- **Prohibition on Rate Bundling**: A prohibition on UP/NS conditioning rates for captive traffic on multi-lane or multi-plant volume commitments, or other bundling arrangements that foreclose shippers' use of alternative routings and gateways.

- **Up-Front On-Time Performance Standards**: Binding, measurable on-time performance standards for shippers – covering transit reliability, local switches, interchange dwell, and Class II/III coordination – with automatic consequences when standards are missed. Those standards and remedies should remain in effect permanently rather than expiring after a temporary oversight period.

These conditions are minimum safeguards, not a cure for the Transaction's structural defects. They may mitigate discrete harms, including routing restrictions, rate bundling, and service failures, but they cannot restore the independent competition and shipper leverage the Transaction would eliminate. The Board therefore should not treat remedial conditions as a substitute for Applicants' affirmative burden to prove that the Transaction itself enhances competition and serves the public interest. As the Board itself recognized in 49 C.F.R. § 1180.1(c), continued rail industry consolidation produces anticompetitive effects that are "increasingly difficult to remedy directly or proportionally," reinforcing why those harms must be weighed in deciding whether the Transaction should be approved in the first place.

CONCLUSION

Applicants have failed to meet their heightened affirmative burdens under 49 U.S.C. § 11324 and 49 C.F.R. Part 1180 to prove that the Transaction would enhance competition, produce substantial and demonstrable public benefits sufficient to outweigh its harms, and protect rail service. Olin respectfully urges the Board to deny the Revised Application. Should the Board nevertheless approve the Transaction, it should impose the above-referenced conditions as minimum safeguards necessary to protect Olin and other shippers.

Respectfully submitted,

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Dated: November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2026, I caused copies of the foregoing to be served by email or by first-class mail, postage prepaid, upon all parties of record in this proceeding and upon the other individuals that the Board has identified for service.

/s/ Peter A. Pfohl