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

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COMMENTS OF THE
WESTERN COAL TRAFFIC LEAGUE

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TABLE OF CONTENTS

PAGE

SUMMARY 1

IDENTITY AND INTEREST.....2

COMMENTS 3

A. The Transaction Must Enhance Competition and Protect Service.....3

B. The Transaction Is Contrary to the Public Interest 4

1. The Proposed Transaction Will Increase Market Power at WCTL Members' Expense 5

2. The Proposed Transaction Creates Substantial Service Risk and Fails to Protect WCTL Members.....6

C. Conditions Cannot Cure the Transaction 9

1. If the Transaction Is Approved, Minimum Protective Conditions Are Necessary.....9

CONCLUSION 10

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The Western Coal Traffic League ("WCTL") submits these Comments in response to the application as revised (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 Transaction asks the Board to approve still further consolidation on the same premise that has accompanied every major merger: a larger, more streamlined railroad will produce efficiencies and better service. The record of the last four decades is the opposite. Consolidation increased carrier profitability and market power without producing stronger price competition, sustained customer-focused investment, or reliable service. WCTL members would receive no new western carrier, competitive route, capacity, or service benefit, but would remain exposed to UP's pricing power in an even more consolidated market and the operational risks of a multiyear integration. Applicants have not carried the heavier burden imposed by *Major Rail Consolidation Procedures*, EP 582 (Sub-

No. 1), 5 S.T.B. 539, (2001) ("*2001 Rules*"), and the Board should deny the Revised Application.

No condition can create the missing western competition or eliminate the risks of the largest rail integration yet proposed. If the Board nevertheless approves the Transaction, it should impose binding customer-specific service and restoration obligations on Applicants, require them to bear the full cost of merger-related service failures, and permanently exclude the acquisition premium from regulatory cost and investment measures capable of affecting coal rates and contracts. Those are minimum defensive protections, not a cure for a Transaction that fails the public interest test.

IDENTITY AND INTEREST

WCTL is a voluntary association formed in 1976 whose regular membership consists entirely of shippers, receivers, and consumers of coal mined west of the Mississippi River and transported by rail. Its members are Ameren Missouri; Arizona Electric Power Cooperative, Inc.; Austin Energy (City of Austin, Texas); CLECO Corporation; CPS Energy; Entergy Services, Inc.; Evergy, Inc.; Lower Colorado River Authority; MidAmerican Energy Company; Minnesota Power; Nebraska Public Power District; and Western Fuels Association, Inc.

WCTL represents its members' interests in rail transportation matters affecting the price, availability, and reliability of western coal service. Its members depend on western Class I railroads to move high-volume coal traffic over long distances, with limited or no transportation alternatives. WCTL has a direct and substantial interest in the proposed Transaction, which will increase railroad market power while exposing customers to merger-related service failures.

COMMENTS

A. The Transaction Must Enhance Competition and Protect Service

The statutory test is not whether the Transaction benefits UP and NS, but whether it serves the public interest. 49 U.S.C. § 11324(c). Applicants bear the burden of demonstrating substantial public benefits sufficient to outweigh the Transaction's competitive and service harms.

The *2001 Rules* reflect the hard lessons of the prior merger cycle. Major mergers repeatedly produced serious service disruptions, while consolidation left fewer independent Class I railroads, diminished competitive constraints, and was followed by higher rates and deteriorating service for many rail customers. *2001 Rules*, 5 S.T.B. at 546, 549, 560; 49 C.F.R. Part 1180. The Board also recognized that another major merger could trigger further combinations and determine the industry's final structure. *Id.* at 560; 49 C.F.R. § 1180.1(i). It therefore imposed a "heavier burden," required "greater emphasis" on enhanced competition, and adopted a skeptical, "show me" approach to claimed benefits and service assurances. *Id*.

Those requirements respond directly to the painful history WCTL members experienced as prior merger promises failed to materialize. The Board acknowledged that "many of the benefits claimed by applicants in recent mergers have been delayed by transitional service problems, frustrating both the Board and the shipping community." *Id.* at 558-59. Applicants therefore receive no presumption that greater size serves the public. They must prove that this Transaction will benefit rail customers and the national rail system rather than repeat the failures of the prior merger cycle and accelerate the final round

of consolidation the Board warned against. *Id.* at 560; 49 C.F.R. §§ 1180.1(c), 1180.1(i), 1180.6(b)(12).

B. The Transaction Is Contrary to the Public Interest

WCTL has warned about the harms of rail consolidation for more than four decades. In the major merger proceedings that have reshaped the industry since 1980, WCTL cautioned that further consolidation would diminish competition, increase carrier market power, and expose rail-dependent shippers to higher rates and unreliable service. The mergers were approved nonetheless, and the predicted results followed, as the Board later acknowledged. *Id.* at 546, 549, 558-60.

But the structural problems remained. WCTL has participated in the principal Board and ICC proceedings addressing rail competition and service.[1] Those proceedings addressed competitive access, service failures, rate remedies, capacity, and other consequences of consolidation, but produced few meaningful remedies. The industry remains highly concentrated, effective competitive alternatives remain limited for many rail-dependent shippers, and recurring service failures continue. The Board has repeatedly observed these problems without curing them, sometimes noting its jurisdictional and institutional limitations. Against that history, Applicants' reliance on single-line convenience and limited post-hoc service remedies does not establish enhanced competition, customer value, or adequate service protection. The Board should not approve a Transaction that would further concentrate the industry on the premise that post-merger regulation will protect shippers.

[1] *E.g.*, EP 558 and its annual sub-dockets; EP 661 and EP 661 (Sub-No. 2); EP 671; EP 672; EP 704 (Sub-No. 1); EP 705; EP 711 (Sub-Nos. 1 and 2); EP 722; EP 723; EP 724 and EP 724 (Sub-No. 4); EP 740; EP 755; EP 761; EP 767; EP 770; and EP 775.

1. The Proposed Transaction Will Increase Market Power at WCTL Members' Expense

Four decades of consolidation produced larger, more concentrated, and highly profitable Class I railroads. Railroad financial success is not the statutory test; the question is whether further consolidation produces public benefits for customers rather than additional private gains for the merged company. The record of consolidation is the opposite of Applicants' "bigger is better" premise:

- higher carrier profitability has not produced stronger price competition or expanded rail output;
- greater scale has not assured aggressive investment in customer capacity, redundancy, or service;
- efficiency and productivity gains have not reliably been passed through in lower prices or better service; and
- western coal consumers have limited or no alternatives, while the Transaction creates no new western carrier or competitive routes.

Railroads have substantial fixed costs and economies of scale, scope, and density, but those characteristics make competitive discipline more important, not less. Greater scale and lower unit costs are public benefits only if they reach customers, and Applicants therefore must show that claimed merger-specific efficiencies will discipline prices, expand output, improve service, or produce customer-focused investment. Benefits achievable through less restrictive arrangements are not merger-specific. 49 C.F.R. § 1180.1(c). The industry's experience provides no basis to presume such pass-through: rail volumes have declined or stagnated, substantial cash flow has been returned to shareholders, and repeated service failures have occurred while carriers grow increasingly profitable. The Transaction would extend that pattern, eliminate another independent Class I railroad, and risk the further

combinations addressed by the *2001 Rules*. 5 S.T.B. at 560; 49 C.F.R. § 1180.1(i). It promises WCTL members no new western carrier or competitive route and no enforceable assurance that claimed efficiencies will reach customers. A larger railroad may be more profitable; Applicants have not shown that it will be better for the customer.

The Transaction presents another significant problem for WCTL members: an acquisition premium of approximately $25 billion that could affect Applicants' regulatory rate base and the regulatory cost and investment measures derived from it. Those measures include URCS and other variable-cost calculations including the jurisdictional threshold, revenue-adequacy net investment, and RSAM-related benchmarks. These measures matter to WCTL members even though most or all of their coal moves under contract because they can influence standard escalators, contract reopeners, cost benchmarks, and carrier negotiating positions in setting or renewing rates. The premium reflects what UP chose to pay NS shareholders, not any increase in the cost of serving WCTL members or any new western track, equipment, capacity, or service. That substantial potential harm is completely unaddressed.

2. The Proposed Transaction Creates Substantial Service Risk and Fails to Protect WCTL Members

Major rail mergers repeatedly have produced serious service disruptions despite extensive planning. BN/SF, UP/SP, and the division of Conrail impaired service across large portions of the rail network; UP/SP disrupted western rail activity for nearly a year and imposed hundreds of millions of dollars in costs. The Board accordingly concluded that transitional service disruptions are likely. Planning may reduce that risk; it cannot eliminate it. *2001 Rules*, 5 S.T.B. at 546, 558-59.

Later crises reflected the same deficiencies in capacity, maintenance, equipment, and preparation for foreseeable demand. Precision Scheduled Railroading increased that risk by reducing crews, equipment, capacity, and redundancy in pursuit of operating-ratio improvements, leaving the network less able to absorb disruption. Repeated regulatory review, hearings, and intervention have not prevented further breakdowns.

Applicants' so-called Service Assurance Plan does not protect customers from that risk: they impose no binding, customer-specific service standards; monitoring and problem-resolution teams respond only after service deteriorates; arbitration requires a "substantial deterioration in service" and caps monetary relief; and after-the-fact relief cannot restore depleted inventories, missed production, replacement-fuel costs, or service while the railroad recovers. For high-volume coal customers, those limitations are consequential: service failures can interrupt production, increase transportation and fuel costs, disrupt maintenance, force replacement power purchases and loss of wholesale power sales opportunities, and impair electric reliability, while alternative rail service is unavailable.

Nor can WCTL members rely on market substitution when a major railroad experiences integration-related service problems. During the UP/SP service crises, BNSF lacked the resources to provide substitute service for most western coal traffic and, where it had resources, sought premium rates and long-term commitments from UP customers. The result was not effective market substitution, but the "severe service disruptions that have cost shippers nationwide hundreds of millions of dollars." Brief for Respondent STB at 4, 10-11, *W. Coal Traffic League v. STB, et al.*, No. 00-1115 (D.C. Cir. 2000). That history is especially important for high-volume western coal movements, where substitute rail capacity

is not available on demand, especially as all carriers have embraced Precision Scheduled Railroading.

The Transaction adds integration risk without delivering a corresponding service benefit to WCTL members. Their coal traffic does not depend on NS, and the acquisition creates no western capacity, crews, locomotives, redundancy, or alternative service. Yet UP would commit management, capital, technology resources, and operating attention to a multiyear eastern integration.

The resulting allocation of risk is one-sided: systemwide metrics may identify deterioration after it begins, but cannot deliver a missed train or substitute transportation at the required scale. Applicants retain the Transaction's gains, while WCTL members bear the consequences if integration diverts resources or destabilizes western operations. Applicants must prove that integration will not degrade western service, divert needed investment, or impair network resilience. They have not, and the recurring cycle of assurances, service failure, and public cost weighs heavily against approval.

A particular risk of the Transaction is the Applicants' focus on intermodal. Efforts to grow intermodal traffic are likely to come at the expense of carload traffic, including the unit train movements of WCTL members. Unit trains are more likely to be held to accommodate the demands of intermodal customers, which are more likely to have a competitive trucking alternative. When disruptions arise and corrective investment is needed, Applicants will look to increase rates on traffic, including coal, that lacks such an alternative. If the intermodal gains fail to materialize, Applicants will look to their carload traffic to recoup their acquisition premium. The consolidation of UP and NS into a single URCS is likely to result

in higher URCS than if UP remained by itself. Again, WCTL members stand to bear the burden of the Transaction, but not share in any of its potential benefits.

C. Conditions Cannot Cure the Transaction

No condition can supply what the Transaction lacks. Nor can any condition eliminate the risks of integrating the largest rail system ever proposed or undo the industry-wide consequences if the Transaction precipitates further Class I consolidation. The *2001 Rules* require those cumulative impacts and crossover effects to be decided as part of the public interest determination itself. 5 S.T.B. at 560; 49 C.F.R. § 1180.1(i). Competition and service conditions may mitigate discrete injuries; they cannot transform a Transaction that fails the public interest test into one that satisfies it.

No practicable condition can create a third western railroad, duplicate the infrastructure needed to serve western coal traffic, or provide capacity, crews, locomotives, and substitute service when needed. Since Applicants have not established, and cannot establish, that the Transaction itself enhances competition and protects service, the Revised Application should be denied.

1. If the Transaction Is Approved, Minimum Protective Conditions Are Necessary

If the Board nevertheless approves the Transaction, WCTL requests defensive conditions directed to harms identified in Part B.

First, throughout the integration period, the Board should impose binding, customer-specific service standards and prohibit Applicants from diverting crews, locomotives, equipment, capital, technology resources, or other resources from western operations to eastern integration where doing so would impair or materially risk pre-Transaction service

levels. Standards should address loaded and empty cycle times, transit-time consistency, requested and delivered tonnage, trainsets, switching, interchange performance, and crew and locomotive availability. Material deterioration should trigger a written restoration plan identifying the cause, committed resources, measurable recovery milestones, and a firm restoration date, backed by expedited Board relief, make-up service where feasible, and continuing Board jurisdiction.

Second, Applicants should bear the costs of merger-related service failures and make affected contract shippers whole. Relief should cover reasonably documented losses resulting from merger implementation, including replacement transportation or fuel, purchased power, production curtailments, lost sales opportunities, and additional inventory and equipment costs. It should contain no monetary cap or contractual limitation of liability. Applicants chose the Transaction and stand to receive its benefits; they, not their customers, should bear the risk and cost if its implementation causes service failures.

Third, the Board should permanently exclude the acquisition premium and all acquisition-related write-ups and purchase-accounting adjustments from regulatory cost and investment measures capable of affecting coal rates and contract negotiations, including URCS and other variable-cost calculations, revenue-adequacy net investment, and RSAM-related benchmarks. For the reasons discussed in Part B.1, *supra*, WCTL members and shippers generally should not bear the premium, directly or indirectly, through the regulatory measures and negotiating benchmarks affecting their contracts.

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. Accordingly, the Board should deny the Revised Application. If the Board nevertheless approves the Transaction, it should impose WCTL's requested conditions as minimum safeguards.

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