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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

EASTERN BERKS GATEWAY RAILROAD COMMENTS AND REQUEST FOR CONDITIONS

Eastern Berks Gateway Railroad Company ("EBG"), a wholly owned subsidiary of the community development nonprofit Colebrookdale Railroad Preservation Trust ("CRPT"), respectfully submits these comments and request for conditions in response to the Surface Transportation Board ("STB" or "Board") Decision No. 30 in the above-captioned proceeding setting a procedural schedule. EBG takes no position on whether the transaction as proposed by the Applicants should be approved. If it is approved, EBG asks the Board to make its approval subject to the three conditions described below, without which the transaction would not be consistent with the public interest. *See* 49 U.S.C. § 11324(c).

I. EBG'S INTEREST IN THE CONTROL TRANSACTION.

EBG is a Class III common carrier that operates the 8.6-mile Colebrookdale Line between Boyertown, in Berks County, and Pottstown, in Montgomery County, Pennsylvania. At milepost 0.0 in Pottstown the line connects with the Harrisburg Line of one of the Applicants, Norfolk Southern Railway Company ("NS"). That connection is EBG's only link to the national rail network. EBG is a handling-line carrier: NS sets the through rate and the route, and EBG is paid

an allowance for each car it handles. EBG's traffic includes petroleum coke, agricultural products, fuels, and industrial materials. EBG shippers include energy distributors receiving propane and butane, and other shippers to be named with their consent. EBG handles roughly 460 carloads a year, of which approximately 5% moves in joint-line service with a western carrier other than UP. EBG has had to turn away more than 4,000 carloads and some two dozen prospective shippers since 2018, principally because the line could not accept 286,000-pound cars, a limit that the public investment described below will remove.

As noted, NS is the only railroad that serves EBG as an interchange partner. The nearest point at which the Harrisburg Line meets CSX Transportation, Inc. ("CSXT") is the line's eastern end in Philadelphia, near East Falls, about 35 miles east of EBG's interchange with NS at Pottstown.

After the Board authorized the line's abandonment in 2008, Berks County bought it in 2009 to preserve rail service. EBG, then owned by U.S. Rail Partners, has provided common carrier service on the line since 2010 under a modified certificate of public convenience and necessity. *E. Berks Gateway R.R.—Modified Rail Certificate—in Berks Cnty., Pa.*, FD 35383 (Oct. 13, 2010). CRPT acquired control of EBG in 2013 and has operated heritage passenger excursions, and, through EBG, freight, on the line since 2014.[1] The Redevelopment Authority of the County of Berks ("RACB") has owned the line since 2014 and leases it to EBG under a long-term lease that provides for EBG to take title to the line. EBG has successfully developed freight

[1] The first tourist train ran on January 17, 2014, and the line opened for regular passenger service in October 2014. It is operated as the Colebrookdale Railroad. The railroad's passenger trains, educational programs and vocational training serve more than 60,000 people a year, from at-risk, formerly incarcerated and formerly homeless people to visitors from around the world.

traffic on the line, which once again serves as a lifeline for the region's major industrial employers.

EBG is a community-centered, economic development enterprise whose objective is service-driven rather than profit-driven. Its mission is not to pay shareholders but rather to serve local businesses, thereby expanding the region's industrial base.

EBG provides local switching services. It also offers car storage and car repair. It can also arrange loading/unloading services from the railcars directly to trucks along with warehousing and storage. It has at its disposal two transload yards with highway access. Other developable parcels are located near or adjacent to the railroad.

Since 2013, federal, state and county governments, foundations and private donors have committed approximately $135 million to rebuild and develop this corridor and to build a multimodal hub at Pottstown. Federal awards account for about $54 million of that total: a $25 million BUILD grant awarded in July 2026 for the Pottstown hub; $16 million in Railroad Crossing Elimination funds awarded in June 2023 for ten grade crossings and three bridges on the line; $10.1 million in Consolidated Rail Infrastructure and Safety Improvements (CRISI) funds, for which the Federal Railroad Administration selected EBG's project in October 2026, to rehabilitate about five miles of track and enable 286,000-pound railcar capacity; and Community Project Funding and Save America's Treasures grants. Pennsylvania programs have provided about $31 million, and Berks and Montgomery Counties and their redevelopment authorities more than $15 million, including $12 million committed by Berks County in May 2026 for track and bridges. Private donors, foundations and volunteers have contributed about $36 million in gifts, grants, donated property and in-kind labor, and CRPT is paying the entire $3.7 million non-federal share of the CRISI project from its own funds, without borrowing. The BUILD project

adds track to separate freight from passenger movements, expands yard capacity, rehabilitates the High Street bridge, and builds pedestrian links to the Schuylkill River Trail and the transit hub.

Three pieces of NS property at Pottstown matter here, all within a couple of miles of each other along the Harrisburg Line. The first is the EBG interchange with NS. The second is the Reading Company's 1928 passenger station, listed on the National Historic Register, now the Charles W. Dickinson Transportation Center and the hub of Pottstown Area Rapid Transit. It stands beside the line on which the Schuylkill River Passenger Rail Authority and Amtrak agreed in July 2026 to advance Reading–Philadelphia intercity service with a stop at Pottstown at or near this station.[2] The third is NS's Thoroughbred Bulk Transfer terminal at 291 South Keim Street, run for NS by a contract operator, which transloads dry and liquid bulk, chemicals, plastics, petroleum products and steel between rail and truck.

However, EBG has had difficulties with its sole Class I interchange partner, NS, in obtaining adequate service to move freight to and from its local customers because its interchange partner does not want to provide service in certain circumstances. Unfortunately, to connect to the national rail network, EBG has no other interchange options available to it except through a reciprocal switch or haulage rights.

II. COMMENTS

A. A Reciprocal Switch or Haulage Rights Would Provide Adequate and Needed Service to EBG, Thereby Protecting it From a Loss of Competition and Service Problems Due to the Merger.

[2] The SRPRA–Amtrak agreement is a memorandum of understanding announced July 15, 2026 (Amtrak as proposed operator; Amtrak to perform ridership, revenue and cost tasks for Corridor ID Step 2 at no cost to SRPRA; stops at Reading, Pottstown and Phoenixville).

EBG asks the Board to impose a condition on this transaction involving a reciprocal switch or haulage rights which would allow EBG to interchange with CSXT at a nearby interchange point. These rights are important for EBG's captive customers to connect to domestic and global markets. This proposed right would also create local industrial development. Traffic that would use it exists today: a Boyertown major local plastics user receives its inbound product by CSXT to Philadelphia and then trucks it to Boyertown, because no CSXT route reaches EBG. A CSXT connection would let that product move by rail to Boyertown. At present, NS operates ineffectively as a large railroad in terms of traffic moving from EBG. Cars frequently arrive late, sit in yards for days, or arrive in bunches too large to be accommodated at our interchange or storage yards and transloaded in a timely fashion, resulting in car hire and demurrage fees that hurt our customers and our relationship with them. Other NS-service concerns have caused us to incur significant expense that, ultimately, in one form or another, gets passed onto our customers. On one occurrence, NS placed a line of cars into our interchange that was too long for the track, blind shoving the end of the string—at night—across a 4-lane highway and (albeit unknowingly) leaving it there. On another occasion, NS stopped a mainline train at our interchange for the purpose of setting off a trash car that was on-fire—and left it there—without contacting us. Lastly, we have regularly communicated the need to have the interchange track tamped and raised on the side of the interchange derail device that only NS can access. These requests have gone unresponded to, causing a safety concern that reduces train speeds and thus requires us to spend more time and money We share this only to indicate that NS's ability to adequately service us in a way that keeps costs down for our customers is already in question. This service is more at risk if NS becomes part of UP's cross continent single-line network. The reciprocal switching or haulage rights that EBG seeks here will benefit local industry and industrial development by enhancing competition for EBG's customers.

B. The standard: when the Board may deny or condition a major merger.

1. The statute makes competition and adequacy of service required considerations.

"The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." 49 U.S.C. § 11324(c). In a merger of two Class I railroads, the Board "shall consider at least" five factors, among them "the effect of the proposed transaction on the adequacy of transportation to the public" and "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." § 11324(b)(1), (5). The rail transportation policy that informs the public interest standard directs the Board "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes." 49 U.S.C. § 10101(4). It is also the policy of the United States "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail" and "to avoid undue concentrations of market power." *Id.* § 10101(1), (12).

2. Under the 2001 rules, applied here for the first time, Applicants carry a heavier burden and are expected to enhance competition.

The Board has called this a "consequential proceeding of first impression," one that "requires application of the Major Merger Rules for the first time." *Decision No. 37*, slip op. at 4 (served Sept. 18, 2026). Those rules begin from disfavor. 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). A merger serves the public interest "only when substantial and demonstrable gains in important public benefits—such as improved service and safety, enhanced

competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms." *Id.* at (c). Because further consolidation is "likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately," the rule provides that "merger applications should include provisions for enhanced competition," and that "the Board is prepared to use its conditioning authority as necessary under 49 U.S.C. § 11324(c) to preserve and/or enhance competition." *Id.*

The Board has already said what this means in this docket. Under the 2001 rules, "applicants bear a heavier burden to show that a major rail combination is consistent with the public interest," and the Board takes a "more skeptical, 'show me' attitude toward claims of merger benefits and toward claims that no transitional service problems would occur." *Decision No. 21*, slip op. at 18 (served May 28, 2026) (quoting *Major Rail Consolidation Procs.*, 5 S.T.B. 539, 546, 549 (2001)). The rules reflect a policy shift that "places greater emphasis on the public interest assessment on enhancing competition while ensuring a stable and balanced rail transportation system." *Id.* at 19 (quoting 5 S.T.B. at 546).

3. Four ways an application can fail

a. Reduced competition, including from an end-to-end merger.

"Competition in product and geographic markets can also be eliminated or reduced by mergers, including end-to-end mergers," and "[a]ny railroad combination entails a risk that the merged carrier would acquire and exploit increased market power." 49 C.F.R. § 1180.1(c)(2)(i). In its last major merger decision, the Board declined to presume that a vertical combination is competitively harmless. *See Decision No. 30*, 91 Fed. Reg. 53927, 53931 (Aug. 20, 2026) (citing

Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 3, 19, 47 (STB served Mar. 15, 2023)). In this case, the Board has observed that the opposition centers on "concerns about competitive harm stemming from vertical foreclosure and the loss of geographic competition." *Decision No. 37*, slip op. at 3.

b. Harm to essential services.

"The Board must ensure that essential freight, passenger, and commuter rail services are preserved wherever feasible," and it "will consider whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and Class III rail carriers and ports) to sustain essential services." 49 C.F.R. § 1180.1(c)(2)(ii). "An existing service is essential if there is sufficient public need for the service and adequate alternative transportation is not available." *Id.*

c. Transitional service failure.

"Experience shows that significant service problems can arise during the transitional period when merging firms integrate their operations, even after applicants take extraordinary steps to avoid those disruptions," and the Board "will weigh the likelihood of transitional service problems." *Id.* at (iii). The required Service Assurance Plan must address "connecting railroads (including Class II and III carriers)." *Id*. at (h)(1).

d. Failure to enhance competition.

"To offset harms that would not otherwise be mitigated, applicants should explain how the transaction and conditions they propose would enhance competition." § 1180.1(c)(2)(iv). Applicants' conditions "should not simply preserve, but also enhance, competition," and Applicants "must explain how they would preserve competitive options for shippers and for

Class II and III rail carriers." 49 C.F.R. § 1180.6(b)(10), (b)(10)(i). The Board has said what enhancement looks like. Applicants could focus "on enhancing intramodal (rail-to-rail) competition, for example, by the granting of trackage rights, the establishment of shared or joint access areas, the removal of 'paper' and 'steel' barriers, and other techniques that would enhance railroad-to-railroad competition." *Decision No. 21*, slip op. at 19 (quoting 5 S.T.B. at 554). It has also said what it made of Applicants' original proposal: "the sole competitive enhancement Applicants propose—CGP [Committed Gateway Pricing]—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." *Id.* at 20. Applicants answered in July by widening CGP and adding three commitments: a Targeted Access Program for sole-served shippers in terminal areas, a condition meant to preserve Class I access at 2-to-1 and 3-to-2 shipper facilities, and a rate dispute resolution program. *See Decision No. 30*, 91 Fed. Reg. at 53928. These commitments do not help EBG's loss of competition if the merger is approved and are generally procedurally difficult to use when applicable.

Two further considerations cut across all four. The Board "cannot evaluate the merits of a major transaction in isolation" and "must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination." 49 C.F.R. § 1180.1(i). And it weighs "whether the benefits claimed by applicants could be realized by means other than the proposed consolidation." *Id*. at § 1180.1(c).

4. Short lines are inside these rules by their terms.

The 2001 rules "strengthened consideration of a merger's impacts on communities, employees, shortline railroads, ports, and others." *Decision No. 21*, slip op. at 18. They describe

the industry "(including Class II and III carriers)" as "a network of competing and complementary components." 49 C.F.R. § 1180.1(a). They require applicants to delineate "the projected impacts of the transaction on the ability of various network links (including Class II and Class III rail carriers and ports) to participate in the competitive process and to sustain essential services." *Id*. at § 1180.7(b)(6). They provide that the service plan "should inform Class II and III railroads and other connecting railroads of the operational changes or changes in service terms that might affect their operations." *Id*. at § 1180.10(a). And in this docket, the Board directed Applicants to "[c]onfirm that Applicants do not intend to take any action to reduce or eliminate the access of any Class II carrier, Class III carrier, or a port to a Class I carrier following the Transaction, including, for example, through changes involving interchange commitments, lease arrangements, routing, or service." *Decision No. 21*, slip op. at 23.

5. The conditioning power reaches reciprocal switches, access to facilities, and the short line portion of the network.

"The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities," and trackage rights imposed to alleviate anticompetitive effects "shall provide for operating terms and compensation levels to ensure that such effects are alleviated." 49 U.S.C. § 11324(c). Under the rules, the Board "will condition the approval of Class I combinations to mitigate or offset harm to the public interest"; it "may impose conditions that are operationally feasible and produce net public benefits, but will not impose conditions that undermine or defeat beneficial transactions by creating unreasonable operating, financial, or other problems for the combined carrier"; and it "seeks to enhance competition in ways that strengthen and sustain the rail network as a whole (including that portion of the network operated by Class II and III carriers)."

§ 1180.1(d). The Board has already invoked that last sentence in this docket. *Decision No. 21*, slip op. at 27.

The Board's older cases add limits that Applicants will invoke where "the consolidation may produce effects harmful to the public interest," and the condition "will ameliorate or eliminate the harmful effects, will be operationally feasible, and will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits produced by the merger." *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 20 (STB served Mar. 15, 2023) (quoting *Burlington N. Inc.—Control & Merger—Santa Fe Pac. Corp.*, 10 I.C.C.2d 661, 729 (1995)). A condition "must be narrowly tailored to remedy the harm it is intended to address," and where "the harm to be remedied consists of the loss of a rail option, any conditions should be confined to restoring that option rather than creating new ones." *Id.* at 20–21 (quoting 10 I.C.C.2d at 730). The Board described these criteria as its "pre-2001 policy." *Id.* at 20. How they fit with the enhancement language of the 2001 rules is a question this case will answer. The first condition requested here by EBG meets the older criteria as written. The second and third rest on the newer rules.

C. How each ground arises at Pottstown

1. Competition: the merger takes away EBG's only neutral connection.

NS is an eastern railroad. Its lines end at the western gateways. For any EBG shipment with an origin or destination in the West, NS must hand the car to a western railroad, and it has no reason to prefer one over another except price and service. BNSF, UP, CPKC and CN compete for that handoff. In the past, approximately 5% of the Colebrookdale's traffic moved in joint-line service with BNSF, CN, or what is now CPKC. The rules require applicants to

explain how they would "at a minimum preserve competitive and market options such as those involving the use of major existing gateways." 49 C.F.R. § 1180.1(c)(2)(i). For EBG's traffic, NS's neutrality at the western gateways is that option.

If UP controls NS, the carrier that handles every car to and from EBG also owns one of the competing western routes. That is the condition for vertical foreclosure. Applicants' competitors have described the same incentive to the Board in their own markets. BNSF, addressing intermodal traffic to the Northeast: "If the Board approves the proposed merger, however, UP/NS would have the ability and incentive to ensure that BNSF is not a competitive option from a pricing and service perspective." BNSF-53 at 8. CSXT, addressing a port terminal that NS alone serves, said a combined UP/NS "would have both the ability and incentive to exploit" that exclusive access. CSXT-25 at 9.

A shipper located on a Class I line and facing that problem has some recourse. It may have another railroad within trucking distance, or the volume to bargain. EBG's shippers have less, and EBG has none. As a handling-line carrier, EBG does not set rates or choose routes. NS does. EBG cannot offer a competing joint rate over a different route because it has no other connection. The option that disappears is specific: an eastern line-haul carrier with no western route of its own. Within reach of Pottstown, exactly one such carrier will remain after the merger, and it is CSXT.

2. Service reliability: a one-connection short line has no fallback.

Every EBG car depends on one NS local reaching one interchange. When a Class I integration goes badly, and the Board's rule is written on the premise that it can, a shipper in a terminal may have another railroad across town. EBG's shippers do not.

Applicants' answer to service failure is a Targeted Access Program that offers reciprocal switching to a UP/NS customer that is sole-served and located in a terminal area. UP-80/NS-78 at 22–23 (filed July 27, 2026). Pottstown and Boyertown technically are not in a terminal area, making this remedy completely ineffective for EBG. Moreover, this relief invites further litigation, thereby making it ineffective. And intercity passenger service is being planned on the line through Pottstown, which will add to the demands on it.

3. Enhancement: Applicants offer a temporary pricing commitment, not a second carrier.

Committed Gateway Pricing may apply to some EBG traffic. Applicants say it reaches shippers on short lines that interchange solely with UP/NS. *See* UP-80/NS-78 at 31. But consider what it is. It is a commitment about the price of the UP or NS leg of an interline move, made by the carrier that holds the bottleneck. It does not add a carrier. It ends: it "would remain in place until the end of the oversight period." *Id.* at 37. It leaves out traffic interchanged with CN and CPKC. *Id.* at 30–31. In the past, our line's butane and propane traffic has interchanged with these Canadian roads. And it leaves out "shipments to and from railroad-owned transload facilities," *id.* at 36, which at Pottstown means the TBT terminal, the principal public transload in the area, where a shipper without its own siding reaches rail. The Board's concern that CGP "may harm some shippers by incentivizing UP/NS to compete less aggressively for some traffic" applies at Pottstown as it does elsewhere. *Decision No. 21*, slip op. at 20.

Applicants' other July commitments do not apply at Pottstown at all. The Targeted Access Program is less effective than an emergency service order. The condition for 2-to-1 and 3-to-2 facilities protects shippers who lose a Class I carrier, and EBG's shippers have only ever had one. The rate dispute program is a backstop if promised benefits fail to appear. And Applicants' answer to Request A-4, that they "do not intend to reduce or eliminate existing

access for short lines or ports to a Class I railroad," *id.* at 66, is a statement of intention that promises nothing better than today. The rules ask for more than preservation.

4. Cumulative effects: this is the proceeding in which EBG's end state is fixed.

The Board's rule expects rivals to respond to an approval. *See* 49 C.F.R. § 1180.1(i). If the response is a second transcontinental combination, the industry's end state is essentially two systems. A short line connected to only one of them would be captive to it permanently, and no later proceeding is likely to be about Pottstown. Applicants "are expected to discuss whether any conditions imposed on an approval of their proposed merger would have to be altered, or any new conditions imposed, if the Board should approve additional future rail mergers." 49 C.F.R. § 1180.6(b)(12)(ii). A CSXT connection holds up in either future. If CSXT stays independent, it is the neutral eastern carrier. If CSXT later combines with a western railroad, EBG connects to both systems.

Nor would a later stand-alone reciprocal switching case be a substitute. In the forty years since its adoption, part 1144 of the Board's rules "has been rarely invoked, and the agency has never issued a prescription under its framework." *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788, 91 Fed. Reg. 945, 947 (Jan. 9, 2026) (proposing repeal). The Board's 2024 rule for reciprocal switching based on inadequate service has been vacated, *Grand Trunk Corp. v. STB*, 143 F.4th 741, 754 (7th Cir. 2025). Section 11324(c) gives the Board authority to address that problem now, in this proceeding.

5. The public's stake: adequacy of transportation and passenger service.

The first statutory factor is "the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1). Here, the public has put its own money behind that adequacy, on the premise that

the rebuilt EBG line connects to a competitive network and that the hub connects to the transit center. That investment now totals approximately $135 million. Two federal awards came this year: the $25 million BUILD grant in July and, in October, FRA's selection of EBG's CRISI project to "enable 286,000-pound railcar capacity, and increase operating capacity." Fed. R.R. Admin., *FY 2025-2026 Consolidated Rail Infrastructure and Safety Improvements (CRISI): Project Selections* (Oct. 2026). Whether those investments produce what they were appropriated for will turn on decisions made by the merged carrier about one interchange, one yard and one station track. The line's lease reflects the same dependence: EBG may terminate it if EBG "is no longer able to interchange traffic with Norfolk Southern or [its] successor." Lease & Operating Agreement between RACB and EBG § 14.01(e).

The merger rules also reach passenger service. Essential "passenger, and commuter rail services" are to be "preserved wherever feasible," 49 C.F.R. § 1180.1(c)(2)(ii), and Applicants' service plan must "establish operating protocols ensuring effective communications with Amtrak and/or regional rail passenger operators to minimize any potential transaction-related negative impacts." 49 C.F.R. § 1180.10(b). Applicants have said publicly that "[t]he combined network will honor existing passenger performance and contractual agreements, including long-term expansion projects." *See* Union Pac. Corp. & Norfolk S. Corp., *Committed to Our Continued Partnership with Passenger Rail* (Aug. 7, 2026), https://www.up-nstranscontinental.com/news-details/committed-to-our-continued-partnership-with-passenger-rail/. The intercity stop planned for Pottstown is such a project. CRPT's access to the same station is its local complement.

D. The remedy sought by EBG: three conditions that operate as one.

The three conditions map onto the concerns above as follows.

Concern in the merger standard	Where the rule states it	How it appears at Pottstown	Condition that answers it
Loss of competition from an end-to-end merger; vertical foreclosure	§ 11324(b)(5) § 1180.1(c)(2)(i)	EBG's sole connection becomes a carrier with its own western route.	1. Second Class I connection
Expectation that applicants enhance competition, including for Class II and III carriers	§ 1180.1(c), (d) § 1180.6(b)(10)	CGP is temporary, adds no carrier, and excludes the transload terminal.	1 and 2. Haulage or reciprocal switching rights; a jointly accessible terminal
Transitional service failure; essential services	§ 11324(b)(1) § 1180.1(c)(2)(ii)–(iii), (h)	One interchange and one local, with no fallback for shippers.	1 and 2. An alternate outlet; terminal capacity in local hands
Cumulative and downstream effects	§ 1180.1(i) § 1180.6(b)(12)	One connection in a two-system future.	1. Second Class I connection
Passenger service and adequacy of transportation to the public	§ 11324(b)(1) § 1180.1(c)(2)(ii) § 1180.10(b)	A funded hub and a planned intercity stop at Pottstown.	3. Station access

1. Condition 1: a second Class I connection.

What it is. EBG remains a handling-line carrier for UP/NS on today's terms and becomes one for CSXT as well. Both carriers may quote through rates to EBG stations, and EBG delivers for whichever wins the traffic. CSXT traffic reaches the Pottstown interchange in one of two ways. The first is UP/NS haulage of EBG–CSXT cars between Pottstown and the nearest CSXT junction, in UP/NS's own trains, for a cost-based charge. The second is a reciprocal switch for CSXT over the Harrisburg Line from the nearest point it otherwise reaches, limited to interchange with EBG. Today that point is the Harrisburg Line's eastern end in Philadelphia,

near East Falls, about 35 miles east of Pottstown. If the Board grants CSXT's request for rights to Wyomissing Junction, it will be about 21 miles west.

Why it fits the standard.

- It restores the option the merger removes. Where the harm is "the loss of a rail option," the remedy should restore "that option." The option lost is a connecting carrier that is neutral among western routes. Today, only CSXT can supply it. If the Board grants BNSF the rights it has requested on the Harrisburg Line, a BNSF connection would serve the same purpose.
- It is structural and permanent. Committed Gateway Pricing is behavioral and temporary.
- It makes EBG's line a shared access area in miniature: two Class I carriers, one neutral local carrier.

Why it is feasible.

- The volume is small. The EBG interchange averages about nine cars a week. By haulage or reciprocal switch, it requires no additional trains and no foreign crews.
- The Board will be deciding Class I access to this line in any event. CSXT and BNSF have each asked for overhead rights on the Harrisburg Line as far east as Wyomissing Junction. CSXT-25 at 7–8; BNSF-53 at 9 n.9. Neither Class I request reaches Pottstown. So EBG asks the Board to close the last few miles, by haulage if not by granting these requests by CSXT and BNSF to Pottstown.
- Compensation is governed by the statute: operating terms and compensation levels must "ensure that such effects are alleviated." 49 U.S.C. § 11324(c).

The Board has granted smaller railroads access to a second Class I connection before. In the *Conrail* case, the Wheeling & Lake Erie received overhead haulage or trackage rights to reach Toledo and Lima, 3 S.T.B. 196 (1998); in *UP/SP*, Tex Mex received trackage rights to reach KCS at Beaumont, 1 S.T.B. 233 (1996).[3]

2. Condition 2: the Pottstown terminal.

What it is. An option for EBG to lease and operate, or to purchase at fair market value, NS's Thoroughbred Bulk Transfer terminal at 291 South Keim Street, subject to existing third-party agreements, together with the right to move between EBG's line and the terminal over NS track designated by agreement.

Why it fits the standard.

- An interchange needs room. And EBG's Pottstown trackage is a single track through the area where CRPT boards passengers. EBG's trackage at Pottstown must serve both freight and CRPT's passenger trains. The terminal is existing rail-served capacity where a second carrier's cars could be set out and picked up without occupying the Harrisburg Line main;
- It is the second technique the Board named, a shared or joint access area: a terminal open to both carriers' traffic and operated by the neutral short line.

[3] *See CSX Corp.—Control—Conrail Inc.*, FD 33388, Decision No. 89 (STB served July 23, 1998), 3 S.T.B. 196, slip op. at 109, 181 (Ordering ¶ 68) (granting, on W&LE's responsive application in Sub-No. 80, "overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railroad and other railroads there" and "overhead haulage or trackage rights to Lima, OH, including a connection to the Indiana and Ohio Railroad"); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760, Decision No. 44 (STB served Aug. 12, 1996), 1 S.T.B. 233 (granting Tex Mex's responsive application in Sub-No. 13 for trackage rights to connect with KCS at Beaumont, restricted to traffic with a prior or subsequent movement on the Laredo–Robstown–Corpus Christi line), *aff'd sub nom. W. Coal Traffic League v. STB*, 169 F.3d 775 (D.C. Cir. 1999).

- The rules recognize transloading as one of the ways shippers obtain competition. § 1180.1(c)(2)(i). A Pottstown-area shipper without a siding reaches NS through this terminal and Committed Gateway Pricing excludes it.
- It keeps a local facility in use. Small transload terminals are exposed when a merged system is rationalized. Run from Pottstown by the carrier whose business is local service, this one has an operator with every reason to keep it open and grow it.

Why it is feasible. NS already relies on a contract operator at this terminal. Nothing about UP/NS's line-haul changes. The terms are commercial, and the traffic EBG develops there moves in a Class I carrier's line-haul, much of it likely UP/NS's.

3. Condition 3: Pottstown Station

What it is. An agreement permitting CRPT passenger trains to operate between the EBG connection and a station track at the historic station, on reasonable terms for dispatching, operating windows, insurance and indemnity. If Applicants prefer, the agreement may provide for a dedicated station track within the right-of-way so that no passenger movement occupies the main line.

Why it fits the standard. EBG does not claim that an existing service to the station is being lost. Its point is narrower. The station is where the public's investments converge: the transit hub is there, the BUILD project builds pedestrian links to it, and Pottstown is a planned stop for Reading–Philadelphia intercity service. Until 1950, the Colebrookdale branch's own passenger trains ran from this station. Congress has provided $800,000 in fiscal year 2026 Community Project Funding for Colebrookdale Railroad trains to reach Pottstown. Whether a rider can step from a CRPT train to a bus today, and to an Amtrak train later, depends on a few thousand feet

of NS track. After the merger, access decisions on the Harrisburg Line, for CRPT and for the intercity service alike, will rest with a larger carrier whose priorities are farther away. Applicants have told the public they will honor long-term passenger expansion projects. This condition asks them to bring the same cooperation to the one station in this corridor where a funded project is waiting.

Why it is feasible. The movement is short and slow. The statute's conditioning power expressly includes "access to other facilities," § 11324(c), and a station track is one. The terms that matter to the owning railroad (dispatching control, operating windows, insurance and indemnity) are left to negotiation.

4. Why the three are one remedy

- The connection without the terminal is limited to what today's interchange track can hold.
- The terminal without the connection changes the operator but not the competition.
- The station without the other two is a separate request. With them, it is the passenger half of a single operating arrangement over the same 1.5 miles, negotiated once.

Each condition can stand alone, and the Board may impose any one without the others. Taken together they use the techniques the Board listed (trackage rights or their haulage equivalent, a joint access area, and opening a short line's access to a second carrier) and confine them to one short line, its one interchange, and one town. They "enhance competition in ways that strengthen and sustain the rail network as a whole (including that portion of the network operated by Class II and III carriers)." 49 C.F.R. § 1180.1(d). And because a second outlet and a busier terminal can add traffic to Applicants' own system, they "produce net public benefits" without "creating unreasonable operating, financial, or other problems for the combined carrier." *Id.*

E. Conclusion

The 2001 rules ask whether a merger of this size enhances competition and protects service across the whole network, including the part of it that short lines operate. At Pottstown the transaction replaces EBG's one neutral connection with a carrier that competes for the traffic beyond it, and Applicants' commitments offer a temporary price promise in place of a second carrier. Three small conditions would change that. EBG asks the Board to impose them on any approval.

Respectfully submitted,

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Attorney for Eastern Berks Gateway Railroad Company

Dated: November 18, 2026

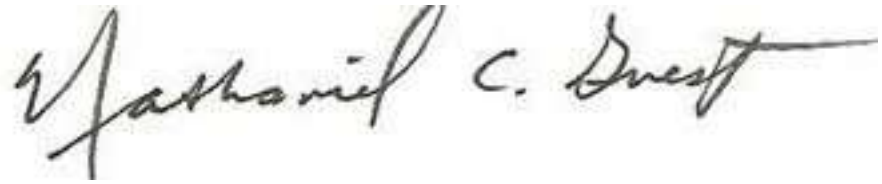
CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Comments and Request for Conditions to be served electronically on the Secretary of Transportation and the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Daniel R. Elliott
Daniel R. Elliott

VERIFICATION

I, Nathaniel Guest, President of the Eastern Berks Gateway Railroad Company, declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to make this Verification on behalf of the Eastern Berks Gateway Railroad. Executed on November 17, 2026.



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Nathaniel Guest