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PHILLIPS66-2

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

Opening Comments and Request for Conditions of Phillips 66 Company

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Dated: November 18, 2026

PUBLIC VERSION

Phillips 66 Company ("Phillips 66") respectfully submits these "Comments and Request for Conditions" on the application of Union Pacific Railroad (UP) to acquire Norfolk Southern Railway (NS) (collectively "Applicants") in STB Finance Docket No. 36873. This statement is supported by the attached Verified Statement of Anil Nath, Director, Rail Transportation for Phillips 66 ("Nath V.S.").

I. Statement of Interest

Phillips 66 is a member of the American Fuel & Petrochemical Manufacturers (AFPM), which also is submitting comments on this merger as part of a coalition of trade associations participating in this proceeding as the "Joint Shipper Associations," or "JSA." Phillips 66 is filing separately to highlight how the competitive issues raised by the JSA directly affect Phillips 66 and to request conditions specific to Phillips 66 to mitigate those issues, if the Board approves this merger.

Phillips 66 operates an integrated portfolio across Midstream, Refining, Chemicals, Marketing and Specialties, and Renewable Fuels, with assets located throughout the United States and the world. Headquartered in Houston, Texas, the company's global workforce has long been focused on operating safely and reliably while providing energy, improving lives, and supporting the transition to a lower-carbon future. The company comprises a diverse mix of heritage, joint venture, and acquired brands that reflect decades of industry experience. Since becoming a standalone company in 2012, Phillips 66 has invested in significant infrastructure projects that expanded its presence across the crude oil and natural gas liquids value chains.

In this proceeding, Phillips 66 is focused on four of its production facilities that will directly experience the anticompetitive effects of the proposed merger. The facilities are the Bayway Refinery, Wood River Refinery, Sweeny Refinery, and Rodeo Renewable Energy Complex. Bayway can access rail service from both NS and CSX because it is in the North

Jersey Shared Asset Area established in the STB decision approving the acquisition and division of Conrail by CSX and NS.[1] Wood River is captive to NS for rail service. Both Sweeny and Rodeo are captive to UP. All three captive locations are close to potential connections with alternative rail carriers.

The Bayway Refinery is located on the New York Harbor in Linden, New Jersey. Bayway's facilities include crude distilling, naphtha reforming, fluid catalytic cracking, solvent de-asphalting, hydrodesulfurization and alkylation units. The complex also includes a polypropylene plant with the capacity to produce up to 775 million pounds per year. The refinery produces a high percentage of transportation fuels, as well as petrochemical feedstocks, residual fuel oil and home heating oil. Refined petroleum products are distributed to East Coast customers by pipeline, barge, railcar and truck.

The Wood River Refinery is located in Roxana, Illinois, about 15 miles northeast of St. Louis, Missouri, at the confluence of the Mississippi and Missouri rivers. Refinery facilities include crude distilling, naphtha reforming, fluid catalytic cracking, alkylation, hydrocracking, hydrodesulfurization and delayed coking units. The refinery produces a high percentage of transportation fuels. Other products produced include petrochemical feedstocks, asphalt and fuel-grade petroleum coke. Refined petroleum products are distributed to customers throughout the Midcontinent region by pipeline, railcar, barge and truck.

The Sweeny Refinery is located in Sweeny, Texas, approximately 65 miles southwest of Houston, Texas. Refinery facilities include crude distilling, naphtha reforming, fluid catalytic cracking, alkylation, hydrodesulfurization, aromatics units, a vacuum distillation unit, and a delayed coking unit. The refinery produces a high percentage of transportation fuels. Other

[1] *CSX Corp.—Control—Conrail Inc.*, 3 S.T.B. 196, 228 (1998).

products include petrochemical feedstocks, home heating oil and fuel-grade petroleum coke. majority of the refined petroleum products are distributed to customers throughout the Midcontinent region, southeastern and eastern United States by pipeline, barge and railcar.

The Rodeo Renewable Energy Complex is one of the largest renewable fuels facilities in the world. The complex, which is partially powered by solar energy, uses feedstocks like waste oils, fats, greases and vegetable oils to produce Renewable Diesel and Sustainable Aviation Fuel. The facility's geographic location, feedstock flexibility, scale and transportation logistics in Rodeo, California make it a leading supplier of renewable fuels. Lower-carbon fuels like renewable diesel, sustainable aviation fuel (SAF) and renewable naphtha are a natural extension of Phillips 66's current business and allow it to build on core adjacencies to become a market leader.

II. Concerns Regarding Potential Anticompetitive Effect of the Merger

The JSA have identified two forms of vertical foreclosure threats from UP's proposed acquisition of NS.[2] The JSA label these "Traditional Foreclosure" and "RRC Foreclosure."

[2] The Applicants deny the potential for vertical foreclosure on multiple grounds to which the JSA respond in their comments. One of those grounds is the applicability of the "one-lump" or "single monopoly profit" theory, which holds that a vertical merger of an upstream monopolist with a downstream competitor does not result in vertical foreclosure because the upstream monopolist was able to capture the full monopoly profit on the entire transaction even before the merger. The Board rejected that theory in the recent CPKC merger decision. *Can. Pac. Ry. Ltd. – Control – Kans. City. S.*, Decision No. 35, FD 36500, slip op. at 46 (served Mar. 15, 2023) ("CPKC Decision"). That decision is correct based on the facts of how Phillips 66 contracts with both UP and NS today. Most interline movements between Phillips 66 facilities and interchanges with connecting Class I railroads traverse the same bottleneck segment to the interchanges regardless of the ultimate destination. Nath V.S. at 4. For each commodity, the bottleneck segment rate is the same regardless of the ultimate destination. *Id.* Indeed, UP and NS are not always aware of the ultimate destination when negotiating contracts with Phillips 66. *Id.* Because the monopoly profit is likely to be different for each complete movement to the ultimate destination, a uniform bottleneck segment rate is highly unlikely to capture the full monopoly profit for each complete movement. This fact works against the argument that the one-lump theory applies to the railroad industry.

Phillips 66 could experience both forms of vertical foreclosure. To mitigate that exposure, Phillips 66 is requesting competitive access at Wood River, Sweeny, and Rodeo, with such access having a residual mitigating effect at Bayway.

A. Traditional Foreclosure

Traditional Foreclosure occurs on interline movements when either the origin or the destination is captive to either UP or NS and either the destination or the origin, respectively, is served by the other railroad and a third railroad (i.e., a competitive location). In Figure 1 below, Phillips 66 has identified thirteen traffic lanes that pose Traditional Foreclosure concerns. Phillips 66 identified these lanes from a review of its 2023 through 2025 traffic data filtered for lanes with 50 or more carloads annually. Figure 1 groups the lanes by Phillips 66 facility and identifies the origin, destination, commodity, route, annual carloads, and alternative rail carriers to UP and NS at either the origin or destination. Nath V.S. at 5-6.

Figure 1{{



}}

Of the four Phillips 66 facilities included in Figure 1, only Bayway currently has two-carrier rail access, to NS and CSX. On rail routes between Bayway and locations that are rail-served solely by UP, the merger will create a single line service option. Lane Nos. 2 and 5 in Figure 1 are two such routes:

- {{[redacted]}}
- {{[redacted]}}

Although nominally, Phillips 66 still could choose a UP-CSX interline route for those movements, Phillips 66 is concerned that UP has both the ability and incentive to prefer its new single-line route post-merger.

The other three Phillips 66 facilities are not dual-served and thus are not directly subjected to Traditional Foreclosure in the same way as Bayway, but they either tender shipments to or receive shipments from dual-served locations that are vulnerable to Traditional Foreclosure. In Figure 1, Phillips 66 has identified eleven routes between those three facilities and dual-served locations that would allow the Applicants to engage in Traditional Foreclosure by self-preferencing their new single-line service over an interline alternative.

Although Figure 1 highlights thirteen specific routes, Phillips 66 is concerned with UP's ability to foreclose other potential interline route options that could arise in the future. As Figure 1 shows, the Phillips 66 rail routes vary from year-to-year. Of the thirteen routes in Figure 1, only two had volumes in all three years analyzed. The other eleven lanes had volume in only one of three years. It thus is important to preserve competitive interline options on future routes too.

B. RRC Foreclosure

In addition to a loss of direct competition from Traditional Foreclosure, the JSA raise concerns based on the "raising rivals' cost," or "RRC," economic paradigm. RRC refers to advantages that merging entities achieve not through greater efficiency, but by raising the costs of their rivals. This can occur through Traditional Foreclosure, which completely forecloses a competitor from participating in a movement, and it also can occur by partially foreclosing a competitor.

This merger may facilitate partial foreclosures on interline movements between a captive UP location and a captive CSX location and between a captive NS location and a captive BNSF location.[3] These are interline moves today and will continue to be interline moves post-merger. But whereas the interchange currently occurs where the eastern and western carrier networks meet at the Mississippi River gateways, post-merger, the combined UPNS can push the CSX interchanges further east and the BNSF interchanges further west.

The JSA identify the competitive consequences from these interchange shifts. By short hauling interline partners, UPNS effectively reduces their revenue and raises their costs. As more traffic switches to the UP long-haul routes, it is reasonable to anticipate the interline partners will lose density both at their legacy (i.e., pre-merger) interchanges and on their main lines between the legacy interchanges and the destinations. This means that there is less traffic to cover the fixed costs of those assets, forcing the remaining traffic that depends upon those facilities to bear more of those costs through higher rates, reduced service, or both. By raising its rivals' costs, UP could make them less competitive, which also allows UP to charge higher rates

[3] The Traditional Foreclosure scenario captures movements to CSX and BNSF locations when open, but not when captive.

or, at the very least, retain the pecuniary benefits of merger-related efficiencies for itself rather than share them with its customers.

Notably, although UP argues that the single-line service it can provide under Traditional Foreclosure scenarios offers an off-setting benefit to shippers, there is no such benefit from RRC Foreclosure scenarios because those routes will remain interline routes post-merger, only the location of the interchange will change.

Furthermore, single-line service is less significant to shippers like Phillips 66. A mere 20-to-24-hour improvement in rail transit time would not materially benefit Phillips 66. Nath V.S. at 2-3. In fact, the Applicants proposed transcontinental single-line service poses some unintended operational challenges for Phillips 66. As UP blocks cars deeper in its network, there is less flexibility for Phillips 66 to divert cars, send them to storage when a plant is disrupted, or keep the cars from causing congestion at the local serving yards. This could add costs to Phillips 66 by forcing it to divert cars closer to the destination back to another destination, whereas it now can divert cars before the interchange with the interline carrier occurs. *Id.* at 3.

Single line service would not cause Phillips 66 to shift any of its truck movements to rail. *Id*. Reliable, consistent service matters much more than average transit time. Nath V.S. at 2-3. In the experience of Phillips 66, delays in first-mile and last-mile service (local pickup and delivery) are more common and more disruptive than delays at interchange between railroads. *Id*. at 3. The Applicants do not claim that this merger will improve first-mile, last-mile service.

In contrast, Phillips 66 primarily uses trucks for movements with different characteristics and priorities. For example, Phillips 66 will ship by truck to locations that do not have rail access, when a rail-served location requires a priority shipment, and when the recipient has a precise delivery schedule. Nath V.S. at 2. Single-line rail service will not alter any of these

factors and thus is unlikely to cause Phillips 66 to shift current truck shipment volumes to rail. Therefore, even single line service associated with Traditional Foreclosure does not offer significant benefits to Phillips 66.

Lastly, single line service would not make tracking rail cars easier for Phillips 66. Railinc's TMQ tracking system is the TransmetriQ® rail management platform, offering real-time railcar tracking, shipment visibility, and bill of lading module utilized by Phillips 66. This is the source that the railroads submit all their CLM's to regardless of what 3rd party fleet management system is utilized. Nath V.S. at 3. Phillips 66 would still need these systems post-merger because it still would have to track railcars on its other interline movements. Phillips 66 considers it advantageous to use this single system to track rail cars rather than the separate systems of each railroad. *Id.* Therefore, new UP single line service is unlikely to offer benefit in that respect either.

The potential harm from RRC Foreclosure is not offset by benefits from single line service on the subset of traffic for which UPNS could offer such service. The harm also is not limited to the traffic that would be foreclosed, because RRC Foreclosure could raise the cost of UP's interline partners to serve their other traffic as well. This harm is because this merger could raise the costs of UP's rivals, principally CSX and BNSF. As a significant shipper on both rail networks, Phillips 66 would experience this harm on movements over those carriers.

C. Foreclosure Methods

As the JSA points out, there are at least three tools by which to engage in Traditional Foreclosure. UP could price its segment of a UP-CSX or UP-BNSF interline route too high to be competitive with its new single line route; it could provide a lower quality of service on the interline route versus its single-line route; and it could tie its rate offers on other captive Phillips 66 traffic to the selection of UP's single line routes over alternative interline routes through the

common practice of "contract bundling." Phillips 66 is concerned that UP could engage in foreclosure through any or all three means.

The only protection that Phillips 66 has against foreclosure through the rates UP could set for its segment of a UP-CSX interline route is to challenge the reasonableness of the UP tariff rate at the STB. That is not a practical solution. In Figure 1, only Lanes 6 and 7 had a high volume of traffic in any single year and any volume in all three years. Every other lane had much lower volumes in just a single year, which is indicative of the fact that many Phillips 66 rail lanes change from year-to year. By the time the STB issues a decision, a route may not be active. And tendering traffic at a high tariff rate while a rate case is pending, with the expectation of receiving an uncertain refund amount at the conclusion, is an unacceptable risk. Nath V.S. at 4-5. Compounding that risk is the ability of UP to refuse to contract with Phillips 66 for other captive traffic if Phillips 66 pursues a rate challenge for the foreclosed movements. That would require Phillips 66 to pay UP's higher tariff rates for even more of its traffic and potentially expand its rate challenge to those rates too. In other words, UP could insist upon bundling all this traffic together into a single contract to create a substantial financial disincentive for Phillips 66 to pursue a rate case. Consequently, the cost of pursuing a rate reasonableness challenge far outweighs the potential benefit of a successful case even before considering the risk associated with high litigation costs and an uncertain outcome.[4]

UP also could foreclose alternative interline routes through the quality of service it provides on its portion of such routes. UP might respond that this could not occur because

[4] A rate case under the stand-alone cost, or SAC, methodology would cost millions of dollars and take years to litigate. A rate case under the simplified Three-Benchmark methodology would cost six figures, require approximately a year to litigate, and have a lower potential for success because the methodology results in smaller rate reductions, if any.

interline and single-line traffic would move on the same trains. But that is not automatically true and could become less likely post-merger. First, UP does not always interchange with NS and CSX, nor NS with UP and BNSF, at the same location for all routes. Second, even for routes where the interchange is at the same location today, the Applicants have presented an operating plan for their new single-line service that internalizes those routes to the UP-NS network, bypassing the current gateway interchanges. Furthermore, even for traffic that still must be interlined with CSX in the east for delivery to exclusively served CSX destinations (or BNSF in the west), that interchange is likely to shift closer to those destinations under the RRC Foreclosure scenario to take advantage of UP's longer haul opportunities post-merger. This means that UP will move fewer carloads through the legacy gateways post-merger, which could be reflected in less frequent service and, also, higher prices due to the need to cover the same fixed costs from less volume. Therefore, it is entirely plausible that UP's portion of interline service will be both lower quality and more expensive.

Contract bundling is the third means of foreclosure and potentially the most prevalent. When Phillips 66 negotiates contracts on its merchandise traffic with UP and NS today, those contracts routinely cover multiple lanes and facilities. They also cover both captive and competitive movements. {{ [redacted] }} Nath V.S. at 4. {{ [redacted] }} *Id.* By acquiring NS, UP will increase its access concentration to even more Phillips 66 traffic, both captive (e.g., Wood River) and competitive (e.g., Bayway), and thereby increase its bundling leverage to capture more competitive traffic,

capture more post-merger long haul opportunities, and increase the already high risk to Phillips 66 of pursuing rate cases. UP's ability to capture competitive traffic, therefore, is not necessarily attributable to UP being more competitive on those routes, but instead, to UP's ability to leverage the rates it charges on its stable of captive movements to persuade Phillips 66 to award UP the competitive movements.

The Applicants may assert that UP would capture more competitive traffic from Phillips 66 post-merger because its new single line service will be more competitive than the alternative interline service. But UP would be ignoring its own ability to force that outcome through its pricing and service on the interline route as discussed above. And as discussed in the preceding section, Phillips 66 does not consider single line service to be a significant merger benefit.

III. Request for Conditions.

The JSA discusses the types of conditions that, at a minimum, should be imposed if the Board proceeds to approve this merger. They point out the necessity of creating new rail competition on the pre-merger bottleneck segments to legacy gateways to preserve a neutral rail carrier on those segments with which the downstream interline carrier can interchange traffic to receive a longer haul than it could when interchanging with the Applicants over their post-merger long-haul routes.

The remedy of restoring a neutral carrier to the pre-merger bottleneck segment also comports with the Board's expression in the 2001 Merger Rules that future mergers were unlikely to be in the public interest without conditions to enhance competition. The Board observed that, due to the scale of the transaction that we would be asked to approve in future major rail merger applications, we believe that offering some new or enhanced rail-to-rail competition or other competitive benefits is likely to be necessary to resolve substantial

difficulties so as to tip the balance in favor of the public interest."[5] This policy of enhancing competition through mergers is particularly apt in vertical foreclosure situations because the remedy for losing a neutral bottleneck carrier from this merger is the restoration of a neutral alternative to the merged carrier through enhanced competition.

Phillips 66 asks the Board to impose three conditions that would fulfill that objective at its Wood River, Sweeny, and Rodeo facilities. In so doing, those conditions also could mitigate the anticompetitive effects of foreclosure at the Bayway facility to preserve the benefits of its existing competitive rail service between CSX and NS.

A. Wood River, IL

Phillips 66 asks the Board to condition this merger by granting competitive access to the Wood River Refinery, which spans the Roxana and Hartford stations, in one of two ways. The preferable alternative is to grant the Terminal Railroad Association of St. Louis (TRRA) trackage rights over NS to provide drop-and-pull service that provides Wood River with connections to all the other Class I railroads at East St. Louis. The second option is to require the post-merger UPNS to provide a reciprocal switch to East St. Louis to interchange with the other Class I railroads.

Of the four facilities covered by these comments, competitive access at Wood River would have the greatest benefit. {{[redacted]}}

[5] *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 550 (2001). *See also*, 49 C.F.R. § 1180.1(c) ("to assure a balance in favor of the public interest, merger applications should include provisions for enhanced competition, and, … the Board is prepared to use its conditioning authority…to preserve and/or enhance competition").

Wood River also is located within the "Gateway Watershed Area" where the Applicants anticipate generating most of the merger's alleged benefits. Because the new UPNS single-line rail service that is the source of those benefits also creates competition foreclosure opportunities by destroying the neutrality of NS on interline routes to/from competitively served locations, enhancing competition at watershed area facilities better promotes those benefits without the foreclosure risk. The {{ }} Wood River lanes in Figure 1 illustrate this fact.

{{ }}. Those are all lanes where NS has a very short linehaul (<15 miles) before interchanging this traffic with UP. Those routes have competitive options at the destinations that are available to Phillips 66 today. Post-merger, however, UP would have a single line route and thus the ability to foreclose those other options. Competitive access at Wood River, however, would provide competitive single line opportunities for BNSF on Lanes 6 and 8-10, and for CPKC on Lane 7. The resulting enhancement to competition would be two single line routes on each of those lanes competing for this traffic.

Similarly, {{ }}. Again, each involves very short linehauls for NS. And BNSF can provide competing rail service from each origin to East St. Louis that UP could foreclose post-merger. Competitive access at Wood River would provide competitive single line opportunities for BNSF, allowing two single line routes to compete for this traffic.

Granting trackage rights to TRRA between Wood River and East St. Louis would replace UPNS service for that short movement with a neutral shortline that interchanges with all the Class I carriers in East St. Louis. To accomplish this operation at Wood River, the following actions are needed:

- Phillips 66 would engage a third party to provide switching services inside the plant in lieu of the current service that NS provides.
- NS either to sell or provide a long-term (~50 year) lease of three NS tracks that Wood River currently leases. {{ }} Nath V.S. at 6.
- If a lease rather than a sale is prescribed, NS must grant the third-party switch provider at Wood River the right to operate to, from, and over all three lease tracks.
- Trackage rights for TRRA over the NS line from East St. Louis to Wood River for a reasonable trackage rights fee consistent with STB precedent.

Alternatively, Phillips 66 requests that NS provide a reciprocal switch to East St. Louis for $800 per car. This effectively would be the same service that NS provides today for a line-haul rate of {{ }} per car plus fuel surcharge. Nath V.S. at 6. Although NS still would provide the transportation to and from East St. Louis, it would be at a rate that allows the other Class I rail carriers to access Wood River for truly enhanced competition that also prevents foreclosure on routes to and from Wood River.

Finally, in addition to solving the Traditional Foreclosure situations at Wood River, competitive access will contribute to mitigating the systemic RRC paradigm consequences of this merger. Enhanced competition at Wood River is a piece of a much broader systemic solution.

B. Sweeny, TX

Phillips 66 asks the Board to grant BNSF direct access to serve the Sweeny Refinery. This would be operationally feasible since BNSF already operates over the UP mainline that serves Sweeny via trackage rights that it obtained in the UP-SP merger. Moreover, BNSF serves the adjacent ChevronPhillips Chemical Company facility vis access it obtained pursuant to the

"New Facilities" condition in the UP-SP merger. Because Phillips 66 uses a third-party switcher inside the Sweeny Refinery, BNSF would only need to provide "drop-and-pull" service. Nath V.S. at 7. Therefore, expanding BNSF service to the Sweeny Refinery is as simple as granting BNSF the right to serve it directly.

BNSF access to Sweeny will directly address the Traditional Foreclosure effect on {{ }} from Sweeny to Bayway. By establishing BNSF as a neutral carrier from Sweeny to the interchange with CSX, UP will not have the ability to foreclose an interline CSX route from competing against the post-merger UPNS single-line route.

For several reasons, it would be insufficient to grant BNSF access solely to serve that route. First, this one lane is unlikely to provide BNSF enough density to justify serving Sweeny. Second, the RRC paradigm is a systemic problem that requires a systemic solution. Enhanced competition for a single bottleneck movement cannot redress that problem. In other words, BNSF access at Sweeny is just a small piece of a broader systemic solution.

C. Rodeo, CA

Phillips 66 asks the Board to grant BNSF access to the Rodeo Complex. A reciprocal switch appears to be more operationally feasible than direct service because of commuter train operations on the mainline, a rack capacity of just {{ }}, and UP services the rack. UP serves Rodeo from its Ozol yard and interchanges traffic with BNSF at its Pittsburg Yard approximately 5 miles away. Nath V.S. at 7.

BNSF access to Rodeo will directly address the Traditional Foreclosure effect on {{ }} in Figure 1. Like Sweeny, {{ }} in Figure 1, the Bayway Refinery is at the opposite end of {{ }}. Therefore, by establishing BNSF as a neutral carrier from Rodeo to the interchange with CSX, UP will not have the ability to foreclose an interline CSX route from

competing against the post-merger UPNS single-line route from Bayway to Rodeo in {{ }}. In the same way that BNSF access protects existing competition at the Bayway Refinery from Traditional Foreclosure, it also protects existing competition at {{ }}, respectively, to Rodeo.

For the same reason addressed regarding Sweeny, it would be insufficient to grant BNSF access solely to {{ }} because that access is just a small part of a systemic solution. In addition, Phillips 66 expects to increase its shipments of renewable feedstock to Rodeo from eastern origins that would benefit from this condition.

Lastly, access to Rodeo via reciprocal switch can only be effective if the switch rate allows the alternative routes to be commercially competitive. To achieve that, Phillips 66 requests that the STB prescribe a switch rate of $600 per car.

D. Bayway, NJ

Phillips 66 is not seeking any condition that is specific to Bayway. As noted above, the Bayway Refinery currently has dual-railroad service from NS and CSX. Phillips 66 is concerned that its access to CSX-UP interline routes remains commercially viable, post-merger, in the face of the identified foreclosure risks. The solution to that problem is the restoration of a neutral carrier over the UP bottleneck segments on those interline routes. The conditions requested above for Wood River, Sweeny, and Rodeo are part of that solution including, but not limited to, routes between those facilities and Bayway. Lanes 2 and 5 in Figure 1 are two examples of this. As discussed under the "RRC Foreclosure" heading, however, the raising rivals' cost paradigm requires a systemic solution as opposed to lane-by-lane.

Respectfully submitted,

/s/ Karyn A. Booth

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Dated: November 18, 2026

PUBLIC VERSION

Certificate of Service

I certify that on November 18, 2026, a copy of the foregoing "Opening Comments and Request for Conditions" was served by electronic mail upon all parties of record on the Service List in this proceeding.

/s/ Karyn A. Booth
Karyn A. Booth

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PUBLIC VERSION

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

Verified Statement of Anil Nath

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1. My name is Anil Nath. I am Director, Rail Transportation for Phillips 66 Company ("Phillips 66"). I am submitting this statement in support of the "Opening Comments and Requests for Conditions of Phillips 66 Company" in the above-captioned proceeding in which Union Pacific Railroad ("UP") has requested regulatory approval to acquire Norfolk Southern Railway ("NS") (collectively "Applicants"). I have personal knowledge of the facts in this statement, based on my responsibilities at Phillips 66 and my review of Phillips 66's business records and information provided by employees under my supervision.

2. I have worked in the rail industry for approximately 38 years in a variety of capacities. I have been with Phillips 66 since 2008 and have held my current position since July 2022. In this role, I am responsible for managing Rail Transportation for Phillips 66, which encompasses rail contract negotiations, maintenance, regulatory compliance, and fleet operations. We manage a fleet of approximately 9,000 owned and leased railcars that transport various commodities to and from our facilities. My team's responsibilities also include billing, railcar tracking, and the procurement of freight rates and routes

3. Phillips 66 is a member of the American Fuel & Petrochemical Manufacturers ("AFPM"), which has raised concerns about the potential effects of the proposed merger of the

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Applicants. In this verified statement, I provide information about Phillips 66 that relates to some of the concerns that AFPM presents in its comments as part of the Joint Shipper Associations.

4. My testimony provides information about Phillips 66's experience with rail freight transportation and specifically discusses merger concerns associated with the following four Phillips 66 locations: the Bayway Refinery, Wood River Refinery, Sweeny Refinery, and Rodeo Renewable Energy Complex. Bayway can access rail service from both NS and CSX. Wood River is captive to NS for rail service. Both Sweeny and Rodeo are captive to UP. All three captive locations are close to potential connections with alternative rail carriers.

5. To mitigate its exposure to the concerns raised by AFPM, Phillips 66 is requesting competitive access at Wood River, Sweeny, and Rodeo. In the first part of my testimony, I describe facts about Phillips 66 that relate to AFPM's concerns and, in the second part, I discuss the potential for competitive access at each of the foregoing locations.

A. Phillips 66 Use of Truck and Rail Transportation.

6. Trucks are not realistic alternatives for most Phillips 66 rail shipments. There is very little overlap between lanes where Phillips 66 uses rail and lanes where it uses trucks. Phillips 66 will ship by truck to locations primarily when it lacks rail access, the customer requires a priority shipment, the shipment is for a less-than-carload quantity, or the customer has a precise delivery schedule that rail cannot accommodate.

7. Single line rail service resulting from a merger of UP and NS would not cause Phillips 66 to shift current truck lanes to rail service. The projected 20-24 hour improvement in rail transit time is insufficient to overcome truck's overall transit time advantage, not to mention truck's

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greater flexibility in the lanes where we currently use trucks. If a lane can move by rail today, it already does.

8. Reliability and consistency of rail service is more important to Phillips 66 than transit time. Whatever the transit times, we can plan our shipments around them so long as the transit times are consistent. The most disruptive rail transit delays to Phillips 66 operations typically occur during the first or last mile of service as opposed to interline interchanges.

9. New single-line rail service on UP-NS routes would not offer Phillips 66 any other significant benefits and could even have some downside. Although UP and NS have advertised easier tracking of rail cars as a benefit, there really would not be any enhancement. All railroads already submit their car location message through RailInc. We utilize their TMQ tracking system, TransmetriQ®. RailInc is the source for all third-party fleet management systems. Because Phillips 66 will still ship on other railroads after a UP-NS merger, it could not cease its use of a third-party fleet manager. Phillips 66 also prefers a single rail car tracking service over the individual services of each railroad.

10. A potential downside to new UP-NS single line service would be new operational challenges. Phillips 66 will divert rail cars in-transit to alternative destinations, to storage when a plant is disrupted, or to prevent cars from causing congestion at local serving yards. By blocking cars onto trains that run deeper into the combined UP-NS network, Phillips 66 rail cars are likely to travel a greater distance before they can be diverted. This will add costs to Phillips 66 when it must divert cars closer to the destination back to another destination instead of where the current interchange between UP and NS occurs.

11. {{[redacted]

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[redacted]}} However, Phillips 66 has a few facilities that have access to a second Class 1 railroad, including our Bayway, NJ refinery. {{[redacted]}}

12. When Phillips 66 tenders manifest traffic to UP or NS from its facilities on interline routes, that traffic typically moves over the same UP or NS line segment to the interchange with the connecting carrier regardless of the ultimate destination. Although UP and NS quote different rates for their portion of the movement for different commodities, {{[redacted]}}

13. Phillips 66 long has been concerned with the pace of rail rate increases. Although rail rates nominally are subject a "reasonableness" regulatory standard, Phillips 66 has not deemed the process of bringing a regulatory rate challenge to be useful. First, because contract rates are not subject to regulation, we would have to switch to tariffs, which tend to be even higher than contract rates. Second, we cannot choose to challenge only the rates on lanes that we believe are too high because railroads typically bundle their rate offers into all-or-nothing contract packages.

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Third, the time and expense of pursuing a rate challenge almost always outweigh the potential benefit from an uncertain result.

B. Phillips 66 Merger Condition Requests.

14. To assess the potential effects of a UP-NS merger upon Phillips 66, I reviewed Phillips 66 traffic data from 2023 through 2025 to identify lanes with 50 or more cars in any single year. From that review, I identified {{ }} interline lanes where one end of the route is competitive and the other is captive to either UP or NS. Those lanes match the definition of "Traditional Foreclosure" in the AFPM comments, which is one of the categories of potential competitive harm that AFPM has identified with this merger. The concern is that, when UP and NS serve both the captive and competitive endpoints of such movements, their merger could cause them to advantage their new single line route over the competing interline route.

15. I summarize those {{ }} lanes in Figure 1 below. They include lanes to or from the Phillips 66 facilities at Wood River, Sweeny, Rodeo and Bayway. By calling out these lanes, I am not saying that these are Phillips 66's only concerns. We seek to address this issue as to all current and future similarly situated rail lanes.

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Figure 1{{



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16. To address the competitive issues at these facilities, Phillips 66 is requesting that the Board condition its approval of this merger upon granting a competing rail carrier access to Wood River, Sweeny and Rodeo, with the collateral effects of that access also benefiting Bayway.

17. The Wood River Refinery is less than 15 miles from St. Louis. Granting trackage rights to TRRA would establish it as a neutral connection to the other Class I railroads on interline movements in lieu of the current NS service. Phillips 66 currently pays NS {{ }} plus fuel surcharges for this short distance movement. To facilitate TRRA's access, Phillips 66 also asks the Board to grant a long-term extension of the following {{ }} between NS and Phillips 66: {{ }}

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18. The Sweeny Refinery is located on a UP mainline over which BNSF has overhead trackage rights. Phillips 66 asks the Board grant BNSF the right to serve the refinery. Because Phillips 66 uses a third-party switcher inside the Sweeny Refinery, BNSF would only need to provide "drop-and-pull" service.

19. At the Rodeo Complex, Phillips 66 is requesting service from BNSF via reciprocal switch. UP serves Rodeo from its Ozol yard and interchanges traffic with BNSF at its Pittsburg Yard approximately 5 miles away.

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VERIFICATION

I, Anil Nath, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on 11/18/2026

DocuSigned by:
Anil Nath
4953681F55204DF...

Anil Nath

Initial
BS