KAPLAN KIRSCH

WASHINGTON, DC
DENVER
NEW YORK
SAN FRANCISCO

313002

ENTERED
Office of Chief Counsel
November 18, 2026
Part of
Public Record

November 18, 2026

VIA ELECTRONIC FILING

Chief of Case Administration
Office of the Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *Union Pacific Corp. and Union Pacific Railroad Co. – Control – Norfolk Southern Corp. and Norfolk Southern Railway Co.*, STB Docket No. FD 36873

Dear Chief of Case Administration:

I am attaching for e-filing the comments of the Washington State Department of Transportation in the above-captioned proceeding.

Please do not hesitate to contact me with any questions.

Sincerely,

Allison I. Fultz

Enclosure

Kaplan Kirsch LLP
Attorneys at Law

1634 I (Eye) Street, NW
Suite 300
Washington, DC 20006

tel: 202.955.5600
fax: 202.955.5616
kaplankirsch.com

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD NO. 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Allison I. Fultz
Charles A. Spitulnik
Kaplan Kirsch LLP
1634 Eye St., NW, Suite 300
Washington, DC 20006
(202) 955-5600
afultz@kaplankirsch.com
cspitulnik@kaplankirsch.com

Ayelet Hirschkorn
Kaplan Kirsch LLP
1500 Broadway, Suite 1605
New York, NY 10036
646-883-5110
ahirschkorn@kaplankirsch.com

Counsel for the Washington State Department of Transportation

November 18, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD NO. 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Pursuant to 49 U.S.C. § 11325 and Decision No. 30 in the above-captioned proceeding, the Washington State Department of Transportation ("WSDOT") hereby submits comments and requests for conditions on the proposed acquisition of control (the "Transaction") of Norfolk Southern Corporation and Norfolk Southern Company ("NS") by Union Pacific Corporation and Union Pacific Railroad Company ("UP"; collectively, the "Applicants"), as reflected in the Amended Railroad Control Application filed April 30, 2026, as supplemented July 7 and July 27, 2026 (collectively, the "Application").

The Applicants must demonstrate that the Transaction will advance the public interest. The unprecedented size and scope of this private railroad merger, which is projected to profoundly change the country's transportation network in many respects, necessitates safeguarding the public interest. The nationwide reach of the Transaction demands an objective nationwide approach to the Applicants' engagement with public entities and project proponents across the U.S. WSDOT proposes conditions that will support the goals of the Transaction to improve freight rail service

while protecting the interests of Washington State's residents, businesses, and institutions. This Board's general authority over rail transportation[1] and broad mandate to protect the public interest[2] demands that any approval of the Transaction reflect that the Applicants have demonstrated to this Board that the Transaction affirmatively meets that rigorous standard.

The largely privately-owned national rail network is an integral component of the multi-modal U.S. transportation ecosystem. UP and NS benefit from significant public investment in that network. Just in the past year, grant funding from the Federal Railroad Administration ("FRA"),[3] Federal Transit Administration ("FTA"),[4] and Federal Highway Administration ("FHWA")[5] for improvements to the nation's rail infrastructure totaled approximately $16 billion. By contrast, UP's FY 2026 capital expenditures ("cap ex") program is $3.5 billion[6] and NS' is $2.1 billion.[7]

As the state transportation agency responsible for rail planning, freight mobility, and the state-supported Amtrak Cascades intercity passenger rail service, operating throughout the Pacific Northwest between Eugene, Oregon and Vancouver, British Columbia, Canada, ("Amtrak Cascades Corridor"), WSDOT has a substantial interest in understanding the potential effects of the proposed Transaction on Washington's transportation system and communities.

Washington State is currently developing the next iteration of its State Rail Plan, which was updated most recently in 2019.[8] Key goals of the State Rail Plan include:

---

[1] 49 U.S.C. § 10101.
[2] 49 U.S.C. § 11324(c).
[3] https://railroads.dot.gov/elibrary/fy25-26-crisi-recipients-project-summaries; https://railroads.dot.gov/partnership-program
[4] https://www.transit.dot.gov/sites/fta.dot.gov/files/2025-11/FY26-Annual-Report-on-Funding-Recommendations.pdf
[5] https://highways.dot.gov/safety/hsip/xings/railway-highway-crossing-program-overview
[6] https://investor.unionpacific.com/news-releases/news-release-details/union-pacific-reports-third-quarter-2026-results
[7] https://fortune.com/company/norfolk-southern/earnings/q3-2026/
[8] https://wsdot.wa.gov/washington-state-rail-plan

- Meeting the increasing demand for passenger and freight rail services in Washington on the private rail network over which passenger and freight trains operate.
- Developing more efficient and effective connections between rail and other modes of transportation.
- Ensuring the economic sustainability of Washington's public and private short line railroads that face infrastructure investment needs in order to preserve these important services to communities.

Although no Transaction-related capital construction projects are currently proposed in Washington state, the proposed Transaction, even without identified improvements, may affect the Washington's interests through changes in freight rail traffic, train frequency and length, routing, operating patterns, dispatching, interchange activity, switching, terminal utilization, and use of existing rail infrastructure. These changes may directly and indirectly affect shared freight and passenger rail infrastructure, highway-rail grade crossings, freight terminals and port-serving facilities, air quality, noise and vibration, transportation safety and mobility, and communities located along affected rail corridors. Both for the purposes of (a) understanding and commenting on the potential effects of the Transaction, and (b) producing an accurate projection of future growth in the State Rail Plan, WSDOT offers the following comments and proposed conditions to guide this Board in its understanding of the impacts of the Transaction and potential mitigation measures.

In reviewing a proposed merger of two Class I railroads, the Board is required by statute to determine whether the proposed merger is in the public interest. 49 U.S.C. § 11324(c). To determine whether such a merger is in the public interest, the Board is required by statute to consider "the effect of the proposed transaction on the adequacy of transportation to the public."

49 U.S.C. § 11324(b)(1). This requirement for a broader consideration of the public interest in assessing mergers between at least two Class I railroads sets the standard for the Board's considerations apart from transactions involving smaller Class II and Class III railroads, which focus public interest considerations more squarely on competition for shippers. *See Commuter Rail Div. of the Reg'l Transp. Auth. v. STB*, 608 F.3d 24, 33 (D.C. Cir. 2010).

To determine whether the Application is in the public interest, the Board must perform a balancing test that weighs potential benefits to applicants and the public against the potential harm to the public. 49 C.F.R. § 1180.1(c). Potential harm to the public includes consideration of reduction of competition and harm to essential services. 49 C.F.R. § 1180.1(c)(2). The Board must ensure that essential passenger and commuter rail services are preserved wherever feasible. 49 CFR 1180.1(c)(2)(ii). An existing service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available. 49 CFR 1180.1(c)(2)(ii).

When the Board updated its major consolidation procedures in 2001, it explained that the current rules "substantially increase the burden on applicants to demonstrate that a proposed transaction would be in the public interest, by requiring them, among other things, to demonstrate that the transaction would enhance competition where necessary to offset negative effects of the merger, such as competitive harm or service disruptions." STB, *Major Rail Consolidation Procedures*, Final Rules, 66 Fed. Reg. 32582 (Jun. 15, 2001).[9]

[9] The 2001 rules no longer expressly require that each condition be shown to remedy a particular impact of the consolidation. Instead, they authorize conditions designed to mitigate or offset merger-related public-interest harms and expressly contemplate competition-enhancing conditions, subject to operational feasibility, net public benefits, and the requirement that conditions not undermine or defeat an otherwise beneficial transaction. *Compare* 49 CFR 1180.1(d) (2026) *with* 49 CFR 1180.1(d) (2000).

The Board is authorized by statute to impose conditions governing approval of railroad mergers and will condition the approval of Class I combinations to mitigate or offset harm to the public interest. 49 U.S.C. § 11324(c); 49 CFR 1180.1(d). The Board has "extraordinarily broad discretion in deciding whether to impose protective conditions in the context of railroad consolidations." *Commuter Rail Div. of the Reg'l Transp. Auth. v. STB*, 391 U.S. App. D.C. 102, 109, 608 F.3d 24, 31 (2010); see also *Village of Barrington v. STB*, 892 F.3d 252, 269 (7th Cir. 2018). The Board's selection of conditions is afforded "great deference" by reviewing courts, which will deny a petition for review of the Board's decision as long as that decision is supported by substantial evidence in the record and was reached by reasoned decision-making. *Village of Barrington*, 892 F.3d at 269. The principal harms for which conditions are appropriate include the loss of the ability to provide essential services. *Canadian Natl. Ry. Co. et al. – Control – Illinois Central Corp. et al.*, 4 S.T.B. 122, 141 (1999).

WSDOT requests the STB attach the conditions contained in the following items to protect the vital public interests of the State of Washington in the event it approves the Transaction. We intend these conditions to be practical, enforceable, and commercially reasonable.

1. Scope of Analysis and Network Data Coverage Limitations

BNSF Railway hosts the vast majority of intercity passenger rail (Amtrak Cascades, Coast Starlight, and Empire Builder) and commuter rail (Sound Transit Sounder) operations in Washington. UP uses trackage rights on a significant portion of the Amtrak Cascades Corridor between Seattle and Portland hosted by BNSF. Because BNSF is not a merger applicant, the Application fails to address train, tonnage, and capacity data for these critical shared lines.

WSDOT requests this Board direct the Applicants to provide data and analysis to address UP's current and anticipated use of this BNSF corridor and the potential impacts of the Transaction on existing and potential expansion of Amtrak Cascades service.

Proposed Condition

WSDOT requests this Board require the Applicants to affirmatively engage with WSDOT if WSDOT seeks the Applicants' input into the State Rail Plan, Amtrak Cascades Service Development Plan, or State Freight System Plan, and to coordinate with WSDOT, Amtrak, and applicable Washington state regulatory agencies prior to any planned service expansions or reductions on the Amtrak Cascades Corridor.

2. Intercity Passenger Rail and Shared-Corridor Capacity

The Application does not adequately address the effect of the merger on passenger rail operations in Washington. The states of Washington and Oregon sponsor and fund Amtrak Cascades intercity passenger rail service in the Pacific Northwest, connecting 18 stations, including 12 in Washington, five in Oregon, and one in British Columbia, Canada. This service operates primarily on BNSF tracks in Washington and on Union Pacific tracks in Oregon. Delays and disruptions at any location along the corridor affect operations along the entire route. Any negative impact of the merger on existing passenger train performance should be mitigated by the merging railroads, and the Applicants should be required to accommodate foreseeable passenger service expansion.

The Applicants assert throughout the Application the Transaction will not adversely impact existing passenger rail service but does not support this assertion with any specificity or address anticipated passenger service expansion. For instance, the Applicants assert broadly that "[t]he

UP/NS merger will not result in any adverse impact to passenger operations,"[10] and, as a discrete example, a discussion of impacts to Metra's service declares that "UP's route has sufficient capacity to support the projected freight increase while maintaining the current passenger service levels."[11] This brief and generalized characterization is typical throughout the Application, and does not address foreseeable passenger rail expansion as reflected in individual state rail plans, other medium-range planning documents, or among projects that have been awarded federal grants for planning, development, or construction.

The analysis Krystof Zetenyi offered in his Verified Statement dated July 20, 2026, employs generalized retrospective regression models to evaluate the relationship between passenger train delays and freight capacity utilization. Dr. Zetenyi's methodology is designed to analyze economic behavior and trends in a variety of contexts and does not provide particular insights applicable to the rail industry. Furthermore, the analysis is observational rather than predictive; it does not take into account forward-looking operational changes such as the longer freight trains the Applicants propose or expanded passenger service.

More robust modeling would yield a finer-grained analysis that would allow the Board and industry participants to understand the implications of the Transaction in a dynamic future. As one recent example, RTC modeling became a particular focus in this Board's proceeding to resolve issues relating to the re-establishment of Amtrak's Gulf Coast Service, now operating as the Mardi Gras, over NS' track. Neither NS, the host railroad, nor Amtrak, had performed modeling to evaluate the impact of re-established passenger service on the route, and the Board found this

[10] Application, Vol. 2, p. 1044.
[11] Application Vol. 2, p. 758.

omission hindered its ability to build a record and render a well-supported decision. The Board noted that it "expects that evidence on the service's potential effects on freight transportation, such as an RTC study or other study or studies, will be part of the record in this proceeding, as well as any competing studies or other competing evidence, together with all the inputs, assumptions, and methodologies underlying any study results, including all relevant traffic projections." *Application of the Nat'l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. & Norfolk S. Ry. Co.*, FD 36496, slip op. at 7 (STB served Aug. 6, 2021) ("*Gulf Coast*"). Moreover, the Board noted that those studies should take into account "the line's present and future traffic volumes and engineering design and conditions" to account for "the specific service" proposed. *Id.*

Analysis similar to the quality the Board demanded in *Gulf Coast,* that includes a sample of geographically-diverse passenger rail services, would go a long way to establishing credibility in the Applicants' approach to protecting the vital public interest of intercity passenger rail. The Applicants have offered generalized, backward-looking analysis to support broad assertions that the Transaction will not impede existing passenger rail service, an approach that does not support this Board's efforts, nor WSDOT's ability, to understand the actual impacts of the Transaction on existing intercity passenger rail service, let alone foreseeable future impacts of the Transaction.

The Transaction's impact on current and anticipated passenger rail operating configuration reflects the following specific conditions:

Operational Volume Growth: On the Canal Street-to-North Portland corridor (138.2 miles), UP operates under trackage rights over the BNSF Railway mainline carrying Amtrak Cascades service. The Application projects an increase of +2.00 freight trains per day (+5.2%) and +4.16 million gross tons per year (+17.3%) on this segment. The Seattle-to-Tacoma segment (33.5 miles)

includes seven miles of track between Tukwila and Argo (Seattle) used by Amtrak Cascades and Sound Transit Sounder. On this segment, UP operations jump by +2.22 trains per day (+33.7%) and +3.39 million gross tons per year (+26.1%). This increase was absent in the December 19, 2025, filing and added in the April 30, 2026, revised filing.

Substandard Baseline Performance: Amtrak Cascades averaged 61.9% Customer On-Time Performance (COTP) from July 2022 to December 2025 (67.1% in FY2025), with 1,563 Host Railroad Delay (HRD) minutes per 10,000 train-miles. The Coast Starlight averaged 57.1% COTP over the same period, with 83.6% of its route train-miles operating on applicant track. Both services operate well below the FRA 80% statutory OTP standard for intercity passenger rail prior to the addition of any merger traffic.

Escalated Risk Without Mitigation: The Applicants' own filings acknowledge heightened operational exposure, upgrading the Amtrak Cascades risk rating from "Low" (December 19 filing) to "Medium" (April 30 filing). However, Appendix A of the Application lists "Nothing" for passenger-side mitigation for either Amtrak Cascades or Coast Starlight.

WSDOT requests this Board require the Applicants, as a supplement to the Application, to perform dynamic capacity simulation modeling (e.g., Rail Traffic Controller / RTC) for the complete network, rather than annual average daily traffic counts, to determine the effect of the merger on passenger rail operations. The modeling should evaluate:

- Temporal distribution of transaction-related freight movements relative to scheduled Amtrak Cascades service windows.
- Net additions to passenger train delay minutes, dispatching conflicts, and host railroad friction.

- Physical constraints at junctions, sidings, and terminal interlockings, particularly along the Seattle–Portland corridor.
- Concrete, enforceable passenger mitigation commitments and capital protections before operational authorizations are granted.

Proposed Condition

The Board should, as it indicated in *Gulf Coast*, require Applicants, as part of the Application, to perform modeling to gain a true understanding of the range of potential impacts of the Transaction. WSDOT requests this Board require the Applicants to identify between three and five major intercity passenger rail operations with anticipated expansions to model using RTC or other predictive methods that (a) provide an iterative analysis of varying operational patterns using current operating data and (b) test both existing service and planned passenger-service scenarios. Such an effort will establish a baseline condition for existing service and provide initial indications as to options for future expansion of intercity passenger rail service. This Board should require modeling for significant operational changes or capital improvements above a certain threshold at least throughout the post-merger monitoring period.

3. Rail Terminal, Port Gateway, and First/Last-Mile Intermodal Operations

Washington's ports are a pillar of its economy, and the ability to efficiently move freight in and out of the ports is key to maintaining Washington's freight supply chain and dependent economy. Any negative effect of the merger on freight mobility at the ports needs to be understood and mitigated, as appropriate. Union Pacific Railroad owns tracks, or has trackage rights, serving several major ports in Washington. The proposed merger may significantly affect operations at Washington's ports, particularly at the state's two largest ports in Seattle and Tacoma.

- Terminal Throughput Surges: The Tacoma South Intermodal Terminal (TacSim) experiences the largest facility increase in Washington, growing from 271.3 lifts per day to 414.5 lifts per day (+143.2 lifts/day, a 53% increase). The Seattle Intermodal Terminal increases from 452.3 lifts per day to 550.9 lifts per day (+98.6 lifts/day, a 22% increase).
- Localized Rail Line Densification: The Fife–TacSim terminal connection segment exhibits the largest percentage traffic increase statewide: +3.00 trains per day (a 100% increase) and +14.57 million tons per year (a 187.5% increase), concentrating heavy freight movements directly within the Port of Tacoma industrial area. This may exacerbate the ongoing congestion at Bullfrog Junction, the primary access point for rail traffic going in and out of the Port of Tacoma.
- Operational Complexity & New Routing: Under the Growth Plan, nine new traffic blocks originate or terminate at Seattle or Tacoma, creating new switching, classification, and interchange demands at marine gateway terminals.
- The train volume estimates in the Application do not take into consideration any changes in local service and/or switching activities around yards. Depending on the nature of operations and facility configuration, these impacts may be significant.

In light of the absence of sufficiently detailed analysis in the Application, the Board should require the Applicants to provide analysis to allow evaluation of potential impacts in the following areas:

- First-mile and last-mile truck trip generation, drayage movements, and arterial pavement impacts surrounding The Northwest Seaport Alliance (NWSA) facilities in Seattle and Tacoma.
- Dwell times, trackage access, and switching bottlenecks at major intermodal yards and junctions.
- Any changes in local service and/or switching activities around yards.
- Downstream capacity impacts at Washington's primary interchange points, including Blakeslee Junction (26,528 units in FY2024), Tacoma (21,077 units), Seattle (13,100 units), and Ayer (11,222 units).

Proposed Condition

The Board should require Applicants, as part of the Application, to perform dynamic, predictive modeling of Applicants' proposed expanded operations in Washington to gain a true understanding of the range of potential impacts of the Transaction on both freight and passenger operations, existing and projected. Having established a baseline during the pendency of the Application, this Board should require modeling for significant operational changes of the merged railroad or capital improvements above a certain threshold at least throughout the post-merger monitoring period.

WSDOT requests this Board require the Applicants to maintain and preserve existing rail access and interchange arrangements serving Washington's ports and intermodal terminals and to engage with affected port authorities, and terminal operators before implementing merger-related changes to routing, switching, interchange operations, or terminal access that could materially affect freight mobility or terminal capacity. Where such changes result in operational constraints

or reduced capacity, the Applicants should be required to identify and implement appropriate mitigation, including operational adjustments or necessary infrastructure improvements, at no cost to affected public agencies or port authorities.

4. State-Owned Rail Assets & Agricultural Freight Mobility

Efficient movement of agricultural commodities is very important to Washington's economy. The Federal Railroad Administration and the state of Washington have made significant investments in the rail network to support this activity. The effect of the merger on agricultural rail traffic needs to be documented and mitigation identified for any negative impacts.

- Palouse River & Coulee City (PCC) Rail System: WSDOT owns the 297-mile PCC Rail System, which provides critical freight rail access for eastern Washington agricultural producers. The PCC system interchanges traffic directly with UP at Hooper Junction (4,516 carloads in FY2024).
- Traffic Shifts on Connecting Corridors: The Ayer Subdivision between Wallula and Hinkle projects an increase of +1.02 trains per day (+14.2%) and +0.46 million tons per year.

WSDOT requests this Board require the Applicants to provide analysis adequate to assess whether shifts in transcontinental routing, car supply, or switching priorities will impact agricultural export fluidity, interchange responsiveness, or operating conditions on connecting short lines and state-owned rail infrastructure.

Proposed Condition

WSDOT requests this Board require Applicants to (a) maintain familiarity with Washington's state rail plan as it is updated and (b) reach out proactively and affirmatively to

WSDOT, other state regulatory agencies, and short line rail operators in the state to coordinate on proposed operational changes or capital plans so that the Applicants can support the efficient shipment of agricultural products. The Applicants should be required to model the anticipated impacts of the Transaction against a range of actual and potential operating profiles for agricultural and other short line movements. Having modeled a range of potential impacts, Applicants should be required to implement mitigating measures through operational refinements or infrastructure investments.

WSDOT requests this Board require the Applicants to maintain and preserve existing interchange access and service arrangements with Washington's short line railroads, including the state-owned PCC Rail System. Where such changes adversely affect service reliability, interchange responsiveness, or access to markets, the Applicants should be required to identify and implement appropriate operational or infrastructure mitigation, at no cost to the state or short line railroads.

5. Highway-Rail Grade Crossing Delays and Confidentiality Concerns

Delays at highway-rail grade crossings can have a profound effect on local communities, impairing travel and lengthening emergency response times. The effect of increased train counts and train length due to the merger needs to be understood.

- Traffic Composition vs. Crossing Blockage: While total tonnage decreases on certain segments (e.g., Richland–Hedges −0.28M tons; Hedges–Wallula −0.18M tons; Blakeslee Junction–Centralia −0.99M tons), train counts increase at other locations (Richland–Hedges +1.42 trains/day; Hedges–Wallula +0.71 trains/day). Train

frequency and train length, rather than gross tonnage, govern crossing closure durations and vehicular delay.

- Data Redaction Deficiency: The Applicants designated local train counts as "Highly Confidential" in workpapers supporting the April 30 filing. Because local and switching trains cause extended crossing blockages during yard approach and switching maneuvers, withholding this data prevents public agencies from evaluating actual crossing exposure.

Proposed Condition

WSDOT requests this Board require the Applicants to make necessary operational data accessible to affected public agencies and conduct localized grade-crossing delay analyses under 49 C.F.R. § 1105.7(e)(7)(i). The analysis must model gate-down times, vehicular queue spillback, and emergency response interference along critical state routes and local arterials.

WSDOT requests this Board require the Applicants to work with regulatory agencies in Washington state to reduce the incidence of blocked at-grade crossings, initially prioritizing those crossings already identified as higher risk in the Washington Highway-Rail Grade Crossing State Action Plan. The Applicants should be required to make necessary operational data accessible to affected public agencies and conduct localized grade-crossing delay analyses under 49 C.F.R. § 1105.7(e)(7)(i). The analysis should model gate-down times, vehicular queue spillback, and emergency response interference along critical state routes and local arterials. Applicants should be required to monitor the incidence of blocked at-grade crossings and adjust priorities in accordance with the severity of blockages. Applicants should be required to report to Washington state regulatory agencies at least quarterly on at-grade crossing blockages. WSDOT requests this

Board require the Applicants to provide regulatory agencies in Washington state and affected local jurisdictions access to the operational data necessary to evaluate merger-related impacts at highway-rail grade crossings, including local and switching train counts, train lengths, and operating patterns. The Applicants should also be required to coordinate with affected public agencies to identify and mitigate increased crossing delays, including impacts to emergency response, vehicular traffic, and local transportation networks resulting from merger-related changes in train frequency, length, or operations.

6. Risk Screening and Safety Assessment

Washington communities need to understand how the merger could affect the movement of hazardous materials.

WSDOT requests this Board require the Applicants to evaluate the hazardous materials expected to be transported, quantities, applicable safety practices and speed restrictions, and the Applicants' safety record regarding accidental releases, consistent with 49 CFR § 1105.7(e)(7)(ii). The analysis should also address applicable Washington requirements, including the Safety of Oil Transportation Act and WAC 173-186, *Oil Spill Contingency Plan – Railroad*.

WSDOT further requests this Board require the Applicants to assess how changes in train length, weight distribution, and car positioning may affect derailment and hazardous-material release risks, particularly along sensitive watersheds, populated areas, and critical infrastructure corridors. It should also evaluate emergency-response preparedness and resource capabilities and whether existing oil-spill contingency and hazardous-substance cleanup requirements under WAC 173-186 and the Model Toxics Control Act are adequate to address potential impacts.

Proposed Condition

WSDOT requests this Board require the Applicants, in conjunction with Washington state regulatory agencies, to establish a program to identify, analyze, and mitigate hazmat impacts in communities surrounding rail corridors used or owned by Applicants and near Applicants' yards. The program should include:

- An operating plan to route shipments of hazardous materials along lines other than those in dense urban areas.
- Financial support for specialized training and equipment for local first responders to address incidents involving the shipment of hazardous materials by rail.
- Ongoing cooperation with first responders along routes that carry hazmat shipments to provide for adequate emergency response and support for staging materials and equipment to respond to derailments and hazardous substance releases.

Subject to reasonable measures in conformance with federal regulations governing the shipment of hazardous materials by rail, WSDOT requests this Board require the Applicants to provide ongoing reporting to applicable Washington state agencies of hazardous materials shipments and anticipated changes in the frequency and volume of such movements.

7. Methodological and Analytical Deficiencies

Timeline clarity is essential to understanding the proposed merger's effects. The source workpapers for the Base Plan and Growth Plan fail to define specific horizon years, obscuring the timeline over which projected operational growth will occur.

WSDOT requests this Board require the Applicants to supplement the Application to provide clear baseline, implementation, and future horizon years for the Transaction.

WSDOT urges this Board to ground any approval of the Transaction in empirical baselines that reflect the operational reality of Washington's rail network. The Application documents increased risk to passenger rail without committed mitigation, substantial port-related intermodal surges, and shifting freight densities. To safeguard Washington's transportation infrastructure and communities, the STB must mandate dynamic capacity modeling for passenger rail effects, transparent local train data, and binding mitigation conditions.

Proposed Condition

WSDOT requests this Board require the Applicants to perform predictive modeling of their own proposed expanded operations and existing and expanded passenger operations. Having established a baseline through this initial modeling process, Applicants should be required to propose specific mitigation measures, a schedule for implementing them, and, as applicable, a financial framework to identify sources of funding.

CONCLUSION

For the reasons outlined above, WSDOT respectfully requests this Board only approve the Transaction if it imposes the requested conditions.

Respectfully Submitted,

THE WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By Counsel



Allison I. Fultz
Charles A. Spitulnik
Ayelet Hirschkorn
Kaplan Kirsch, LLP
1634 I (Eye) Street, NW, Suite 300
Washington, DC 20006
(202) 955-5600
afultz@kaplankirsch.com
cspitulnik@kaplankirsch.com
ahirschkorn@kaplankirsch.com

Date: November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November 2026, I caused the foregoing Comment and Request for Conditions by the Washington State Department of Transportation to be served on all parties of record in this proceeding.

Dated: November 18, 2026

By: */s/ Allison I. Fultz*
Allison I. Fultz
Partner
Kaplan Kirsch LLP

cc: All Parties of Record (via email or first class mail)