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November 18, 2026
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

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

COMMENTS OF ERGON, INC AND ITS FAMILY OF COMPANIES IN OPPOSITION TO THE PROPOSED TRANSACTION AND, IN THE ALTERNATIVE, REQUEST FOR CONDITIONS

November 18, 2026

Via Electronic Filing

Chairman Patrick Fuchs and Members of the Board
Surface Transportation Board
365 E Street SW
Washington, DC 20423

RE: Union Pacific Corp. & Union Pacific R.R. Co. -Control-Norfolk Southern Corp. & Norfolk Southern Ry. Co., Docket No. FD 36873

Dear Chairman Fuchs and Members of the Board:

Ergon, Inc. and its family of companies (collectively, "Ergon") respectfully oppose the proposed merger of Union Pacific Corporation and Norfolk Southern Corporation. Ergon believes the merger would weaken competition, increase transportation costs, and threaten the reliability of rail service, which is essential to our operations and our customers. For these reasons, Ergon urges the Surface Transportation Board to deny the proposed merger.

Ergon values its long-standing relationships with the railroads that serve our businesses, including Union Pacific and Norfolk Southern, and respects the employees of both companies. Our opposition reflects the serious commercial and operational consequences of combining these two independent carriers and our responsibility to explain those consequences to the Board.

Ergon is a chemical manufacturer and asphalt marketer that relies on every Class I railroad in North America to serve customers and replenish products throughout its terminal network. Ergon owns two refineries, one in Vicksburg, Mississippi, one in Newell, West Virginia and over one hundred and fifty asphalt terminals from coast to coast. We have shipped by tank car for decades, maintain a mid-sized fleet of railcars, and move tens of thousands of carloads each year to deliver feedstock to our refining facilities and finished products to our customers. Competitive rates,

viable routing alternatives, and reliable service are essential to our ability to operate efficiently and meet customer commitments.

Norfolk Southern provides service to our West Virginia refinery, fifteen asphalt facilities, and several customers of our refined products in the eastern United States. Union Pacific provides service to Ergon's Smackover, Arkansas, facility, as well as several asphalt terminals in the western United States

The Board's major merger rules require applicants to demonstrate that a merger would enhance competition, rather than merely preserve it. Based on our experience and the effects described below, Ergon does not believe the proposed merger satisfies that standard. Combining Union Pacific and Norfolk Southern would eliminate an independent commercial decision-maker and diminish the practical transportation alternatives available to shippers such as Ergon.

Norfolk Southern currently serves as an independent connecting carrier for two important parts of Ergon's business: asphalt movements in the United States and crude oil feedstock deliveries from Utah to our West Virginia refinery.

For traffic originating in Utah, Ergon can currently select either Union Pacific or BNSF for transportation to Chicago. Norfolk Southern provides the only practical eastern connection for these movements. Its independence from both western carriers preserves meaningful competition at origin: Union Pacific and BNSF compete for the western segment, while Norfolk Southern provides the eastern connection on neutral terms.

The merger would place Ergon's only practical eastern connection at Chicago under the control of one of the two carriers competing for its western traffic. A BNSF routing would then depend on the combined Union Pacific–Norfolk Southern carrier for the eastern segment, while the combined carrier would have an incentive to favor its own single-line service. Although two railroads would continue to serve Utah origin, Ergon expects that origin to function, in practical terms, as a single-carrier location. The resulting loss of competitive leverage would expose Ergon to higher transportation costs and a substantial pricing disadvantage if it selected BNSF.

The applicants' commitments to preserve Class I rail options for "2-to-1" and "3-to-2" shippers, where they can legally grant another railroad access, would not adequately address these concerns.

First, Ergon likely would not qualify for those protections because two railroads would continue to serve its Utah origin. Competitive harm would arise at Chicago, where the only practical eastern connection would come under common control with one of the origin carriers. Protections focused on the number of railroads serving a station do not address the loss of an independent connecting carrier.

Second, preserving nominal access would not ensure a commercially viable alternative. The competitiveness and reliability of a BNSF routing would still depend on the combined carrier's pricing and service for the eastern segment. Requiring a shipper to pursue costly and time-consuming proceedings before the Board would not replace the discipline provided by effective competition.

Third, the Board's rules recognize that Class I mergers "would likely create some anticompetitive effects that would be difficult to mitigate through appropriate conditions" (49 C.F.R. § 1180.1(d)). The loss of an independent eastern connection presents precisely that concern.

The merger would also threaten service reliability. Integrating large rail networks creates risks of disruption as operating practices, dispatching, and service plans are combined. For Ergon, delays in tank car movements could interrupt refinery feedstock deliveries, constrain terminal inventories, and impair our ability to supply customers on schedule. The loss of an independent connecting carrier would compound those risks by reducing our practical ability to redirect traffic when service deteriorates. Nominal access to another western carrier offers limited protection if both routes depend on the same eastern carrier.

Ergon is investing significant capital in a refinery rail project to bring in unit trains from Utah to supply its Newell, West Virginia, refinery. This investment reflects our reliance on a dependable and competitive rail network with multiple independent carriers. By reducing effective competition and increasing our dependence on a single combined carrier, the proposed merger would put the value of that investment at risk and could discourage future investment in rail-dependent facilities.

A similar scenario affects a large volume of asphalt shipped from the upper Midwest. Four origin carriers can handle that traffic and interchange in Chicago for delivery to the eastern United States. Today, competition among those carriers keeps transportation costs low. A combined UP-NS would turn this into a single-carrier lane, which would remove both the competitive pricing and the operational flexibility we have now.

Ergon also is concerned about Union Pacific's Chief Executive Officer's remarks at the Southwest Association of Rail Shippers meeting in Houston on March 17, 2026, that he would "probably increase everybody's rates that said they didn't want a seamless railroad by 3 or 4 extra percent to teach you a lesson." Regardless of the intended tone, such remarks raise concerns for shippers whose competitiveness depends on transportation costs. His invitation for shippers to meet with Union Pacific and "make a deal" further underscores the importance of a transparent review process. Ergon asks the Board to ensure that shippers can participate freely in this proceeding without adverse consequences for their rates or reduced service offerings.

Ergon respectfully urges the Board to deny the proposed merger. If the Board nevertheless considers approval, it should require, at a minimum, the enforceable protections described below. These measures would reduce certain risks but would not eliminate Ergon's objections or establish that the merger would enhance competition.

- Open expanded reciprocal switching. Require reciprocal switching across the combined system, allowing shippers at every terminal served by Union Pacific–Norfolk Southern to access any other railroad serving that terminal. Switching fees should be reasonable and set by the Board, without requiring shippers first to demonstrate inadequate service or competitive harm. Such access would provide shippers with additional competitive options.

- Preserve all existing gateways to remain open and be commercially viable for shippers for interline traffic. Disputes should be subject to expedited, binding arbitration.

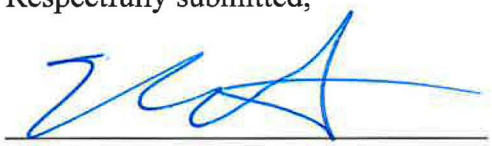
- Protection for participating shippers. Prohibit adverse changes in rates, service, or commercial terms in retaliation for a shipper's participation in this proceeding, with an effective process for prompt enforcement.

- Tank car service protections. Require the applicants' service assurance plan to include measurable performance standards for tank car traffic, regular reporting, and prompt corrective action when service deteriorates. These protections should address transit times, interchange delays, car availability, and continuity of service during integration.

The Board should also consider the merger's potential effects on further consolidation among Class I carriers. Approval of a transcontinental merger could prompt competing combinations and ultimately leave North America with only two major railroad systems. That outcome would further reduce shipper choice, weaken competitive discipline, and increase the risk of higher transportation costs and diminished service reliability.

Ergon appreciates the Board's consideration of these comments. A competitive and reliable rail network is essential to our operations, our customers, and the broader economy. Because the proposed merger would weaken competition, increase transportation costs, and threaten service reliability, Ergon requests that the Board deny the proposed merger.

Respectfully submitted,



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Certificate of Service

I certify that on this day, the 18th day of November, copies of this document were served upon all parties of record in this proceeding by electronic service.

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