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***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 attached comments of the States for Passenger Rail Coalition in the above-captioned proceeding.

Please do not hesitate to contact me with any questions.

Sincerely,

Allison I. Fultz

Enclosure

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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 COMPANY**

# COMMENTS AND REQUESTS FOR CONDITIONS BY THE STATES FOR PASSENGER RAIL COALITION

Pursuant to the Surface Transportation Board ("STB" or "Board") Decision No. 30 in this docket and rules governing merger applications at 49 C.F.R. Part 1180, the States for Passenger Rail Coalition ("SPRC") submits the following comment and request 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").

## INTRODUCTION

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, which includes the "vital public service"[1] of passenger rail transportation serving individual passengers. The nationwide reach of the Transaction demands an objective nationwide approach to the Applicants' engagement with Amtrak and the states who sponsor shorter distance Amtrak intercity service across the U.S. SPRC proposes conditions that will create a coherent

[1] *Union Pac. R.R. Co. v. Surface Transportation Board*, Case No. 25-2919, slip op. at 4 (8th Cir. 2026) (quoting *Commuter Rail Div. of the Regional Transp. Auth., d/b/a Metra – Terminal Trackage Rights – Union Pac. R.R. Co.*, STB FD No. 36844, slip op. at 27 (Service Date Sept. 3, 2025)).

nationwide framework to support the goals of the Transaction to improve freight rail service while (a) permitting existing intercity passenger rail service to continue and (b) providing a mechanism to establish terms for expanded service to meet growing intercity passenger rail demands. In the face of a merger that would create a Class 1 behemoth of unprecedented size and geographic reach, this Board's general authority over rail transportation[2] and broad mandate to protect the public interest[3] demands that any approval of the Transaction (a) preserve existing intercity passenger rail operations and (b) dynamically accommodate expansion of such service.

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"),[4] Federal Transit Administration ("FTA"),[5] and Federal Highway Administration ("FHWA")[6] 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[7] and NS' is $2.1 billion.[8]

SPRC is an alliance of state and regional transportation officials who work together to promote the development and growth of intercity passenger rail as part of an integrated national transportation network. SPRC represents states that sponsor Amtrak state-supported service, which makes up approximately half of Amtrak's annual ridership, and also represents states through whom Amtrak's long distance service travels and states along the Northeast Corridor.

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

SPRC establishes policy principles upon which its members have garnered consensus, including that states are central players in Amtrak corridor planning, program development, project delivery, and service delivery. States assume responsibility for reasonable project delivery risk and negotiate with host railroads, Amtrak, and other operators to manage project and service delivery.

**More robust modeling of existing intercity passenger rail operations and proposed expansion will provide this Board with the insight it requires.**

Throughout, the Application consistently states that 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,"[9] 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."[10] This brief, 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

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

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 the 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 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 of the quality the Board demanded in *Gulf Coast* for a sample of geographically-diverse state-supported Amtrak routes 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 to understand the actual impacts of the Transaction on existing intercity passenger rail service, let alone foreseeable future impacts of the Transaction.

**The Transaction Demands the Memorialization of Established Operating Practices and Access Rights**

In order to provide state-supported service, SPRC members have relied on a combination of written agreements and longstanding operating practices based on years of coordination with the Class 1 host freight railroads. In many cases, the parties to the operating agreements in a given state will be Amtrak and the host railroad, accordingly making the relationship between that state sponsor and the host railroad indirect. However, in those states in which the state has entered into contracts directly with the host railroads, SPRC members have reasonably relied on longstanding operating practices that, in some respects, may have been more favorable to the state sponsors and their operating agencies than the explicit language in written agreements. A post-Transaction change in personnel, policy, dispatching practice, or operating priority after the merger could therefore impact state-supported operations. If this Board approves the Transaction, it must require that well-established existing relationships and practices remain in place to ensure continued efficient operations, and that the Applicants pursue any staffing realignment in a manner that does not disrupt existing passenger rail operations.

**The Transaction Requires an Objective Method to Facilitate Passenger Service Growth**

Applicants' capacity analysis reflects a focus on the ability to "maintain[] the current passenger service levels." App. Vol. 2, p. 758. For the reasons described above, the Application does not demonstrate that is the case. Even if it did, however, an analysis limited to current passenger service levels does not adequately address the public interest considerations before the Board in this proceeding. Under 49 CFR 1180.1(b), "The Board's consideration of the merger or

control of at least two Class I railroads is governed by the public interest criteria prescribed in 49 U.S.C. 11324 and the rail transportation policy set forth in 49 U.S.C. 10101." Section 11324 requires the Board to consider "the effect of the proposed transaction on the adequacy of transportation to the public." It is not reasonable for a transaction the size of the one proposed in this proceeding to be based on the assumption that passenger rail service will stay frozen in time. The Board should include reasonably foreseeable passenger service increases in its public interest analysis.

## REQUEST FOR CONDITIONS

Applicants have not supplied enough information to validate their assertion that merger-related freight growth can be accommodated without impairing state-supported service. If the Board elects to approve the proposed Transaction, SPRC proposes conditions that are necessary to avoid or mitigate the reasonably foreseeable impacts of the transaction on the public interest in preserving state-supported intercity passenger rail service.

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).[11]

As part of their application, applicants must submit full system impact analyses that demonstrate the impacts of the transaction on the provision of essential services, including passenger services. 49 CFR 1180.7(b). Further, railroads proposing major or significant transactions must prepare an operation plan that "[i]f commuter or other passenger services are operated over the lines of the applicant carriers, detail[s] any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations." 49 C.F.R. § 1180.8(b)(2). Finally, if Amtrak or

[11] 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).

commuter services are operated over the lines of the applicant carriers, the applicants must provide a service assurance plan that "describe definitively how they would continue to facilitate these operations so as to fulfill existing performance agreements for those services." 49 CFR 1180.10(b).

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).

SPRC requests that the STB attach the following conditions to protect the vital public interest in robust intercity passenger rail operations in the event it approves the Transaction. We intend these conditions to be practical, enforceable, and commercially reasonable. Clear expectations and objective criteria will allow the Applicants, Amtrak, and the state sponsors of intercity passenger rail service to focus on providing the safest, most efficient service for their customers.

**Requested Condition #1: Preservation and Formalization of Operating Practices:** The Board should require the Applicants and the state sponsors with whom either Applicant has entered into a direct relationship to reduce to a binding written agreement the longstanding operating practices on which the states and Amtrak have reasonably relied. If the Board does not require new agreements, it should at minimum provide that approval of the Transaction does not supersede, impair, or authorize the merged railroad to discontinue those established practices with UP and NS without the state sponsors' written consent. For all state sponsors, SPRC requests that this Board require Applicants to permit no detrimental impacts to existing intercity passenger service, for instance with respect to dispatching practices, schedules, slots, run times, equipment type, without the written consent of Amtrak and the affected state sponsor to any such changes proposed by Applicants.

**Requested Condition #2: Capacity and Capital Commitments:** The Board should prohibit implementation of Transaction-driven freight growth or Transaction-driven operational changes that may detrimentally affect state-sponsored service unless the Applicants demonstrate that the affected routes and facilities can accommodate that freight growth, together with existing and reasonably foreseeable passenger service expansion, without material degradation to passenger operations. Passenger service expansion would be reasonably foreseeable for the purposes of this requested condition if such expansion is reflected in an individual state rail plan, other medium-range planning documents, or among projects that have been awarded federal grants for planning, development, or construction. If the required analysis identifies a capacity constraint, Applicants should implement operating changes to resolve the constraint. If further measures are necessary to increase capacity Applicants should be required to contribute toward the capital improvements needed to accommodate both the projected freight growth and planned passenger

service or to cooperate with the state sponsor or Amtrak to obtain grant funding or develop additional funding sources.

**Requested Condition #3: Independent Capacity Review and Disclosure:** Before implementing material Transaction-related traffic growth on the corridors used by Amtrak for state-supported routes, the Board should require Applicants to provide the state sponsors and Amtrak the schedules, train-length and tonnage assumptions, terminal operating plans, dispatching assumptions, infrastructure data, and delay information needed for an independent capacity review. Where the review identifies a material risk or where the parties disagree about available capacity, the Applicants should conduct, or cooperate with the state sponsors in conducting, RTC or equivalent simulation using current operating data and testing both existing service and planned expansions. At a minimum, the Applicants should be required to permit a state sponsor the opportunity to conduct an over-the-shoulder review of Applicants' modeling results. SPRC respectfully requests that the Board only approve the Transaction if it imposes the requested conditions.

Respectfully Submitted,

THE STATES FOR PASSENGER RAIL COALITION

By Counsel



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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 States for Passenger Rail Coalition 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)