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November 18, 2026

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

Re: *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*
STB Docket No. FD 36873
Comment and Request for Conditions Toledo, Peoria & Western Railway Corp.

Toledo, Peoria & Western Railway Corp. Trackage Rights Requests
STB Docket No. FD 36873 (Sub-Nos. 28, 29 and 30)

Dear Chief of Case Administration:

Enclosed for filing on behalf of Toledo, Peoria & Western Railway Corp. ("TPW") are comments and request for conditions filed in Docket No. FD 36873. Due to the confidential information contained in the comments and request for conditions, enclosed are both a redacted version, which is suitable for public viewing, and an unredacted version containing the confidential information.

Also enclosed on behalf of TPW are responsive applications being filed in Docket No. FD 36873 (Sub-Nos 28, 29, and 30). The filing fees for the responsive applications have been paid via pay.gov.

If you have any questions related to this filing, please let me know.

Sincerely,

Justin J. Marks

Justin J. Marks
Counsel to Toledo, Peoria & Western Railway Corp.

Enclosures

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

COMMENTS AND REQUESTS FOR CONDITIONS OF TOLEDO, PEORIA & WESTERN RAILWAY CORP.

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November 18, 2026

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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

COMMENTS AND REQUESTS FOR CONDITIONS OF TOLEDO, PEORIA & WESTERN RAILWAY CORP.

In accordance with the Board's Decision No. 30 served in this proceeding on August 18, 2026, Toledo, Peoria & Western Railway Corp. ("TPW") submits these comments and requests for conditions. In a separate filing, TPW is simultaneously submitting its Responsive Application for trackage rights. The Comments and Requests for Conditions is supported by the Verified Statement of Marty Pohlod ("Pohlod VS"). In a separate filing, TPW is simultaneously submitting its Responsive Application for trackage rights. TPW neither supports nor opposes the Union Pacific Corporation ("UP" or "Union Pacific") Application to acquire control of Norfolk Southern Corporation ("NS" or "Norfolk Southern").[1] However, TPW respectfully requests that the Board impose TPW's requested conditions to ameliorate the competitive harm that the Transaction will cause to TPW.

The Application clearly states Union Pacific's position: single-line service is superior to interchanged service because interchanges pose onerous costs and delays.[2] Nearly 100% of short

[1] UP's proposal to acquire control of NS is referenced to herein as the "Application" or the "Transaction".
[2] Amended Railroad Control Application, STB Finance Docket No. 36873, Vol. 1, Pg 229, (filed Apr. 30, 2026 (cited to herein as App.Vol.).

line traffic is interchanged. On a network, particularly in the Watershed,[3] where UP intends to substantially increase traffic, UP's statements indicate that it will prioritize single-line traffic over traffic where interchange is necessary, i.e., all short line traffic.[4]

Further, the Application states that rail moves within the Watershed market are historically unappealing to Class Is due to the shorter length of haul. Union Pacific is clearly establishing that traffic that is less than 250 miles is not as valuable as long-haul traffic. To date, Class Is, and particularly UP, have been willing partners receptive to short line/Class I cooperation to move regional traffic to the western United States.

If the Transaction is approved, UP is unlikely to provide competitive options for shorter haul rail traffic especially that which currently competes with NS considering its stated intent to focus on single service, transcontinental, long-haul business.

An illustrative but real example of this is the unit train business TPW developed with UP to move corn from Illinois and Indiana to Texas during certain market conditions. Due to the short length of haul on the eastern end to reach UP, this was not traffic either of the eastern Class Is were interested in, but for the TPW, this represented real opportunity.

In order to ameliorate the anticompetitive impact and to provide an opportunity to offset some of the expected harms of the UP/NS Transaction on TPW customers and the market TPW serves, TPW seeks trackage rights to allow more regionalized traffic movements and keep more volume on rail. [5] TPW needs an opportunity to preserve itself as a useful rail freight route for local

[3] The Watershed is defined as 250 miles from the four key watershed gateways, which are located in Chicago, St. Louis, Memphis, and New Orleans. App. Vol. 1, Page 13. Similarly, "watershed markets" is defined as an economic region in the U.S. "where UP or NS would haul less than 250 miles before or after interchange. These markets are characterized by short-haul handoff lanes that sit right on the fault lines between the Class I railroad networks." APP.VOL. 1, Pg 228.
[4] Pohlod VS at 4.
[5] *Id.* at 5-6.

and intra-watershed modal conversion opportunities as well as traditional rail movements to replace the inevitable losses caused by the UP-NS merger, if approved. The TPW also has a role to play as an alternative gateway for other carriers, particularly to short lines negatively impacted, due to the TPW's unique geographic positioning and rail connectivity.

I. Background

A. About TPW

TPW is a Class III railroad that operates over approximately 224 miles of track in Illinois and Indiana. As relevant to the Proposed Transaction, TPW interchanges with Union Pacific Railroad Company ("UP") in Sommer, Watseka and Chenoa, Illinois, and with Norfolk Southern Railway Company ("NS") in Logansport, Indiana.

The TPW's location and connectivity to other railroads provides it competitive options to offer its customers. Near or on the east end, in and near Logansport, IN, it interchanges with NS, CSX Transportation ("CSX") and TPW's affiliate short line, the Central Railroad Company of Indianapolis. In various locations in the middle of the east-west main line the TPW connects to UP and CN, both of their lines intersecting the TPW on a north-south orientation, and with the short lines Kankakee, Beaverville and Southern Railroad and Bloomer Shippers Connecting Railroad.[6] On the western end, near Peoria, IL, the TPW connects to the short lines, the Keokuk Junction Railway as well as its affiliate, Tazewell & Peoria Railroad, a terminal railroad which gives the TPW access to the BNSF, UP, NS, CN, Iowa Interstate Railroad and, via the Illinois Midland Railroad, the CPKC.[7]

On the east end, TPW competes with NS, both directly at two dual served customer locations as well as in the market, offering shippers optionality to UP via the TPW's connections

[6] *Id. at 3-4*
[7] *Id.*

further west.[8] On the west end of the railroad, TPW can compete with UP, offering shippers connectivity to NS and other railroads on the eastern end.

Prior to 1980, TPW's location functioned as a secondary western gateway bypass to Chicago via Peoria, IL. However, the Peoria gateway declined in volume as the Clas I railroads found routes to bypass the gateway instead connecting directly to Peoria. In the early 2000s-2010s, TPW's traffic fell significantly and track maintenance declined significantly.[9]

Since 2013, TPW has aggressively competed for short haul and local truck traffic, capturing local, less than 50-mile movements of soybeans and competing against CN from longer distances.[10] It also pursued similar short haul movement of corn to ethanol plants in Peoria located on the Tazewell & Peoria Railroad ("TZPR"). As the traffic grew, so did TPW's investment in infrastructure, service, and safety.[11]

TPW continues to develop agricultural traffic. Since the early 2020s, TPW has partnered with western railroads, including UP, to develop a corn unit train program for movement from Illinois and Indiana to Texas during certain market conditions. The short-haul nature of these movements do not interest NS nor CSX because those carriers prefer to focus their Illinois and Indiana grain marketing efforts on moving bushels to the Southeast. UP identifies this issue in its description of rail service in the Watershed. TPW has direct experience with this issue and developed it into new business.[12]

Post acquisition, if approved, TPW will lose a competitive interchange as NS and UP will become a combined network who we expect will prioritize its own, single line, long haul traffic.

[8] *Id.* a 4.
[9] *Id.* at 2-3
[10] *Id.* at 3.
[11] *Id.*
[12] *Id.* at 12.

B. The UP/NS Transaction would competitively harm TPW, but the Application ignores the harm and offers no pro-competitive remedy.

1. The Application Predicts that Class II and Class III Rail Carriers will realize substantial opportunities, but the outlook masks uncertainty for Watershed short lines.

The Application itself appears to provide limited consideration and commentary to short lines, offering relatively generic and seemingly disingenuous platitudes. According to the UP Application, the "growth that our merger will facilitate will be a tide that rises for all, opening for short lines new opportunities to reach national and global markets."[13] It continues, "[s]hort line partners benefit from new connections and growth potential through access to new markets."[14] And the Application exclaims, a "faster, seamless, coast-to-coast network will give short lines the ability to deliver superior service to their customers and access to more markets unburdened by artificial barriers and delays." [15]

As specifically related to short lines in the Watershed, the Application states, "much of this transaction will open up new watershed markets . . . for the UP and NS; so too will opportunity be afforded to short lines, especially those with service in the heartland, unlocking new markets and truck-to-rail diversion opportunities."[16]

The Application's unsubstantiated outlook masks uncertainty for short line rail carriers in the Watershed. In its Application, UP states, "[t]he proposed transaction creates single-line service opportunities for more than 88,000 county-to-county lanes nationwide, including 45,000 lanes in the watershed, where the challenges of providing attractive interline rail service are magnified."[17] TPW operates within these 45,000 Watershed lanes. A combined UP/NS will harm TPW and its

[13] App. Vol. 1, Page 264.
[14] App. Vol. 1, Page 260.
[15] App. Vol. A, Page 264.
[16] App. Vol. 1, Page 326.
[17] App. Vol. 1, Page 38.

agricultural customers because the combined UP/NS will foreclose a competitive partner and will cause traffic diversion from TPW to the combined UP/NS.

As explained in the Pohlod VS, TPW has invested significant capital expenditures in the infrastructure to make TPW a commercially effective rail freight route.[18] It has done the work to meet the needs of the local communities and markets.[19] The UP-NS merger will cause the long-term erosion of freight on TPW due to the agricultural supply chain nature of the territory.[20]

The UP Application does not account for this impact on TPW or other short line carriers. In fact, statements on the record in this proceeding strongly suggest that the Application's references to short line carriers had been written merely as a form of propaganda. According to NS's Chief Strategy Officer in an email to UP, he [redacted]." [21]

2. The Union Pacific Application identifies numerous problems with the national rail network, and in each case, the solution is a UP/NS combination.

The UP Application boasts that the Transaction will provide opportunities to Watershed areas "underserved by rail."[22] It describes the Watershed as "characterized by shorter-haul routes on both sides of an interchange where rail networks meet."[23] The UP Application describes a challenge for Watershed shippers, "unattractive rate and service options because the eastern

[18] Pohlod VS at 12-13.
[19] *Id.*
[20] *Id*.
[21] Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 3, Exhibit A, NS_00329313 (entered into the record, Nov. 6, 2026)(filing id 312810).
[22] App. Vol. 1, Page 44-45.
[23] App. Vol 1, Page 261.

carrier(s) would receive relatively little benefit from carrying the traffic or investing to improve service."[24]

The Application describes interchange as a problem for carriers because it raises costs: "the central interchange gateways between UP and NS" are "where delays and costs accumulate." The Application also calls interchange a "burden between two railroads."[25]

In its Application, UP explains the problem with partnerships, "[t]he benefits of the UP/NS merger cannot be achieved through mere partnership arrangements between UP and NS"[26] because "joint alliances have built-in limits."[27]

The solution to each of these problems, according to the UP Application, is the UP/NS combination. UP's numerous "problem statements" raise concerns because each item that UP identifies as a problem, TPW has embraced as an opportunity. UP acknowledges that intra-Watershed moves provide little benefit to Class I carriers, but TPW is building agricultural business within the Watershed. UP identifies interchange and partnership as problems to be solved, but TPW has used its interchange partners to grow business.

3. The Application Proposes No Conditions to Ameliorate the Harm to TPW or to Improve Competition in the TPW Market.

The Application does not specifically propose any conditions to resolve harms caused by the Transaction or to improve competition in the TPW market. Indeed, as the Board noted, UP's proposed Competitive Gateway Pricing ("CGP") is "the sole competitive enhancement Applicants propose."[28] However, CGP will not alleviate the harm caused by the combined UP/NS

[24] App. Vol. 1, Page 44-45.
[25] App. Vol. 1, Page 244.
[26] App. Vol 1, Page 231.
[27] App. Vol 1, Page 338-339.
[28] Pohlod VS at 5.

deprioritizing short-haul Watershed traffic or the harm caused by the combined UP/NS diverting TPW traffic to UP/NS.

4. Union Pacific's public statements raise questions about its intention to negotiate trackage rights agreements in good faith.

Union Pacific's CEO has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith. Mr. Vena has been quoted as saying, "[i]f you allow---if we allowed x railroad to run on our railroad for 800 miles, we would charge them a per car mile charge that actually would make it more expensive for them to get to that destination. I've thought about just [agreeing] because, guess what, we would just reset the price higher for us. Okay?"[29]

II. Legal Standard

A. Criteria for Approving the Transaction

The acquisition by a Class I rail carrier of another Class I rail carrier requires Board approval under 49 U.S.C. § 11323(a). Because the proposed transaction in this proceeding involves the merger or control of two or more Class I railroads, the Board examines the Application under 49 U.S.C. § 11324(b), which directs the Board to consider:

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

[29] Pohlod VS at 11; Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 5 (entered into the record, Nov. 6, 2026)(filing id 312810).

Although the Board must consider each of these factors, the ultimate statutory inquiry is whether the transaction is consistent with the public interest.[30] In approving a transaction, the Board may impose conditions governing the transaction, including the divestiture of parallel tracks or the granting of trackage rights and access to other facilities, to alleviate anticompetitive effects.[31]

B. Public Interest Test

In 2001, the Board revised its regulations governing major rail consolidations to impose "a heavier burden to show that a major rail combination is consistent with the public interest" ("2001 Rule").[32] The 2001 Rule requires an applicant "to provide a plan for enhancing competition" so that the Board may "remedy every competitive harm that would stem from any proposal that [it] decide[s] to approve."[33]

In determining whether a proposed transaction is consistent with the public interest, the Board considers criteria set out in the governing statute using a balancing test to weigh numerous factors as established in the 2001 Rule.[34] Specifically, the Board must weigh the goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees.[35] The Board must also ensure than a transaction would promote a competitive, efficient, and reliable national rail system.[36] Accordingly, a merger serves the public interest only where substantial and demonstrable gains in important public benefits, including improved service and safety, enhanced competition, and

[30] *See* 49 U.S.C. § 11324(c).
[31] *Id*.
[32] *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 9 (served June 11, 2001) [hereinafter *2001 Rule*].
[33] *Id*. at 20.
[34] *Id*. at 16; 49 C.F.R. § 1180.1(b)-(c); 49 U.S.C. §§ 10101, 11324(b).
[35] *Id*. at 14; 49 C.F.R. § 1180.1(b)
[36] *Id*.

greater economic efficiency, outweigh the transaction's anticompetitive effects, potential service disruptions, or other merger-related harms.[37]

The 2001 Rule requires applicants to offset potential harms of the proposed merger by proposing conditions "that would not simply preserve but also enhance competition."[38] If a proposed merger is not, on its face, consistent with the public interest, the Board "will either deny it or impose sufficient conditions to ensure that it is in the public interest."[39]

C. Treatment of Class II and III Railroads

The Board gives particular consideration to the effect of major rail consolidations on Class II and Class III railroads and identifies their interests as a key component of merger review and the balancing test in determining public interest.[40] Applicants must explain "how they would preserve competitive options for shippers and for Class II and III rail carriers."[41] Under the 2001 Rule,

> [A]pplicants must address the anticipated effects of a proposed merger on regional and shortline railroads, identify any benefits that those small railroads and their customers would realize as a result of the proposed transaction, and develop suggested remedies for any anticipated harms to the public interest by virtue of a merger's adverse impacts on regional and shortline railroads and ports.[42]

Consistent with this approach, the Board places "greater emphasis to the role of Class II and Class II carriers and ports in the broader transportation infrastructure" in conducting its balancing test.[43]

[37] *Id*. § 1180.1(c).
[38] *Id*. § 1180.1(d).
[39] *2001 Rule*, at 13.
[40] *Id*. at 27.
[41] 49 C.F.R. § 1180.6(b)(10)(i).
[42] *2001 Rule*, at 27.
[43] *Id*. at 15.

Where competitive or other merger-related harms to Class II or Class III remain, the Board will impose necessary conditions "to ameliorate or redress those harms". [44]

The Board has looked closely at the adverse effects of rail consolidations on regional and short line railroads. The Board has previously noted:

> In our merger decisions we have given special consideration to shortline interests, generally providing protections similar to those afforded shippers. For example if a merger would cause a short line to lose one of its two Class I connections, it has been our practice to impose conditions where feasible to preserve a second connection. Similarly, if a shortline carrier has a build-out option to reach a second Class I carrier, we have attempted[sic] to preserve that option as well. …
>
> We are keenly aware that shortlines are an important part of the national rail transportation system. They provide a valuable service in gathering and distributing traffic that generally flows over the lines of the Class I carriers, and they are usually able to provide this type of service at a lower cost than the larger carriers can achieve. . . . Nevertheless, where conditions are warranted to protect the interests of particular shortlines, or shortlines in general, from the adverse impacts of this transaction, we will impose them as appropriate.[45]

Therefore, where the criteria for imposing conditions are satisfied, the Board has imposed appropriate conditions to protect short lines from merger-related harms.

III. Criteria for Imposing Conditions

Under 49 U.S.C. § 11324(c), the Board has "broad authority to impose conditions" on a Class I merger transaction to preserve and enhance competition.[46] The Board may issue conditions when a proposed merger would reduce competition, harm essential rail services, or result in

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[44] *See id*. at 27.
[45] *CSX Corp., et al.–Control and Operating Leases/Agreements–Conrail Inc., et al.*, STB Finance Docket No. 33388, 1998 WL 456510, Decision No. 89, slip op. at *54 (served July 20, 1998).
[46] 49 C.F.R. § 1180.1(d).

transitional service disruptions or other service problems.[47] The Board may exercise its conditioning authority whenever appropriate conditions would protect the public interest without unduly diminishing the public benefits of the proposed transaction.[48]

IV. Argument

A. The Board Should Grant TPW's Requested Trackage Rights to Ameliorate the Harm Caused if the Board Approves the Application.

First, the Application's own statements show that Union Pacific will focus its efforts on profitable long-haul traffic and will deprioritize traffic that is less than 250 miles that requires UP to interchange. The stated purpose of the Transaction is UP's ability to offer single line service on a transcontinental scale because any rail traffic that is interchanged between carriers is a "burden."[49] TPW's agricultural traffic provides a combined UP and NS with traffic that the combined carriers can divert from TPW and will cause TPW to lose a competitive option.

Further, because all TPW traffic with UP is interchanged, UP is likely to de-market TPW traffic in favor of its long-haul traffic if it views interchange as a burden.[50] Additionally, the Application demonstrates that Union Pacific is not interested in traffic that is less than 250 miles. The UP Application explains that traffic under this range is unattractive because Class I carriers receive little benefit in carrying the traffic or investing to improve service.[51] Finally, it is evident that UP would concentrate on its transcontinental traffic because it has specifically stated that "joint alliances have built-in limits."[52]

[47] *Id*. § 1180.1(c)(i)-(iii).
[48] *See id*. § 1180.1(d).
[49] App. Vol. 1, Page 244.
[50] Pohlod VS at XX.
[51] App. Vol. 1, Page 44-45.
[52] App. Vol 1, Page 338-339.

If the Board approves the Transaction, TPW seeks trackage rights over certain NS and UP track to connect to the Indiana & Ohio Railway ("IORY") and the Chicago and Ft. Wayne & Eastern Railroad ("CFE") to preserve the Peoria Gateway as an alternate to the only two Class I freight rail networks east of the watershed.[53] The remedy to prevent and offset competitive harm to TPW is to ensure that TPW can access other carriers to continue to grow regional traffic and remain a viable alternative gateway which will be increasingly important post Transaction, especially to short lines. Connecting TPW, IORY and CFE provides an alternative rail freight option to customers in the watershed market. Coupling that with the Peoria gateway would provide for enhanced competition for these Watershed customers.

These trackage rights would be pro-competitive but TPW would not truly be competing with the major east-west gateways. The requested trackage rights would allow more regionalized traffic movements and keep more volume on rail. It is also for this reason that the TPW is filing for trackage rights over UP to reach carriers in Chicago. Reaching other carriers directly would allow for more efficient interchange, ensure competitive access to offset harm, and is more economic overall.

B. <u>If The Board Grants TPW's Trackage Rights, It Should Impose Conditions to Protect TPW From Bad Faith Negotiating Tactics.</u>

The Application promises a "rising tide" while calling interchange a "burden," and its impact analysis on short lines offers conclusions, not evidence. Discovery explains why: NS's Chief Strategy Officer told UP he had [redacted] Language added to please the Commissioners are not commitments.

[53] *Id.* at 14.

Union Pacific's CEO has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith. Mr. Vena has been quoted as saying, "[i]f you allow---if we allowed x railroad to run on our railroad for 800 miles, we would charge them a per car mile charge that actually would make it more expensive for them to get to that destination. I've thought about just [agreeing] because, guess what, we would just reset the price higher for us. Okay?"[54]

As such, TPW respectfully requests that the Board impose, as part of TPW's requested trackage rights, a condition that UP/NS provide equal dispatching and equal access to facilities such as sidings. Further, TPW seeks indefinite oversight to guarantee that TPW is able to return to the Board if Union Pacific exercises its market power to inhibit TPW's trackage rights granted in this proceeding.

C. TPW's Conditions are in the Public Interest

TPW's trackage rights conditions are in the public interest because the trackage rights will allow TPW to continue to be a short line within the Watershed that can provide a western option to shippers even if UP de-prioritizes TPW traffic and the trackage rights would allow TPW to potentially replace revenue it will lose as a result of the transaction.

D. Description of TPW Trackage Rights Requests

If the Board approves the Transaction, TPW respectfully requests trackage rights or amended trackage rights over the following routes:

1. Logansport, IN - Ft. Wayne, IN - Leipsic, OH. Trackage rights over Norfolk Southern between Logansport, IN - Fort Wayne, IN - Leipsic, OH

    a. Between Logansport, IN and Leipsic, OH via Ft. Wayne, IN: allows Toledo, Peoria & Western Railway to interchange with Indiana & Ohio Railway in Leipsic, OH

[54] Pohlod VS at 7-8; Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 4, n.13 (entered into the record, Nov. 6, 2026)(filing id 312810).

b. Between Logansport, IN and Ft. Wayne, IN: allows interchange with Chicago, Fort Wayne & Eastern Railway in Ft. Wayne, IN

2. Watseka, IN - Chicago. Trackage rights over Union Pacific between Watseka, IN and Chicago area gateways, to allow interchange with:

   a. Indiana Harbor Belt (IHB): at Dalton Jct. with ability to go east or west to access IHB's Blue Island Yard and Gibson Yard

   b. Belt Railway (BRC): at or in the environs of 80th Street

   Presently, the UP-TPW Watseka connection track is in the southwest quadrant of the UP-TPW diamond. As part of the trackage rights request, UP must consent to TPW making a reverse move south onto UP's mainline in order to use its proposed trackage rights to proceed north to Chicago. Similarly, for TPW southbound trains from Chicago, TPW requests UP's consent to take head room on UP's mainline at Watseka to clear the connection track turnout in order to make a reverse movement back onto TPW. Additionally, if TPW wants to make a progressive move for the train movements to/from Chicago, TPW requests the right and full cooperation of UP to construct a connection track(s) at TPW's sole option and cost.

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V. Conclusion

For the reasons stated above, TPW respectfully requests that the Board grant TPW's requested trackage rights in its Responsive Application and impose the conditions described above if the Board approves the Transaction.

Respectfully submitted,



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Dated: November 18, 2026

Counsel for Toledo, Peoria & Western Railway Corp.

VERIFIED STATEMENT

Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

VERIFIED STATEMENT OF MARTIN POHLOD ON BEHALF OF THE TOLEDO, PEORIA & WESTERN RAILWAY CORP.

I. Introduction

My name is Marty Pohlod, I am Vice President ("VP") of National Accounts and Industrial Development for Genesee & Wyoming Railroad Services, Inc (G&W). I have 36 years in the railroad industry including time at Wheeling & Lake Erie, Southern Pacific, Ohio Central and have been supporting Genesee & Wyoming railroads since 2008. My roles have been primarily in the commercial side of the business, including Marketing & Sales, Customer Service, Revenue Accounting, Industrial Development and Real Estate. I also have operations experience and served 3 years as Region Senior VP for G&W's Midwest Region from 2017-2020, where I had full P&L responsibility for all departments and functions of the railroads in that region (from Wyoming east to central Ohio). The Toledo, Peoria & Western Railway Corp. (TPW), was part of my VP of Marketing responsibilities from 2013-2017, and one of the railroads for which I was responsible as Region Senior VP thereafter. My department continues to support business growth and development on the TPW and all G&W owned short lines. In my position, I handle large, national accounts, and I have a clear understanding of how customers with multiple facilities package and purchase their transportation needs, how Class I rail carriers compete and co-operate to win this business and the important role short lines play to enhance competitive options.

A. About TPW and the Market it Serves.

The TPW is a 224-mile, Class III short line railroad, hauling approximately 26,000 cars per year. Largely agricultural, it traditionally derives 65%-70% or more of its traffic from such sources. Its 170-mile mainline stretches from Logansport, IN on the east to Peoria, IL on the west and sits squarely in the Watershed[1], the region Union Pacific ("UP") has focused on in much of its discussion of its potential acquisition of Norfolk Southern ("NS") as an underserved area by Class I railroads. The TPW has been at various times been owned by the Atchison, Topeka and Santa Fe Railway (AT&SF), Delaware Otsego Corporation, Rail America and then G&W acquired it in January 2013. As relevant to Union Pacific's proposed acquisition of Norfolk Southern (the "Transaction"), the TPW interchanges with Union Pacific ("UP") in Sommer, IL, Watseka, IL and Chenoa, IL and with the Norfolk Southern Railway Company ("NS") in Logansport, IN.

Prior to deregulation in 1980, TPW also functioned as a secondary western gateway bypass to Chicago via Peoria, IL. After deregulation, the economically necessary retrenchment of rail lines to a few core through routes resulted in focusing most western gateway traffic through Chicago and St. Louis. The Peoria gateway steadily declined in volume including via other railroads with their own secondary lines connecting directly to Peoria (UP, BNSF, CN, NS). The TPW line then became unused as a through route between Conrail and NS at Logansport, IN and connections at Peoria, IL. Conrail had its preferred hi-density routes to Chicago and St. Louis while NS had its own route to Peoria; neither needed a TPW route to Peoria. Thus, TPW lost any overhead traffic and had to subsist on the grain and agricultural traffic local to the line. In the early 2000s-2010s, most years the TPW had less than {{[redacted]}} carloads of traffic. It was difficult to

[1] As defined in the Joint Verified Statement of Kenny Rocker and Claude E. "Ed" Elkins, page 8, paragraph 15, as part of Union Pacific Corporation and Union Pacific Railroad Company Amended Application of April 30, 2026 to control Norfolk Southern Corporation and Norfolk Southern Railway Company, Volume 1, page 282

maintain and renew the 170-mile mainline and the infrastructure declined to mostly Federal Railroad Administration (FRA) Class I with some FRA Class II.

Since G&W acquired the Line in 2013, TPW has aggressively competed for short haul and local truck traffic in the agricultural space, capturing local, less than 50-mile movements of soybeans to the large Incobrasa soybean crush plant in Gillman, IL (which plant has since doubled in size in 2026 making it the largest soybean extraction plant in the United States), competing with trucks and, from longer distances, CN. It also pursued similar short haul movement of corn to ethanol plants in Peoria located on the Tazewell & Peoria Railroad ("TZPR"). The TPW attracted wind-turbine and other transload traffic at its repurposed former AT&SF intermodal terminal in Remington, IN. Further relationships with customers yielded a long-term lease of Kokomo Grain's ~45-mile Winamac Southern in 2019 to add onto the TPW's east end in Logansport, IN. In total we estimate carloads have increased by {{[redacted]}}% from when G&W acquired the railroad.

As the traffic grew, TPW steadily invested capital to improve its physical condition, service and safety. The year 2025 marked completion of a large multi-year $13.5M grant-assisted program to accelerate the replacement of ties, rail and add yard tracks in Effner, IN. In late 2026, it was announced that TPW was awarded its Consolidated Rail Infrastructure and Safety Improvements ("CRISI") grant application, a jointly funded TPW - IL Department of Transportation - IN Department of Transportation - Federal Railroad Administration $32.8M project to undertake a major upgrade of the railroad with installation of 32 miles of 115# continuously welded rail, ties, crossing improvements, wayside defect detectors and East Peoria Yard improvements.

The TPW's location and connectivity to other railroads provides it meaningful competitive optionality. Near or on the east end, in and near Logansport, IN, it interchanges with NS, CSX Transportation ("CSX") and TPW's affiliate short line, the Central Railroad Company of

Indianapolis. In various locations in the middle of the east-west main line the TPW connects to UP and CN, both of their lines intersecting the TPW on a north-south orientation, and with the short lines Kankakee, Beaverville and Southern Railroad and Bloomer Shippers Connecting Railroad. On the western end, near Peoria, IL, the TPW connects to the short lines, the Keokuk Junction Railway as well as its affiliate, Tazewell & Peoria Railroad, a terminal railroad which gives the TPW access to the BNSF, UP, NS, CN, Iowa Interstate Railroad and, via the Illinois Midland Railroad, the CPKC.

B. Summary of TPW's Concerns with UP's Acquisition of NS

TPW neither supports nor opposes the UP application. However, if the Board approves the application, the TPW requests that the Transaction be conditioned on granting TPW certain trackage rights to reduce competitive harm caused by the Transaction and ensure conditioned competitive access for the TPW and other local short lines.

UP proposes to create a transcontinental network, focused on long haul, single-service which it will prioritize and disadvantage other traffic seeking to interchange with UP, particularly from lower density short lines like the TPW, and especially for traffic going shorter distances.

The TPW sits in the Watershed with access to both UP and NS. These connections are important competitive outlets for TPW's customers. On the east end, TPW competes with NS, both directly at two dual served customer locations as well as in the market, offering shippers optionality to UP via the TPW's connections further west. On the west end of the railroad, TPW can compete with UP, offering shippers connectivity to NS and other railroads on the eastern end. Post acquisition, if approved, TPW will lose a competitive interchange as NS and UP will become a combined network who we expect will prioritize its own, single line, long haul traffic.

We discussed above TPW's meaningful connectivity and optionality as an alternative east-west gateway for other carriers. We believe, post Transaction, if approved, this access will become even more critical, especially to short lines both contiguous and those in near proximity who we expect may file with the Board as part of these proceedings requesting protective trackage rights to reach the TPW as potential remedies to expected Transaction harms, including TPW's affiliated railroads (Indiana & Ohio Railway Company (IORY), Illinois & Midland Railroad, Inc. (IMRR), Chicago, Ft. Wayne & Eastern Railroad (CFER), and The Columbus & Ohio River Rail Road Company (CUOH)). To ensure the remedies are effective, we believe it is just as important for TPW to have the ability to connect to other regional short lines as it is for those short lines to connect to the TPW.



In no way would these trackage rights create a true competitor to the major east-west gateways. They would, however, allow more regionalized traffic movements and keep more volume on rail. It is also for this reason that the TPW is filing for trackage rights over UP to reach carriers in Chicago. Reaching other carriers directly, particularly in this vital gateway, as opposed to via a terminal railroad, allows for more efficient interchange and is more economic overall.

We also believe that if the proposed Transaction occurs it meaningfully increases the likelihood of a follow on transaction that creates a second transcontinental railroad. In such a scenario the preservation of alternative gateways like what the TPW can provide, in addition to access to Chicago, and particularly to short lines, will be of even greater importance.

We would ask that the Board consider this filing in context and alongside of other short lines who may file to reach the TPW who would benefit from alternative competitive access.

II. Union Pacific's Proposed Acquisition of Norfolk Southern Ignores Harms to short line railroads and will specifically harm TPW.

Union Pacific's proposed acquisition of Norfolk Southern is an unprecedented undertaking that, if approved, will meaningfully transform the transportation landscape of the United States. TPW is not opposed to the Transaction, assuming there are appropriate protections for other industry participants like the TPW. The railroad appreciates the potential advantages a combined Union Pacific and Norfolk Southern could create via the creation of single line, transcontinental service. However, TPW is concerned for our specific customers and the market we serve, including as an independent overhead route, and whether, post transaction, TPW will be able to continue to provide the same level of competitive options and service levels as it does at present and that TPW continues to remain in a position to sustainably invest and grow. In evaluating the Application TPW believes that the Application fails to adequately address the potential impact on certain short lines and the TPW in particular.

UP has advocated in its filing that the only meaningful avenue for volume growth is through the creation of a transcontinental railroad.[2] Yet, as widely recognized by the industry[3], the Board,[4] and UP itself, short lines have been able to grow consistently, often at double the growth rates of Class Is. Many reasons explain this, for example, unlike Class I railroads, short lines benefit from not having to price traffic to meet the requirements of a sophisticated, national pricing model which often limits the ability of a rail carrier to offer a differentiated rate or to haul traffic over shorter distances. Short line railroads are free of this obligation which allows short lines to be nimble and to convert traffic from truck to rail. Nor do short lines share the economic pressures of competing to generate a sub-60% operating ratio to satisfy investors. Instead, a short line benefits from being in a position to focus purely on generating incremental business such that it will move an additional car whether it is going 2 miles, 20 miles, 200 miles or is participating in a small part of a 2,000 mile move across the country.

Whereas the Class I railroad business model is focused on how to best allocate their capacity and service plan to the traffic that generates the greatest profitability, short lines in contrast do not benefit from a similar privilege of density. For short line railroads, in almost all cases any incremental traffic is simply added to the back of an existing train and hence each additional carload makes a difference.

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[2] Verified Statement of Mark George, page 17, paragraph 42; Union Pacific Corporation and Union Pacific Railroad Company Amended Application of April 30, 2026 to control Norfolk Southern Corporation and Norfolk Southern Railway Company, Volume 1, page 259

[3] OliverWyman, "Unleash The Short Lines", 2024

[4] Surface Transportation Board, Hearing On Growth In The Freight Rail Industry Docket No. EP 775, Day 1 (September 16, 2024), transcript pages 131, 267

A. Intrinsic Harms Caused by the UP/NS Transactions that Impact all Short Line Rail Carriers.

The Union Pacific acquisition of NS creates multiple concerns to the short line industry generally and to TPW specifically. The Applicants have not acknowledged these harms nor have they proposed remedies to offset these harms. As the Board analyzes the impact of the UP/NS transaction and TPW's requested conditions, TPW respectfully requests that the Board consider the following harms that will impact TPW.

1. *Union Pacific will prioritize its own single-line traffic over traffic that originates and terminates on and is interchanged with short line railroads.*

The Application clearly states the catalyst for the Transaction is the ability to offer single line service on a transcontinental scale and any rail traffic that is interchanged between carriers is less efficient, higher-cost and, by definition, less desirable.[5] Short lines are almost entirely dependent on interchanging traffic with Class Is and by definition, all traffic that UP shares with short lines is interchanged. TPW is concerned that post transaction UP will prioritize its limited network capacity to its own single line traffic to the detriment of existing interchange traffic.

2. *Union Pacific is not interested in traffic that they haul less than 250 miles.*

UP defines the Watershed Area as 250 miles to the east and west of the Mississippi River[6]. UP states that the Watershed Area is without competitive rail service because the shorter haul portion of the move is not of interest for the Class I carrier. Short line railroads within this Watershed Area, including TPW, have been able to grow because they continually focus on

[5] Verified Statement of Mark George, page 19, paragraphs 45 and 46; Union Pacific Corporation and Union Pacific Railroad Company Amended Application of April 30, 2026 to control Norfolk Southern Corporation and Norfolk Southern Railway Company, Volume 1, page 261

[6] Union Pacific Corporation and Union Pacific Railroad Company Amended Application of April 30, 2026 to control Norfolk Southern Corporation and Norfolk Southern Railway Company, Volume 1, page 12

moving shorter haul, regional and local traffic. Similar to our concern about the prioritization of non-interchanging traffic, our concern is that UP will be even less interested in cooperating with a short line where UP is moving the traffic less than 250 miles, especially when the focus is on allocating network capacity to even greater volumes of longer-haul, single line service.

3. *Union Pacific will act in its own interest and post-Acquisition, if approved, this self-interest will harm the customer base that TPW has built in partnership with UP.*

UP's stated self-interest in acquiring NS is to establish a transcontinental railroad focused on the profitable long-haul. Post-acquisition the new UP/NS entity will no longer have the same incentive to offer the competitive access and service as UP it did pre-Transaction. The combined UP/NS will have different priorities. TPW requests that the Board adopt conditions to ensure that competitive access for customers that are not directly located on the new UP/NS system are not lost.

4. *Union Pacific's does not propose any conditions to remedy the adverse impacts of the transaction on short line railroads.*

Union Pacific has sought to meet the regulatory requirements to preserve and enhance competition via broad commitments to service and rates through its proposed Committed Gateway Pricing. TPW does not believe that these proposed remedies properly address and fundamentally misunderstand the role TPW and certain short lines play in the more regional and local transportation landscape.

The updated 2001 merger rules specifically require the applicants to address the impact the proposed merger might have on Class II and Class III short lines.

Under our new rule, applicants must address the anticipated effects of a proposed merger on regional and shortline railroads, identify any benefits that those smaller railroads and their

customers would realize as a result of the proposed transaction, and develop suggested remedies for any anticipated harms to the public interest by virtue of a merger's adverse impacts on regional and shortline railroads and ports.[7]

The Application pays little attention to short line railroads aside from claiming benefits that may accrue to UP and NS feeder lines. To the extent that the Application acknowledges harm to any specific short line railroad, UP provided limited analysis and only after prodding by the Board.

5. *Any traffic loss harms short line rail carriers.*

The UP Application fails to address the negative impact that lost revenue has on short line rail carriers. TPW respectfully requests that the Board grant considerable weight to evidence showing that the transaction could cause a short line to lose revenue as a reason for imposing a condition. For a short line rail carrier, any loss of traffic, even 10% or less can have an outsized impact on a short line rail carrier's service and viability. With a relatively fixed operating and capital cost base, short lines are also not able to cut costs aggressively when traffic falls. When traffic does fall and a short line rail carrier has no choice to cut service or investment, the impact of this is typically much greater than what it would be for a Class I carrier.

A forced reduction in service might mean eliminating days of service to a particular customer or branch line or reducing speeds from 25 mph to 10 mph. Eliminating service or lowering speed can cause a downward spiral to a short line rail carrier. Poor service can cause customers to switch from rail to truck, this in turn means that the short line must cut more service

[7] *Major Rail Consolidation Procedures,* STB Ex Parte No. 582 (Sub-No. 1), slip op. at 27 (served June 11, 2001).

and investment. This limits the short line rail carrier's ability to generate the required cashflow to invest in its infrastructure, meet maintenance costs, and provide the flexible service. As service levels deteriorates, the short line carrier can lose even more business and the downward spiral continues.

6. *Union Pacific has made statements in this proceeding that are concerning and the Board should impose conditions to protect short line rail carriers from retaliation and that if trackage rights are imposed as conditions that they are reasonable and competitive.*

If the Board grants the Union Pacific application to acquire NS, the Board should use its conditioning authority to impose conditions protecting short line rail carriers that are seeking conditions in this proceeding.

Regarding the potential conditioning of trackage rights, UP's Chief Executive Officer, Mr. James Vena has also made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith if the Board were to impose trackage rights as a condition. Mr. Vena has been quoted as saying, "But on top of that, this is what it would do. If you allow---if we allowed x railroad to run on our railroad for 800 miles, we would charge them a per car mile charge that actually would make it more expensive for them to get to that destination. I've thought about just [agreeing] because, guess what, we would just reset the price higher for us. Okay?" The Board should impose oversight conditions in this proceeding to ensure that any trackage rights that may be imposed include pro-competitive rates, equal dispatch, and equal access to railroad facilities (ex. sidings). Further, the Board should impose conditions that a short line rail carrier can enforce without lengthy litigation. If the Board allows this transaction to proceed, Union Pacific will be one of the largest companies in the United States. It has resources to delay the imposition of the Board's conditions through litigation that can easily outlast any short line rail carrier. The Board should not allow UP to thwart its conditions.

B. The UP/NS transaction, if approved will cause TPW competitive harm.

If the Board approves the UP/NS transaction, the combination of UP and NS will cause TPW competitive harm because TPW will lose a competitive option. TPW operates in the Watershed, and as such it both directly competes with and partners with NS and UP, who both operate in close proximity, and who currently can compete with each other to provide TPW's customers options. As in other cases, with similarly placed short lines, TPW competes with NS for traffic that may flow to UP and TPW competes with UP for traffic that may flow to NS. If the Board approves UP's acquisition of NS, TPW will be precluded from those carriers as independent competitive options.

In the early 2020s, TPW worked with western railroads, including UP, to develop a commercially effective unit train program to promote the movement of corn from Illinois and Indiana to Texas during certain market conditions. Such movements were not of interest to NS nor CSX for their grain marketing efforts in IL and IN due to the relative short haul nature of the traffic as compared to moving bushels to their traditional consumption markets in the Southeast, illustrative of the watershed issue raised by UP. The TPW had a receptive market to couple with its newly developed program with the western railroads. However, the harm would come with a combined UP-NS. The elevators on NS in Illinois and Indiana near TPW will be part of a unified UP-NS network which is clearly and rightly focused on watershed traffic generation. That new reality will most assuredly favor UP-NS' own origins relegating TPW and its customer elevators to a distant second-place option for such market conditions and eliminating UP as an option.

Furthermore, traditional Southeastern markets for grain in TPW's territory may likely become satiated first with origination from traditional UP-served elevators in IL instead of TPW. This would never have routed interline UP-NS before because of the short length of haul for UP. Now UP elevators in the watershed of IL as part of UP-NS will have new, more favorably priced

and structured options with mainline UP-NS unit train service than TPW. In other words, no matter the market conditions, the TPW's customers' elevators grain traffic will likely be damaged moving to both the east and the west.

This example of competitive traffic losses will repeat itself in multiple ways within the watershed for TPW. Agriculture based territory freight consists of crop input distribution and grain gathering and storage. It can migrate to facilities located on the more favorably priced/incentivized UP-NS facilities in the same area and gradually choke-off the facilities located on TPW because it no longer has a primary or even par competitive position in conjunction with UP on the west nor the new UP-NS to the east to participate in those supply chains.

TPW has invested major capital dollars in the infrastructure to make TPW a viable and commercially effective rail freight route. It has done the work to meet the needs of the local communities and markets. The UP-NS merger will cause the long-term erosion of freight on TPW due to the agricultural supply chain nature of the territory. Given the investments recently made and even more pending plus the opportunity to utilize this railroad as a secondary freight route gateway to the west via Peoria, it would be wasteful to needlessly sit by and let it slip backwards to an underinvested, non-contiguous, non-market connecting rail line with limited commercial effectiveness.

1. The remedy to prevent and offset competitive harm to TPW is to ensure that TPW can access other carriers to continue to grow regional traffic and remain a viable alternative gateway which will be increasingly important post Transaction, especially to short lines

The landscape for short lines will change materially if the Board approves the UP Application to control NS. Connections to Class Is, especially for east-west traffic, is a key consideration.

TPW needs an opportunity to preserve itself as a useful rail freight route for local and intra-watershed modal conversion opportunities as well as traditional rail movements to replace the inevitable losses caused by the UP-NS merger. This is why trackage rights to connect to the IORY and the CFER is the only hypothetical defense to preserve the scarce resource of a contiguous long-reaching freight rail line as an alternate to the only two Class I freight rail networks east of the watershed. It would be short-sighted transportation policy to discard the restored TPW line segment when it has an opportunity to meet a future, and perhaps present, need for rail freight movement to the alternate western gateway of Peoria within the watershed. This gateway would enable connections with BNSF, CN and CPKC through combination with G&W's IMRR, in addition to UP.

TPW, IORY and CFER have clearly demonstrated their ability to grow local traffic, convert truck-captive freight to rail, and provide a useful alternative rail freight option to customers in the watershed market. Coupling that with the Peoria gateway provides at least a degree of enhanced competition for customers in a rapidly diminishing resource of useful and potentially interconnected aggressive short line freight railroads.

This request causes no appreciable harm to UP-NS, it only enhances rail competition for commodities in both short haul truck-captive corridors as well as traditional watershed rail freight traffic.

III. TPW Proposes Conditions to be Imposed if the Board Approves the Transaction to Remedy the Anti-Competitive Impacts of the Transaction.

The conditions proposed by UP's Committed Gateway Pricing fail to provide the certainty and security needed to support long-term investment and optionality. In order to remedy the Union Pacific application's failures and to protect the TPW and its customers, which includes overhead

traffic of other railroads, from the negative competitive impacts of the UP/NS transaction, TPW respectfully requests that the Board adopt the following conditions.

A. Trackage Rights

TPW respectfully requests the following trackage rights

1. Logansport, IN - Ft. Wayne, IN - Leipsic, OH. Trackage rights over Norfolk Southern between Logansport, IN - Fort Wayne, IN - Leipsic, OH

    a. Between Logansport, IN and Leipsic, OH via Ft. Wayne, IN: allows Toledo, Peoria & Western Railway to interchange with Indiana & Ohio Railway in Leipsic, OH

    b. Between Logansport, IN and Ft. Wayne, IN: allows interchange with Chicago, Fort Wayne & Eastern Railway in Ft. Wayne, IN

2. Watseka, IN - Chicago. Trackage rights over Union Pacific between Watseka, IN and Chicago area gateways, to allow interchange with:

    a. Indiana Harbor Belt (IHB): at Dalton Jct. with ability to go east or west to access IHB's Blue Island Yard and Gibson Yard

    b. Belt Railway (BRC): at or in the environs of 80th Street

    At Watseka, allow additional connection to be built and allow TPW to shove and pull onto UP's main line as needed

B. Reasonable terms

TPW respectfully requests that the Board impose the above-mentioned traffic rights under the reasonable terms proposed in the TPW Responsive Application. TPW is proposing it pays to,

i. Norfolk Southern: the same trackage rights rate as Norfolk Southern pays to run over the Chicago, Fort Wayne & Eastern Railroad from Crestline OH, to Gary, IN as per its 6/1/1999 trackage rights agreement, currently {{[redacted]}} per car mile and {{[redacted]}} per intermodal container mile

ii. Union Pacific: the same trackage rights rate as Union Pacific pays to run over the Illinois & Midland Railroad from Barr, IL to Springfield, IL (9.7 miles) per its 8/27/1997 trackage rights agreement, currently {{[redacted]}} per car mile

TPW also requests that the Board impose an obligation on the part of Union Pacific to provide equal dispatch and equal access to railroad facilities on the trackage rights lines.

C. Indefinite Oversight

TPW respectfully requests that the Board impose an oversight period to last in perpetuity to ensure TPW has a remedy at the Board to ensure that the conditions requested are enforceable now and into the future.

VERIFICATION

I, Martin Pohlod, Vice President of National Accounts and Industrial Development for Genesee & Wyoming Railroad Services, Inc., declare under penalty of perjury that the forgoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18th day of November, 2026



CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2026, the foregoing document was served by first-class mail or email upon all parties of record on the service list and the administrative law judge assigned in this proceeding.



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Justin J. Marks