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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 FROM THE ENVIRONMENTAL LAW & POLICY CENTER

Derrick James
35 E. Wacker Dr.
Suite 1600
Chicago, IL 60601
(312) 673-6500
djames@elpc.org

Chad Hughes*
740 15th St., NW
Suite 700
Washington, DC 20005
(313) 510-0857
chughes@elpc.org

**Counsel for ELPC*

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On behalf of the Environmental Law & Policy Center (ELPC), thank you for this opportunity to comment on the proposed merger between Union Pacific and Norfolk Southern railroads. ELPC has held since its founding in 1993 that economic progress and environmental protection are mutually supportive goals. Nothing better exemplifies this belief than our 30+ years of advocacy in support of intercity passenger rail in the Midwest and nationally.

We have three interests in this proposed merger. First, ELPC has an interest in expanding passenger rail in the Midwest and nationwide. Second, ELPC has a longstanding interest in energy conservation, air quality, and climate change. We are thus interested in the purported benefits coming out of modal shift. Third, as a Chicago-based organization, ELPC has a particular interest in the local impacts on the railroad hub of the United States.

Environmental Law & Policy Center respectfully urges the Surface Transportation Board to reject the proposed merger of Union Pacific and Norfolk Southern because the railroads have failed to demonstrate that the proposed merger is in the public interest. Specifically, Applicants have failed to demonstrate that they can ensure adequate passenger rail service on existing routes, much less demonstrate that the merger will not interfere with the ability to expand and improve passenger rail service.

This comment proceeds in six parts. Part I explains why passenger rail remains part of the railroads' common carrier obligation, for both current service and future expansions. Part II shows that the governing statute and the Board's implementing rules require Applicants to demonstrate passenger rail benefits, and Part III shows that the record does not. Part IV explains why history does not support the claimed modal shift. Part V expands upon impacts to Chicago and the Midwest. In Part VI, we set out the minimum conditions ELPC believes are necessary if the board nonetheless approves the transaction.

I. Passenger Rail is Part of the Railroads' Common Carrier Obligation

The common-carrier obligation is a foundational doctrine of railroad law. A common carrier holds itself out to serve the public and accepts duties of nondiscrimination, reasonable rates, and reasonable service in exchange for the privileges associated with powers of eminent domain, exemption from many local regulations, and other benefits. Modern federal law states the freight form of this obligation in 49 U.S.C. § 11101(a): "A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request."

Historically, the same public-service principle applied to passenger service. Railroads were chartered and regulated not merely as private businesses, but as public utilities serving commerce and travel. State commissions and, later, federal regulators could require continued service where public convenience and necessity justified it. A railroad seeking to abandon or discontinue a passenger train generally had to obtain regulatory approval rather than unilaterally exit the market. The baseline rule was that passenger service was a regulated public duty, not merely a discretionary product.

By the mid-twentieth century, there was a steep decline in intercity rail passenger demand. The financial burden to railroads was significant. The Penn Central bankruptcy in 1970 dramatically illustrated the danger that passenger-service losses, layered on top of broader freight and capital-

market problems, could threaten the stability of major railroads. Congress therefore faced two linked policy concerns: preserving essential intercity passenger service and preventing money-losing passenger obligations from accelerating railroad insolvency.

A. Congress created Amtrak to preserve passenger rail service

Congress enacted the Rail Passenger Service Act of 1970 ("RPSA") to create a new institutional structure for intercity passenger rail. In its findings, Congress declared that "modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system," that "the public convenience and necessity" required "the continuance *and improvement* of such service," and that rail service could help relieve highway congestion and overcrowded airways and airports. RPSA, Pub. L. No. 91-518, 84 Stat. 1328, § 101 (emphasis added). The RPSA expressly states "that federal financial assistance as well as investment from the private sector of the economy" was needed to achieve the national goal of continuing and improving passenger rail service in the United States. *Id*. The Act therefore designated a basic national rail passenger system and authorized the creation of Amtrak.

The RPSA also created a transaction structure for participating railroads. Railroads could join Amtrak, transfer responsibility for intercity passenger service, and make payments tied to prior passenger losses. In return, Amtrak would take over the obligation to provide service over the designated national system. This was not simply a subsidy program; it was a statutory reallocation of a public-service duty from dozens of private railroads to a single national passenger corporation.

The transfer occurred through a statutory bargain. Private railroads that entered into contracts with Amtrak were relieved of their common-carrier responsibility to operate intercity passenger trains. Amtrak assumed responsibility for the national intercity passenger system in 1971, and the participating railroads' role shifted from passenger operator to host railroad. In that host role, they were required to make tracks, facilities, and services available to Amtrak under statutory and contractual terms.

Current federal law reflects this bargain. Amtrak must operate a national rail passenger transportation system under 49 U.S.C. § 24701. Amtrak also has broad authority to acquire and operate equipment and facilities necessary for intercity passenger rail transportation under 49 U.S.C. § 24305. Host-railroad access is addressed in 49 U.S.C. § 24308, which authorizes Amtrak to make agreements with rail carriers to use facilities and receive services, gives the Surface Transportation Board authority to order access if agreement cannot be reached, and provides that, except in emergencies, intercity and commuter passenger transportation provided by or for Amtrak has preference over freight transportation in using rail lines unless the Board orders otherwise.

As the US Supreme Court summarized in *Department of Transportation v. Association of American Railroads*, "as a condition of relief from their common-carrier duties, Congress required freight railroads to allow Amtrak to use their tracks and facilities at rates agreed to by the parties—or in the event of disagreement to be set by the Interstate Commerce Commission (ICC)." 575 U.S. 43, 46–47 (2015) (citing 45 U.S.C. §§ 561-62). The Surface Transportation Board now occupies the dispute-resolution role originally assigned to the ICC. *See* 49 U.S.C. §

24308(a). Since 1973, Amtrak has received a statutory preference over freight transportation in using rail lines, junctions, and crossings. *See id.* at § 24308(c).

The creation of Amtrak did not extinguish common-carrier obligations; it reassigned them. Freight railroads retained freight common-carrier obligations, now principally administered under the rail provisions of Title 49. Passenger common-carrier responsibility for the national intercity network became Amtrak's mission. Amtrak's statutory access and preference rights are not merely commercial conveniences; they are the consideration for relieving private railroads of a public-service obligation.

B. Congress affirms passenger rail expansion is in the public interest

While passenger rail demand was plummeting at the time of Amtrak's creation, nothing in this "grand bargain" precluded a passenger rail renaissance. And, for the last two decades, Congress has consistently called upon Amtrak to expand passenger rail service.

- In the Rail Safety Improvement Act of 2008, Congress directed Amtrak, the U.S. Department of Transportation, the Federal Railroad Administration (FRA), states, and other stakeholders to strengthen the passenger rail network. *See* Pub. L. No. 110-432. The Act addressed long-distance routes, the Northeast Corridor, state-sponsored corridors, and high-speed rail corridors, and it created or reinforced structures for state-supported intercity passenger service. In doing so, Congress moved passenger rail policy away from mere survival funding and toward a framework in which states and Amtrak could plan, fund, and operate expanded corridor services.

- Congress followed that framework almost immediately with the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, which provided $8 billion for high-speed and intercity passenger rail capital assistance.

- The Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, included $66 billion in advance appropriations for rail and made at least $18 billion available for costs directly related to expanding passenger service to new corridors. In addition, the Act amended the Federal-State Partnership program, now codified at 49 U.S.C. § 24911, to fund projects that reduce state-of-good-repair backlogs, improve performance, or expand or establish new intercity passenger rail service. Eligible applicants include states, groups of states, public agencies, Indian Tribes, and Amtrak, acting either on its own behalf or cooperatively with states. *See* 49 U.S.C. § 24911(a)(1).

- Congress also directed the executive branch to create planning pipelines for future service at 49 U.S.C. § 25101. The FRA's Corridor Identification and Development Program is intended to help states, Amtrak, and other eligible sponsors identify promising corridors, complete planning and environmental review, and position projects for later construction funding.

- Lastly, Congress also specifically required the FRA to examine long-distance passenger rail expansion. *See* 49 U.S.C. § 25101. FRA must conduct the Amtrak Daily Long-Distance Service Study, evaluating restoration of daily service on discontinued Amtrak

long-distance routes and on long-distance routes operating less than daily. *See* Pub. L. No. 117-58 § 22214. Congress also authorized FRA to evaluate potential new long-distance routes, with particular attention to routes that existed in April 1971 but were not continued when Amtrak began operations. *Id.* The study was required to consider whether new or restored routes would link large and small communities, improve rural economic and social well-being, enhance connectivity to the national long-distance rail system, and reflect public engagement and local or regional support. *Id.*

Through these mechanisms, Congress has called on Amtrak and its public partners to do more than maintain the inherited 1971 network; it has asked them to develop new routes, add frequencies, improve reliability, and extend passenger rail to communities that either lost service or never received meaningful intercity rail options.

II. The Governing Statute and the Board's Rules Require Applicants to Evaluate the Impact of the Merger on Both Current and Future Passenger Rail Service

This history explains why both the governing statute and the Board's rules impose passenger-specific duties. The Board must consider the impact of the proposed merger on the adequacy of both present and future passenger rail service. The Board may approve the merger of two freight railroads only if it finds the transaction to be "consistent with the public interest." 49 U.S.C. § 11324(b)-(c). *See also Swonger v. Surface Transp. Bd.*, 265 F.3d 1135, 1138 n.5 (10th Cir. 2001) ("The STB will approve a proposed merger or consolidation *only if* it finds that the transaction is in the public interest.") (emphasis added) (citing *Norfolk & W. Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117, 132 (1991)). One of the public interest factors that the Board "shall consider" is "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1). [1] A merger of two Class I railroads that will either unreasonably risk the degradation of current passenger rail service or unreasonably interfere with future passenger rail expansion is inconsistent with the public interest and therefore fails to meet the statutory standard.

The Board's regulations confirm that the "public interest" and "adequacy of transportation to the public" inquiries are broad and encompass the impact of the proposed merger on both present and future passenger rail service. Under its regulations, the Board "must ensure that any approved transaction would promote a competitive, efficient, and reliable national rail system," ensure "that essential freight, passenger, and commuter rail services are preserved whenever feasible," and ensure that the merger "strengthen, not undermine, the ability of the rail network to advance the nation's economic growth and competitiveness." 49 C.F.R. § 1180.1(b)-(c). The Board's regulations further specify that any merger of two or more Class I railroads must be consistent with "the rail transportation policy set forth in 49 U.S.C. § 10101." *Id.* at § 1180.1(b). In Section 10101, Congress states that "[i]n regulating the railroad industry, it is the policy of the United States Government" to "promote a safe and efficient rail transportation system" and "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and other modes, to meet the needs of the public and national

[1] *See also* 49 C.F.R. § 1180.1(b) (characterizing the four mandatory factors of § 11324(b) as a part of the public interest inquiry of § 11324(c)).

defense." 49 U.S.C. § 10101. Congress here defines "transportation" to include "the movement of passengers or property, or both, by rail." *Id.* at § 10102(9).

Both Congress and the Board thus consistently articulate a broad, forward-looking standard that considers the impact of a merger on passenger rail. The statute and the Board's regulations make clear that the Board may not approve a merger of two Class I railroads unless it "ensure[s]" that such merger will not interfere with *either* the "continuation" or the future "*development*" of "a sound" passenger and freight rail transportation system. *See* 49 U.S.C. § 10101 (emphasis added). *See also id.* at § 10102(9); 49 C.F.R. § 1180.1(b). A merger's impact on foreseeable expansion of "efficient" and "reliable" passenger rail service that will "strengthen" future economic growth and otherwise "meet the needs of the public" is a crucial component of the public interest inquiry. *See* 49 U.S.C. § 10101-02; 49 C.F.R. 1180.1(b)-(c).

Applicants disregard this clear statutory and regulatory language and instead focus exclusively on "current" passenger rail service.[2] As such, Applicants fail to meet their burden under the statutory and regulatory framework and fail to provide the Board with the information and analysis necessary for it to consider "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1).

III. The Applicants Fail to Demonstrate Passenger Rail Benefit

A. Current, baseline service provided by applicants is already inadequate

Applicants ask the Board to infer no adverse passenger effect from evidence that the post-merger railroad may perform no worse than UP and NS perform today. But the governing question is adequacy, not mere continuity. Most Amtrak services hosted by the Applicant carriers are subject to delay and fail to meet FRA metrics and standards for schedule adherence and customer on-time performance.

Most Amtrak routes hosted by UP and NS fail the delay standard, exceeding 900 minutes of delay per 10,000 train miles.[3] This performance is unacceptable. Except for acknowledged train congestion along one UP route in Arizona and along the NS Crescent Corridor in Alabama, the Applicants propose no additional infrastructure to meet their contractual obligations to Amtrak for better passenger train handling. Host railroads are governed by two primary federal standards when dispatching Amtrak trains, statutory preference over freight and a minimum 80% customer on-time performance benchmark. Because Amtrak owns only about 3% of the track it uses, these rules exist to ensure passenger trains move reliably across the 97% of the network owned by freight companies per 49 U.S.C. § 24308(c).

The proposed transaction does not adequately address how the carrier would improve the dispatching performance of existing passenger rail services operating on the network, nor

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[2] *See* Amended Railroad Control Application, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*, Docket No. 36873, 148-67 (Apr. 30, 2026); Applicants' Second Response to Decision No. 21, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*, Docket No. 36873, 165-75, 371-99 (July 27, 2026).

[3] AMTRAK: HOST RAILROAD REPORT 8 (2026), *available at* https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/August-2026-Amtrak-Host-Railroad-Report.pdf.

accommodate the planning initiatives and implementation of new passenger services, with their Growth Plan indicating additional freight trains. The Board's implementing regulations require applicant carriers to "describe definitively how they would continue to facilitate these operations so as to fulfill existing performance agreements for those services." 49 C.F.R. § 1180(b). A failure to demonstrate measurable worsening does not establish acceptable service, compliance with passenger preference in dispatching, or protection against the merger's added operating risk.

Without even attempting to provide any route specific plans for improving existing passenger rail on-time performance, Applicants utterly fail the public benefit test and to otherwise meet their obligations under both 49 U.S.C. § 11324 and the Board's implementing regulations.

B. Applicants do not demonstrate that the merger will not further degrade passenger rail service

Leaving aside the above issue of currently inadequate passenger rail on-time performance, UP and NS take the curious position that increasing track utilization through the merger will not result in additional delays to current Amtrak service. Their assertion contradicts arguments made by the entire freight railroad industry repeatedly and consistently since 1970. For example, when the American Association of Railroads fought against On-Time Performance Standards ("OTP") for Amtrak, it argued that host-railroad infrastructure and operating constraints—including limited track capacity, congestion, dispatching conflicts, and allegedly unrealistic schedules—could make it difficult or impossible to meet a uniform OTP standard without additional capacity investment or operational disruption.[4]

Rather than provide operations modeling and detailed route-specific analysis, as suggested by the Board, Applicants rely on a statistical model provided by Dr. Krystof Zetenyi that examines discrete segments and concludes there is no significant correlation between host railroads' route capacity utilization and passenger train delays.[5] This submission has several flaws:

First, there is a spatial problem. One selected track segment is not an adequate predictor of congestion on the entire corridor. Indeed, this is self-evident to anyone on the road who has ever marveled at their speed while driving, only to be confronted minutes later by bumper-to-bumper congestion. Just because a highway is free-flowing in one segment does not mean that it is congestion-free in another. The same is true of railroads. A passenger train can incur host-caused delay at a terminal, yard, junction, or another line segment far from the selected segment; delay then propagates through the trip and into connections, equipment turns, and later departures. Even Dr. Zetenyi acknowledges that infrastructure, topography, train density, traffic composition, weather, maintenance, operating practice, and other conditions may affect both utilization and passenger delay. None of this is captured by looking at a single track segment along a corridor.

Second, there's temporal problem. Amtrak delays are not caused by average monthly traffic volumes exceeding some threshold; they are caused by individual instances of specific trains in specific places and by dispatchers making real-time decisions based on these constraints. By

[4] Laura Stevens, *Freight Railroads Fight New Rules for Passenger Trains*, WALL ST. J. (Aug. 17, 2016), *available at* https://www.wsj.com/articles/freight-railroads-fight-new-rule-for-amtrak-trains-1471426202.
[5] Applicants' Second Response to Decision No. 21, *supra* note 1 at 368 (Verified Statement, Dr. Kristof Zetenyi).

analogy, you don't wear a winter coat based on the average monthly temperature, you wear it based on the actual temperature that day.

Highway congestion research is instructive: once traffic volumes approach a road or network's practical capacity, even modest additional traffic can push the system past a critical threshold, causing travel speeds to fall and delays to rise disproportionately. Thus, average traffic is far less relevant than peak traffic.

Third, the analysis is observational rather than predictive. It does not follow that higher future freight volume will not cause delays simply because there is no statistically significant correlation between past freight volume and delays in the dataset. Comments by the Commuter Rail Coalition explain this point more fully.[6] Moreover, Applicants fail to consider anywhere in their submission the interaction between projected freight volume growth and the growth of passenger rail clearly contemplated by Congress.

C. Applicants maintain a double standard for infrastructure upgrade needs to support passenger and freight service frequency increases

Statistical analysis notwithstanding, Applicants make the remarkable claim that they can expand freight rail service without degrading passenger rail service.

The history of Applicants' actions on this question is instructive. Virtually every time any expansion in Amtrak service or frequency has been proposed, Applicants respond that astronomically expensive infrastructure upgrades are necessary to accommodate a single daily passenger train.

- In the Gulf Coast Amtrak case, NS and CSX demanded substantial capital improvements costing over $2 billion before the proposed additional Amtrak service could be accommodated without impairing freight operations.[7]

- On the Chicago-St. Louis corridor, UP required the State of Illinois and the federal government to undertake, in UP's words, "rehabilitating 262 miles of mainline track, constructing more than 50 miles of second mainline track, upgrading 212 grade crossings and rebuilding or replacing 200 bridge structures and culverts."[8] These improvements were all on a freight corridor with minimal traffic in order to increase passenger train speeds.

- When Amtrak and passenger advocates pushed to convert the Sunset Limited route into a standard daily service, UP stated to federal regulators that it would require roughly $750 million in infrastructure investments.[9] UP insisted that adding just four more weekly slots

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[6] *See* Comments and Request for Conditions of the Commuter Rail Coalition, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*, Docket No. 36873, at 5-6 (Nov. 12, 2026).
[7] Jim Mathews, *N-S, Amtrak Trade Queries in Gulf Coast Proceeding*, RAIL PASSENGERS ASSOC. (Aug. 19, 2021), https://www.railpassengers.org/happening-now/news/blog/n-s-amtrak-trade-queries-in-gulf-coast-proceeding/.
[8] Union Pacific: Key Partner on New High-Speed Rail Service Fit for 'RVs and Ferraris' (June 26, 2023), https://www.up.com/news/service/high-speed-partner-it-2306126.
[9] Bob Johnston, *Merger Filing Portends Amtrak Operating Issues, Precludes Expanded Service: Analysis*, TRAINS (Dec. 19, 2025), https://www.trains.com/pro/passenger/intercity/merger-filing-portends-amtrak-operating-issues-precludes-expanded-service-analysis/.

would overwhelm their critical *Sunset Route* corridor, requiring hundreds of millions in publicly funded double-tracking, siding extensions, and signal upgrades.

- Adding a second daily Pennsylvanian on NS's track cost taxpayers $200 million in new infrastructure. [10]

If adding a single daily passenger train has proven so difficult, expensive, and disruptive on every corridor proposed over the last 20+ years, how can freight volume increase by as many as 14 trains per day on some segments with no adverse impact to passenger service?

D. Applicants fail to account for planned passenger service expansions

There are numerous substantive projects underway to expand passenger rail service, underpinned by public investment. UP and NS fail to address the ongoing state-sponsored, federally supported Corridor Identification and Development (Corridor ID), Consolidated Rail Infrastructure and Safety Improvement (CRISI) programs, or other programs to expand and add passenger rail service on existing or new routes. Indeed, the entire premise of the Federal-State Partnership for Intercity Passenger Rail is passenger rail service should expand. Yet Applicants provided no insight as to whether their projected increased freight traffic will be able to accommodate planned passenger growth on limited track space.

Forty-three Corridor ID routes have been selected that propose to utilize some portion of Applicants' networks. [11] Twenty-two of those 43 overlap at least one segment where Applicants project more freight traffic. [12] Many routes are preparing to move into a phase Step 2 of the FRA Corridor ID program, where applicants will need to work closely with freight hosts to begin determining schedules, capacity needs and infrastructure upgrades desired to accommodate new passenger trains. Passenger route sponsors, be they Amtrak, State Departments of Transportation, or local entities, have attempted, with varying degrees of resistance from the transaction parties, to expand passenger rail service through the addition of new frequencies on existing routes or the addition of new routes.

Applicants have proven resistant to passenger rail expansion over the years. By introducing costly delays, neglecting sponsor inquiries, and demanding excessive infrastructure to accommodate new trains, they have jeopardized public projects and wasted taxpayer dollars. Resistance has sometimes gone so far as to require adjudication by public arbiters, including the proposal to operate the Los Angeles-New Orleans Amtrak *Sunset Limited* daily (on UP), establish twice daily New Orleans-Mobile *Mardis Gras* (on NS) and *Crescent* (Washington-New Orleans) on time performance failures (NS). These demonstrate Applicants' lack of cooperation with public sponsors.

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[10] *See* Peter Hall, *Additional Amtrak Passenger Train Service to and From Pittsburgh to Begin in Mid-November*, Penn Capital Star (Aug. 26, 2026), https://penncapital-star.com/transportation-infrastructure/additional-amtrak-passenger-train-service-to-and-from-pittsburgh-to-begin-in-mid-november/.
[11] *See* Comments of the Rail Passengers Association In Opposition to the Application, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*, Docket No. 36873, at 25-26 (Nov. 16, 2026).
[12] *Id.*

IV. History Does Not Support Modal Shift Assertions

Railroads are an inherently efficient mode for moving freight. Our organization is generally supportive of railroads realizing market efficiencies to convert movement of freight from truck to train, and of the resulting positive impact on air quality, carbon emissions, and fuel use. A reduction in "rubber-tire" drayage of freight on the regional highway system would reduce emissions and lower roadway maintenance expense for the taxing authorities charged with highway maintenance.

For this reason, ELPC has long supported policies and investments that help move freight from trucks to trains. We were among the first supporters of the CREATE Program to ease rail flow in Chicago, and we continue to support it. We are thus very interested in the Applicants' claims of shifting 2.1 million truckloads to trains, annually. If true, this would be a significant public benefit of the proposed merger. Unfortunately, the asserted modal shift does not stand up to scrutiny.

Despite railroad consolidation over the last quarter century, railroading's share of freight movement has remained virtually unchanged. As Congress noted in the Railroad Antitrust Enforcement Act accompanying report, Class 1 railroad systems declined from thirty in 1976 to just seven by 2007, four of which carried 90% of freight traffic.[13] Bureau of Transportation Statistics estimates show that between 2000 and 2024, truck freight grew by 360 billion ton-miles or 19.1% while rail grew by 28 billion ton-miles or 1.9%.[14] And, as the Board noted in its 2024 freight-rail growth hearing, US carload volumes have recently declined.[15]

Looking more specifically at prior mergers, there is no indication that they resulted in significant modal shift. The Canadian Pacific-Kansas City Southern merger, for example, was projected by those railroads to result in a diversion of 64,000 long-haul truck shipments annually.[16] But three years after the merger, CPKC is reporting only about 23,000 truck-to-rail diversions per year, roughly 37% of the 64,000 annual truckloads projected when the merger was approved.[17]

In contrast, Amtrak has seen years of record ridership in 2024, 2025, and projections look bright for 2026.[18] This growth diverted thousands of additional car trips to efficient passenger rail. Ensuring reliable on-time arrivals and rail corridor growth will be critical to continuing ridership gains and achieving passenger modal shift.

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[13] S. Rept. 110-252, Railroad Antitrust Enforcement Act (Dec. 19, 2007) *available at* https://www.congress.gov/committee-report/110th-congress/senate-report/252/1.
[14] U.S. Ton-Miles of Freight, Bureau of Transportation Statistics.
[15] Surface Transportation Board, Hearing on Growth in the Freight Rail Industry (Sept. 16, 2024), *available at* https://www.stb.gov/wp-content/uploads/Growth-hearing-transcripts_12162024.pdf.
[16] Neal Hightower, *New Rail Giant CPKC Challenges Trucking Industry: 7 Key Impacts*, TANK TRANSPORT (Apr. 26, 2023), https://tanktransport.com/2023/04/cpkc-challenges-trucking-industry/.
[17] *See* CPKC's January 2026 Traffic Diversion Submission, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*, Docket No. 36500, at 14 (Jan. 15, 2026); CPKC's July 2025 Traffic Diversion Submission, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*, Docket No. 36500 at 13 (July 15, 2025). *See also*, Daniel Munch, *Rail Consolidation Increases Risk for Rural Supply Chains*, MARKETINTEL (Mar. 11, 2026), https://www.fb.org/intel/markets/proposed-rail-merger-comes-at-farmers-expense (evaluating truck diversion projections of CP-KCS merger against the post-merger reality and concluding that this "experience suggests that volume and efficiency claims often prove difficult to achieve in practice.").
[18] AMTRAK: A YEAR OF RECORDS (2025), *available at* https://media.amtrak.com/2025/11/amtrak-a-year-of-records/.

V. Chicago and Midwest Impacts Highlight Broader Passenger Concerns

The Environmental Law & Policy Center, as a Midwestern nonprofit with headquarters in Chicago, has particular concerns with railroad operating impacts in the city and the region. Chicago, the hub of North American rail operations, is uniquely impacted by this proposed merger.

A. Intercity passenger rail to and through the Midwest hub in Chicago

Applicants project five additional daily freight trains on the Chicago-Porter corridor used by five Amtrak services, including the Lakeshore Limited to Cleveland, New York, and Boston; the Floridian to Pittsburgh and Washington, D.C.; and three Michigan services to Detroit, Pontiac, Port Huron, and Grand Rapids. Many of these routes already struggle with on-time arrivals and freight interference. Michigan's Blue Water and Wolverine corridors both recorded over 2,000 minutes of delay per 10,000 train miles from 2025-2026.[19] This is well over double the target of 900 minutes. Applicants have provided no evidence that they can resolve these longstanding issues, much less fit five additional freight trains without causing further delay.

Another four passenger rail routes serving the Midwest are hosted by Union Pacific and Norfolk Southern. Lincoln Service (Chicago-St Louis) has four roundtrips daily, the Missouri River Runner (St. Louis-Kansas City) has two roundtrips daily, the Cardinal (Chicago-Indianapolis, Cincinnati, Washington, D.C.-New York City) has three round trips per week, and the Texas Eagle (Chicago-St. Louis-Little Rock-San Antonio) has one roundtrip daily.

States and municipalities are also exploring expanding train service throughout the region through the FRA Corridor ID program. The proposed merged railroad would control all or portions of the following Corridor ID and other planned expansion routes in the Midwest:

- On UPRR
  - Chicago-Springfield-St. Louis
  - St. Louis-Kansas City
  - Chicago-Madison-Eau Claire-Twin Cities
  - Chicago-Big Timber (Elgin)-Rockford
  - Milwaukee-Racine-Kenosha

- On NSRR
  - Chicago-Detroit and other Michigan points via the *South of the Lake* route
  - Chicago-Fort Wayne-Columbus-Pittsburgh via *South of the Lake* route
  - Detroit-Toledo-Cleveland
  - Cincinnati-Dayton-Columbus-Cleveland

B. Metra commuter rail in northeastern Illinois

In addition to Amtrak trains, UP and NS host commuter trains in Chicagoland operated by Metra, as part of the Northern Illinois Transit Authority (NITA). While commuter service has a different

[19] AMTRAK: HOST RAILROAD REPORT 8 (2026), *available at* https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/August-2026-Amtrak-Host-Railroad-Report.pdf.

legal arrangement with the freight rail hosts than Amtrak, it is nonetheless critical for the public interest.[20] Routes over which we have concerns include:

- On Metra's UP-West corridor, Applicants project two additional trains between Chicago and Kedzie, fourteen between Kedzie and Proviso, and five between Proviso and Elburn, while separately assuring the Board that Metra operates over UP's high-capacity Chicago-area commuter lines.

- The UP-North to Waukegan and Kenosha and the UP-Northwest to McHenry and Harvard are Metra's second and third busiest lines. All three UP routes have been subject to a trackage rights struggle between Metra and UP for several years, hurting fare recovery at a vulnerable time for the transit agency post-covid.

- Applicants also identify an additional movement in the NS Southwest/Markham area. These changes reach multiple Amtrak services and Metra lines and converge in a terminal where delay propagates across carriers and missed connections. Applicants provide no terminal-wide passenger simulation or reconciled post-merger plan showing how these movements will coexist with peak-period commuter and intercity schedules.

Metra provides millions of Illinois transit trips every year on UP and NS lines now, and the state and region are also investing heavily to increase ridership. The 2025 NITA Act added $1.5 billion to the transit system, including plans to increase Metra frequency throughout the day and week. If host railroads block that progress with freight interference or fail to negotiate sufficient trackage rights, Illinois will have squandered public funds and goodwill. Applicants fail to show that new freight movements can coexist with more robust transit schedules and have not made available to the STB the true amount of capacity and percentage available along portions of the Metra Chicago to Elburn line, where 14 additional daily freights trains are projected.

C. Additional railroad considerations in the Chicago area

Applicants failed to specify the impact of the proposed merger on the CREATE (Chicago Region Environmental and Transportation Efficiency) Program. For more than two decades, the CREATE Program has been the Chicago region's principal effort to reduce rail congestion through a public-private partnership involving federal, state and local governments, Metra, Amtrak, and the freight railroads. CREATE calls for 70 infrastructure projects, ranging from track and signal improvements to major rail flyovers and 25 road-rail grade separations; as of November 2025, 36 projects had been completed, including the $380 million Forest Hill Flyover.

The program represents billions of dollars in planned and committed infrastructure investment, with hundreds of millions of dollars continuing to flow into major projects such as the 75th Street Corridor. The proposed merger prompts several questions, which applicants have failed to answer: what is the impact of the proposed merger on past investments? Are changes to future CREATE plans necessitated by the projected changes in Chicago rail traffic? If so, what are the

[20] *See, e.g.*, *Union Pacific Railroad Co. v. STB*, 191 F. 4th 585, 589–92 (8th Cir. 2026) (upholding STB decision to grant terminal trackage rights to Metra as in the public interest).

financial impacts – positive or negative – to public bodies carrying the overwhelming burden for these investments?

Moreover, Chicago traffic flow data appears to be outdated. On July 22, 2026, Canadian National Railway announced that it had entered into a binding agreement with the Union Pacific. Among other things, "the agreement provides Union Pacific with expanded operating rights over CN's Elgin, Joliet, & Eastern Railway (EJ&E) corridor" around Chicago.[21] This agreement will presumably result in changes to the rail traffic submitted by applicants. Given the complexity of Chicago as a railroad hub, the specific changes and their downstream impacts are far from self-evident.

VI. If the Transaction is Approved, Conditions Should be Imposed.

ELPC believes that the application should be rejected since Applicants have failed to demonstrate that the public interest is served by combining the railroads. Mergers, by the Board's own rules, should strengthen the rail network's ability to sustain essential services and meet public aims of mobility and economic growth.[22] Applicants fail to demonstrate that this transaction meets that standard with regard to existing passenger rail service. And Applicants did not even *attempt* to establish the impact of the merger on the prospects for passenger service expansion.

However, if the Board does approve the merger, at the absolute minimum, conditions should be imposed to protect the public interest. ELPC supports all the merger conditions proposed by the Commuter Rail Coalition in their November 12, 2026 comments. Additionally, we propose the following conditions:

A. Preservation of existing passenger-service rights and remedies

- As a condition of approval, the Board should require that consummation of the transaction not extinguish, impair, supersede, or otherwise diminish any existing passenger-service right, remedy, settlement obligation, contractual commitment, or other protection applicable to either Applicant. Those protections should remain enforceable against the appropriate successor entity according to their terms, subject to subsequent modification by the parties or lawful action by an agency or court with jurisdiction. This condition would preserve, rather than expand, existing rights and remedies.

B. Applicants must engage in effective planning and modeling

- **Transparent good-faith modeling consistent with the application**. Applicants must be required to engage in transparent, good-faith modeling. Given the scope of this massive merger and its potential impact on more than half the Amtrak network, this condition is critical to the public interest. Furthermore, the assumed

[21] CN, *Union Pacific and CN Announce Agreement to Improve North American Rail Connectivity* (July 22, 2026), https://www.cn.ca/en/news/2026/07/union-pacific-and-cn-announce-agreement-to-improve-north-america/.
[22] *See* Section II, *supra*.

number of freights in modeling cannot exceed the number indicated in the merger application. The settlement between Pan Am Railways (Docket no. FD 36472) and Amtrak provides a useful model for this condition.

- **Passenger operating demonstrations.** Before implementing each material merger-related train-plan change on a passenger-used corridor, UP/NS must provide a route- and terminal-specific operating analysis showing anticipated freight windows, passenger conflicts, meets and passes, yard and terminal capacity, maintenance windows, and contingency operations.

C. Applicants must maintain and improve operations for passenger rail on existing and new corridors

- **Ensure passenger priority**. The Board should impose the terms of the 2025 settlement between Norfolk Southern and the U.S. Department of Justice to the merged entity to address Applicants' failure to give passenger trains priority.[23] The settlement resolved a dispute over NS handling and dispatching of Amtrak trains and requires NS to provide highest priority to Amtrak, trains NS employees to give priority, requires supervisor approval to any decision that does not give priority, and provides records of delays. NS is required to assist with determining root causes of delays. These requirements should apply to the entire merged entity.

- **Existing-service performance floors.** UP/NS must meet enforceable route-level standards for host-responsible delay and endpoint on-time performance, with no route permitted to use an already deficient pre-merger result as its compliance floor. UP/NS must be prohibited from making changes in operations, freight volumes, scheduling, infrastructure, or dispatching that would reasonably be expected to result in Customer On-Time Performance of Amtrak trains operating on the merged carrier falling below the minimum standard as defined by the FRA Final Rule published November 16, 2019.

- **Expedited passenger dispute resolution**. Amtrak, commuter authorities, states, and corridor sponsors must have access to an expedited Board-supervised procedure for disputes over dispatching, access, performance, capacity studies, and infrastructure requirements.

- **Objective intervention triggers.** The conditions must define delay, utilization, terminal-dwell, missed-connection, and project-schedule thresholds that automatically require corrective action, rather than leaving intervention to internal discretion.

[23] *See* U.S. Dept. Justice Office of Public Affairs, Press Release: Norfolk Southern Agrees to Give Amtrak Trains Highest Priority Over Freight Trains and Make its Delay Records for Amtrak Trains Available to the Department of Justice (Sept. 9, 2025), https://www.justice.gov/opa/pr/norfolk-southern-agrees-give-amtrak-trains-highest-priority-over-freight-trains-and-make-its.

- **Passenger rail expansion capacity preservation.** UP/NS must identify and preserve reasonable capacity for Corridor ID and other planned expansion projects, additional frequencies and new routes that reach defined development milestones. UP.NS must participate promptly and in good faith in planning and operating studies, development of capacity models, and follow-up corridor analysis and operations simulation, to determine reasonable capacity enhancements needed for passenger service expansion, with the sponsoring entity, Amtrak, Metra, or other designated service operator. Deliverables from the railroad should be per strict timelines.

D. Applicants must be subject to oversight and reporting requirements to ensure the merger does not interfere with passenger rail service

- **Public reporting.** UP/NS must publish monthly route- and host-segment passenger-performance reports, merger-related train-count changes, capacity utilization, infrastructure status, and identified passenger conflicts in a consistent format suitable for comparison with pre-merger benchmarks.

- **Independent validation.** Capacity models, material assumptions, and post-merger passenger-impact analyses must be available to affected passenger operators and qualified reviewers under appropriate protective arrangements, with independent validation where the Board relies on them. All parties must have access to any modeling, data inputs, results, scenarios, and assumptions, subject to those parties executing appropriate undertakings to safeguard confidential material. This would permit all parties to participate equally in the modeling and resulting analysis and would ensure good-faith public-interest principles are maintained.

- **Continuing oversight and supplemental relief.** Passenger conditions should remain subject to ten years of oversight by the Board, with authority to extend oversight, modify conditions, require capital work, or impose operational remedies if merger related freight traffic degrades current or unreasonably interferes with future passenger service.

CONCLUSION

For the reasons outlined above, ELPC respectfully requests that the Board reject the transaction or, in the alternative, impose the requested conditions.

Respectfully submitted,

/s/*Chad Hughes*
Chad Hughes
Senior Associate Attorney

Environmental Law & Policy Center
740 15th St. NW, Suite 740
Washington, DC 20005

Dated: November 18, 2026

Attorney for the Environmental Law & Policy Center

CERTIFICATE OF SERVICE

I hereby certify on the 18th day of November 2026, I caused the foregoing Comment and Request for Conditions by the Environmental Law & Policy Center to be served on all parties of record in this proceeding.

Dated: November 18, 2026

By: */s/ Chad Hughes*
Chad Hughes
Senior Associate Attorney
Environmental Law & Policy Center

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