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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION AND THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PUBLIC - REDACTED

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The Commonwealth of Massachusetts Department of Transportation ("MassDOT") and the Massachusetts Bay Transportation Authority ("MBTA") (collectively, the "Commonwealth"), pursuant to the procedural schedule established by the Surface Transportation Board (the "Board") in Decision No. 30, served on August 18, 2026, hereby submit their Comments and Requests for Conditions, supported by the accompanying Verified Statement of Michael Rooks, in response to the revised primary application filed on April 30, 2026, and subsequent supplemental filings by Union Pacific Corporation, Union Pacific Railroad Company (collectively, "UP"), Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively, "NS," and together with UP, the "Applicants").

For the reasons set forth below, the Commonwealth remains unconvinced that the proposed transaction, as currently presented, is consistent

with the public interest under 49 U.S.C. § 11324 and the Board's governing major rail consolidation regulations at 49 C.F.R. part 1180. The proposed combination would create the largest private railway in the history of the United States, operating at a scale far exceeding anything the public or regulators have encountered previously. The Commonwealth is skeptical that the combination will yield tangible advantages or net benefits to Massachusetts and its diverse freight and passenger rail stakeholders. Rather, the record developed to date—marked by a troubling lack of Massachusetts-specific operational modeling, unexplained shifts in terminal volume forecasts, and an absence of meaningful outreach by Applicants to Commonwealth leadership—demonstrates that Applicants have failed to carry their heavy burden under the Board's post-2001 merger rules. Practically speaking, the Applicants have shifted the burden of proof to the public. Unless and until the Board imposes the specific, enforceable protective conditions detailed herein, the proposed transaction threatens to degrade passenger rail reliability, marginalize vital regional freight corridors, and foreclose competitive access for Massachusetts shippers and short-line railroads.

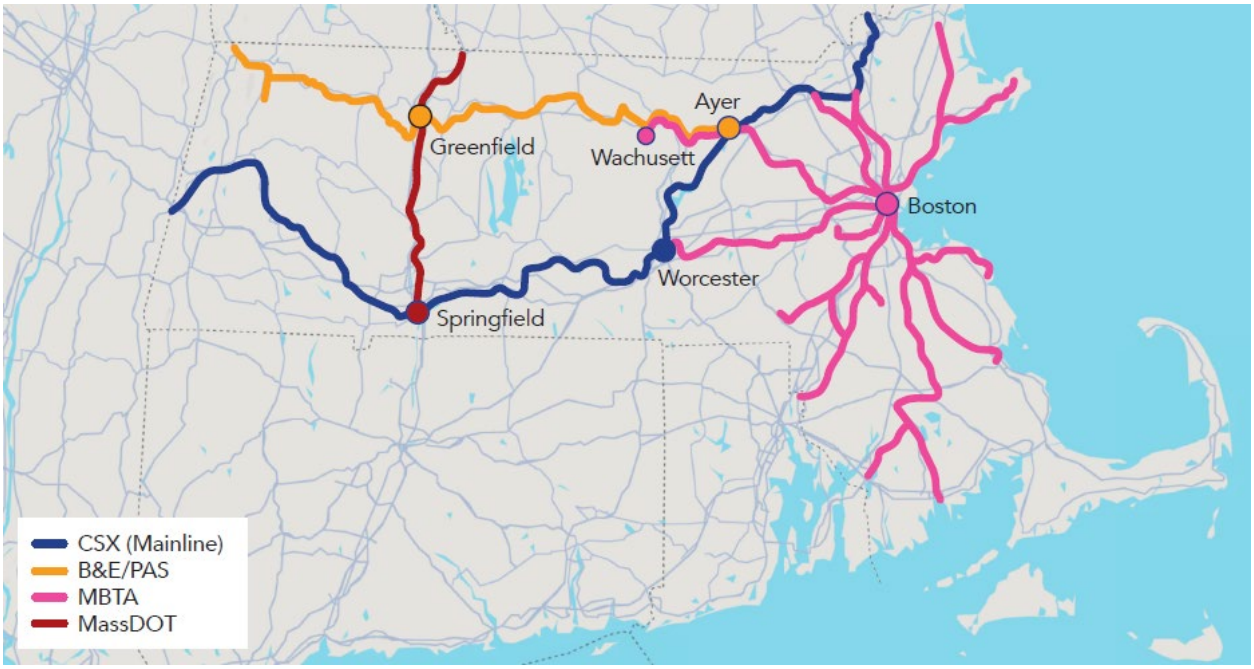
IDENTITY AND INTERESTS OF THE COMMONWEALTH

MassDOT and MBTA are the primary public stewards of railroad infrastructure, passenger rail mobility, and freight rail policy within the Commonwealth of Massachusetts. Together, MassDOT and MBTA own hundreds of miles of railroad right-of-way and track assets across the state, forming the

backbone of a complex, densely populated transportation network where intercity passenger, commuter rail, and freight operations are inextricably intertwined.

While the Commonwealth's rail network encompasses hundreds of route miles across numerous branches, its core focus in this proceeding is protecting the specific corridors threatened by Applicants' unmodeled freight growth forecasts (Included in Map 1). These include the MBTA-owned Fitchburg Main Line (which physically interfaces with NS operations at Ayer and hosts Pan Am Southern/Berkshire and Eastern operations), the CSX-owned Boston and Albany ("B&A") route (which hosts a daily pair of NS trackage rights trains limited to 9,000 feet in length), and the Pan Am Southern LLC ("PAS") corridor (which serves as a vital northern-tier freight artery).

Map 1: Massachusetts Mainline Trackage, including relevant corridors



MassDOT, with state and Federal grants provided by the Federal Railroad Administration, is investing heavily in CSX's B&A route to support existing Amtrak service and planned frequency expansions under the Commonwealth's Compass Rail Program—MassDOT's statewide vision for enhanced intercity rail, which specifically includes the West-East Rail initiative connecting Boston, Worcester, Springfield, and Pittsfield with Albany, NY.

STATUTORY AND REGULATORY FRAMEWORK

Because this proceeding involves the proposed consolidation of two Class I railroads – creating a coast-to-coast system controlling roughly half of the nation's freight rail traffic – it is governed by 49 U.S.C. § 11324(b) and (c) and the Board's Major Rail Consolidation Procedures at 49 C.F.R. part 1180, as substantially revised in 2001. Under 49 U.S.C. § 11324(c), the Board may approve a major consolidation only if it finds the transaction is "consistent with the public interest," an assessment guided and informed by the Rail Transportation Policy ("RTP") set forth at 49 U.S.C. § 10101.

In its 2001 rulemaking, the Board fundamentally elevated the threshold for major Class I mergers. Recognizing the severe service disruptions, integration failures, and competitive harms that followed previous rounds of Class I consolidation, the Board declared that future applicants can no longer rely on a mere showing that a merger will preserve the competitive *status quo*. Instead, under 49 C.F.R. § 1180.1(c), Applicants bear a heavy burden to demonstrate with concrete, verifiable evidence that the proposed combination will *enhance*

competition where necessary to offset negative effects of the merger, and that the public benefits of the transaction clearly outweigh any potential harms to the public interest, including, among other things, transitional service disruptions.

Key pillars of the Board's 2001 policy statement and regulations directly govern the Commonwealth's concerns in this docket:

Protection of Passenger Rail Operations

The Board's rules explicitly require a searching examination of a proposed merger's impact on commuter and intercity passenger rail operations. Under 49 C.F.R. § 1180.1(c)(2)(iii), the Board weighs the effect of the transaction on the adequacy of transportation to the public, including passenger mobility. This regulatory mandate is grounded in the Rail Transportation Policy, which requires the Board to "meet the needs of the public" and "operate transportation facilities and equipment without detriment to the public health and safety" (49 U.S.C. § 10101(4), (8)). Furthermore, the Board is bound to protect intercity passenger mobility by vigorously enforcing Amtrak's statutory preference and on-time performance requirements as established by the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") under 49 U.S.C. § 24308.

Downstream and Transnational Effects

Under 49 C.F.R. § 1180.1(c), the Board does not view a transaction in isolation; it must evaluate the strategic responses of other carriers, the potential weakening of competing Class I railroads (such as CSX in New England), and the

downstream effects on regional and short-line carriers that rely on Class I connections to serve local shippers.

Transitional Service and Integration Risks

The Board requires applicants to present a fully developed, realistic Operating Plan (49 C.F.R. § 1180.8(a)) supported by rigorous operational modeling to prove that the combined network can absorb projected volume growth without triggering terminal congestion, mainline bottlenecks, or service meltdowns that cascade across the national rail network.

Broad Conditioning Power

Pursuant to 49 U.S.C. § 11324(c), the Board possesses broad, inherent authority to condition its approval of any transaction on terms that ameliorate localized harms, protect passenger service, preserve gateway competition, and hold applicants accountable to their on-the-record representations. Where applicants fail to substantiate their claims or refuse to engage meaningfully with public stakeholders, the Board must either deny the application or impose strict, enforceable conditions.

Fair and Open Participation in the Proceedings

Under 49 U.S.C. § 11324(b) and 49 C.F.R. part 1180 generally, the Board's proceedings should ensure fair and open participation by all interested parties. As the Board itself recently recognized in taking remedial steps to address credible concerns that commercial intimidation and retaliatory conduct may have

chilled stakeholder participation in this proceeding, such conduct undermines the integrity of the regulatory process. For the Commonwealth, these troubling developments underscore a critical substantive point: given the lack of trust and candor already demonstrated during the pendency of this proceeding, neither the Board nor public stakeholders can rely on Applicants' thin assurances or voluntary commitments. Rather, the need for clear, objective, and strictly enforceable conditions is all the more paramount.

ARGUMENT
APPLICANTS HAVE FAILED TO DEMONSTRATE THAT THE TRANSACTION SERVES THE PUBLIC INTEREST IN MASSACHUSETTS

A. Absence of Meaningful Engagement and New England-Specific Planning

A foundational requirement of the Board's consolidation rules is that applicants must thoroughly plan for the operational realities of their proposed network and engage candidly with affected public agencies. Here, discovery and deposition testimony have confirmed a void in Applicants' preparation: UP and NS have undertaken virtually no Massachusetts- or New England-specific operational planning for this transaction.

During depositions, NS's integration lead conceded that {{[redacted]}} *See* Exhibit A, Highly Confidential Dep. of Michael R. McClellan, Oct. 9, 2026 ("McClellan Dep.") at 438:1-7, 442:2-14. (Instead, Applicants relied on MultiRail modeling, a software program created by Oliver Wyman, which simulates network plans against a

designated set of traffic and allows service designers to adjust plan parameters. MultiRail is primarily used for rail service design planning rather than simulating train operations. See Revised Application, Vol. 2 at 621.) NS's witness {{[redacted]}} (See McClellan Dep. at 436:23-437:8, 438:1-7, and 441:11-442:1) and {{[redacted]}} (see id. at 444:19-445:2 and 446:10-16), and that {{[redacted]}} (see id. at 431:12-432:6).

This lack of outreach—compounded by NS's minimal commercial and government-affairs footprint in New England—has left the Commonwealth in the untenable position of having to assess the Applicants' vague, conclusory assurances through formal discovery, essentially attempting thereby inappropriately to shift their statutory burden to the Commonwealth. Under the heightened evidentiary standards of 49 C.F.R. part 1180, Applicants' unsupported assertions that the transaction will not impact Massachusetts passenger or freight operations fail to satisfy their statutory burden. Applicants cannot satisfy the heightened standards of 49 C.F.R. part 1180 by treating New England as an afterthought. The Commonwealth should not be left to guess what the impacts of this massive, historic consolidation will be on the Commonwealth, specifically, and New England, more generally.

B. Unreconciled Ayer Forecasts and Unproven Operational Feasibility

The most immediate, concrete manifestation of Applicants' planning deficit is the unresolved status of NS's intermodal and automotive terminals at Ayer, Massachusetts. Currently, NS serves the Ayer intermodal terminal with one pair of intermodal trains per day operating in part over CSX trackage rights via the B&A main line. Autoracks bound for the SanVel ramp east of the intermodal terminal currently move over the MBTA's Fitchburg Line from the west utilizing B&E haulage rights, traveling between Ayer and Mechanicville on a single daily NS haulage train pair (typically 5,000 to 6,000 feet in length) alongside municipal solid waste ("MSW") traffic for Arrowhead Environmental Partners and Republic Services, two major Ayer-area customers (while general manifest traffic of roughly 50 railcars daily for the Ayer area is handled by a separate B&E train pair operating between Ayer and East Deerfield in connection with NS haulage movements to and from Mechanicville, supplemented by local freights between Ayer and Fitchburg). *See* Exhibit B, Verified Statement of Michael Rooks, Chief Railroad Officer, MBTA ("Rooks V.S.") at ¶¶ 5–6. Because these intermodal, automotive, MSW, and manifest operations all share and compete for constrained terminal and mainline capacity in the Ayer terminal, unmodeled surges in intermodal or automotive traffic create a serious risk that vital local manifest and MSW shippers will be operationally squeezed out or suffer degraded service resulting from terminal congestion. In their original application, Applicants projected

approximately 147,000 annual container and trailer lifts at Ayer, forecasting a dramatic surge from 107 base-plan lifts per day to 402 growth-plan lifts per day.

In their re-filed April 30, 2026 application and workpapers, however, Applicants reduced the annual Ayer forecast to 110,000 lifts and deleted the daily-lift presentation entirely from the body of the application, offering no explanation for this material alteration. In both versions of the application, Applicants project that following an ongoing parking lot expansion, Ayer will have a fluid capacity of 156,000 lifts per year. At the same time, Applicants continue to project {{[redacted]}} at Ayer while asserting that the facility has the existing capacity to accommodate such growth. This capacity assertion is further undermined by the Applicants' flawed decision to not engage in RTC modeling to examine how actual terminal operations will work at the Ayer terminal. This methodological choice leaves the actual traffic burden to be placed on the Ayer facility and the surrounding passenger network unknown.

Of note, Applicants contend that all projected intermodal and automotive growth into Ayer can be absorbed within NS's existing daily train pair operating over CSX's B&A route via trackage rights. *See also* McClellan Dep. at 440:6-20. Yet NS's trackage rights over the B&A are contractually restricted to a maximum train length of 9,000 feet, and the alternative route—the PAS/Berkshire & Eastern ("B&E") corridor—is unable to handle double-stack intermodal traffic due to vertical clearance limitations through the Hoosac Tunnel. Because Applicants admit {{[redacted]}}, the

record lacks evidence to confirm whether or how a 9,000-foot train pair operating via the current trackage rights route can physically and adequately accommodate the projected growth in intermodal lifts and automotive volume, how that growth affects the current daily train pair, daily train lengths, switching movements, and Ayer terminal dwell.

Applicants' narrative assertions are further undermined by unexplained internal contradictions within their own operating plan and workpapers. Specifically, while Applicants' witnesses and narrative text insist that all Ayer intermodal traffic and projected growth will continue to move exclusively on the existing daily train pair over CSX's B&A line, Applicants' Optimized Plan outlines a new intermodal train operating between Global 2, IL, and Mechanicville, NY (Train ZG2NE) that is expressly profiled to carry an Ayer block to Mechanicville—the western gateway to the PAS/B&E Patriot Corridor. *See* Revised Application, Vol. 2 at 830. This discrepancy admits of several possible explanations, none of which reflects a coherent operating plan: (1) Applicants' workpapers are simply careless and internally inconsistent; (2) Applicants are quietly contemplating shifting or splitting Ayer intermodal service onto the PAS/B&E corridor via Mechanicville without explaining how such traffic could clear the Hoosac Tunnel (either by running inefficient single-stack consists or funding major tunnel clearance improvements); or (3) Applicants tacitly recognize that projected Ayer growth cannot actually fit within the 9,000-foot B&A train-length cap. Whatever the explanation, neither the Board nor the Commonwealth should be

forced to engage in guesswork or gap-filling to reconcile basic contradictions in Applicants' New England operating plan.

Failure to Examine Impacts on the Pan Am Southern / Berkshire & Eastern Corridor

Although Pan Am Southern—jointly owned 50/50 by NS and CSX and operated by Genesee & Wyoming's B&E subsidiary—is the primary artery for NS freight traffic into New England, Applicants largely exclude PAS/B&E from their application by treating it as an external, third-party operation. Superficially, Applicants may claim that drawing their analytical boundary at the Mechanicville, NY, gateway comports with technical form because PAS is a joint venture operated by B&E rather than a wholly owned NS line. Yet doing so elevates corporate form and expedience over commercial and operational reality. Mechanicville is not a terminal endpoint; it is the jumping-off point and primary funnel for virtually all non-B&A freight that the consolidated UP/NS system will originate and terminate across Massachusetts and New England as a whole.

By making the conscious decision to treat PAS/B&E as a third-party entity, Applicants effectively chose to turn all of New England into an analytical blind spot. As a result, the application fails to examine how post-consolidation operations east of Mechanicville will work, necessary capital and maintenance investments on PAS, or the long-term governance of NS's 50% ownership stake. Indeed, deposition testimony revealed that {{[redacted]

[redacted]}}, leaving the Commonwealth to question the Applicants' commitment to PAS and this route, in particular, post-transaction. See McClellan Dep. at 391:16 to 392:21.

Elevating form over substance to exclude an entire region of the country is particularly unacceptable given the Commonwealth's substantial public investments in the PAS corridor to preserve it as a vital freight artery for northern-tier Massachusetts communities and a competitive counterbalance to CSX's B&A line. Moreover, PAS is hardly a stranger to NS's core commercial network: NS co-owns the corridor, retains reserved trackage rights between Mechanicville and Ayer, and moves its traffic into Massachusetts under a haulage arrangement in which B&E supplies the crews for NS trains. Given PAS/B&E's integral role as Applicants' commercial conduit into New England, hiding behind the technicality of third-party operations leaves the Board and the Commonwealth unable to meaningfully evaluate the transaction's regional impacts. Additionally, despite Applicants' silence in their narrative filings, their own environmental data (submitted in response to OEA Errata #2 and Request #4), while appearing to vastly underreport current traffic levels, projects a substantial increase in average train lengths and carloads over portions of the B&E route.

Similarly, the Applicants' workpapers suggest material volume growth at the current NS-B&E interline gateway at Mechanicville, NY. Because NS's intermodal trains operating via trackage rights on the B&A are capped at 9,000

feet, overflow traffic bound to or from Ayer or eastern Massachusetts would trigger the need to either be routed via the PAS/B&E route (subject to Hoosac Tunnel clearance restrictions), or the traffic growth would necessitate changes to the train length and/or train frequency restrictions currently applicable to the B&A routing. While the Commonwealth supports reasonable traffic growth via the PAS/B&E route, Applicants have failed to demonstrate that the anticipated growth won't overload the PAS corridor and made no statements or commitments to future investment or capacity for the PAS/B&E route to ensure its long-term viability.

Unassessed Risks to Commuter and Intercity Passenger Rail Service

Applicants' failure to model New England operations directly imperils both MBTA commuter rail and Amtrak intercity passenger service. The Commonwealth shares, and incorporates by reference, the systemic passenger-rail risks and modeling critiques identified by the Rail Passengers Association ("RPA") in this docket and RPA's incredulity regarding the extensive modeling generally required by all Class I railroads for the addition of but a single intercity passenger train on their networks – even when Amtrak's statutory rights provide access – which Applicants appear to feel is not required to support their own future operations. While Applicants' disclosures affirmatively identify passenger corridors exposed to added traffic, the analysis presented by Applicants' witness on this subject, Kristof Zetenyi, was not extended to the MBTA and its interactions with NS at Ayer or with the B&E along the Fitchburg Line. Where Applicants' own

projections disclose substantial additional traffic on passenger corridors, they cannot satisfy their statutory burden through unsupported assurances—particularly when they declined to perform the timetable-based and network-level analysis necessary to determine whether those assurances are true.

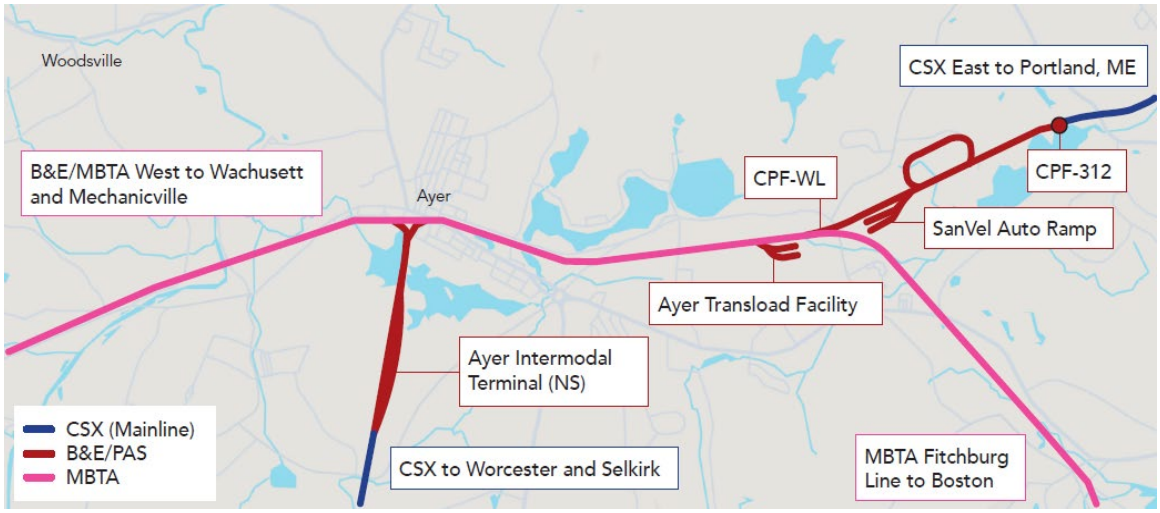
MBTA Fitchburg Line and the Ayer Interface

At Ayer, NS and PAS/B&E freight trains entering and exiting the intermodal yard, or accessing the east-side automotive facility, must directly traverse and interface with MBTA's heavily traveled Fitchburg Main Line, with B&E responsible for dispatching this line segment. Ayer also hosts a municipal solid waste ("MSW") transfer facility where MSW is placed in containers and then loaded onto trains for outbound shipment via a current B&E/NS interline route. This is a growing customer and the yard switch to this facility is located between Ayer and Willows on the shared MBTA segment. While Applicants provided detailed passenger impact analyses for commuter agencies operating directly on NS-owned lines—and were compelled by the Board in July 2026 to provide a similar analysis for NJ TRANSIT on Conrail Shared Assets territory—{{[redacted]}} *See*, *e.g.*, McClellan Dep. at 442:2-14.

Unmodeled increases in freight trains traversing the Fitchburg Line in and around Ayer, and corresponding increased switching activity on the same line, threaten commuter rail headway reliability and dispatching fluidity on shared MBTA trackage from Willows west through Ayer and Fitchburg to Wachusett. MBTA's operational tracking from September 2023 through September 2026

documents 643 freight-train conflict occurrences across the Fitchburg Line—rising from an average of 13 conflicts per month in late 2023 to 23 per month in 2025 and 17 per month in the first nine months of 2026—averaging approximately 10 primary delay minutes per conflict (plus 2 to 3 residual delay minutes) and eroding annual Fitchburg Line on-time performance ("OTP") by 2.01% in 2025 and 1.49% year-to-date in 2026. See Rooks V.S. at ¶ 8 & Exh. 1. Notably, 421 of those recorded freight-train interference ("FTI") occurrences were concentrated at just five locations—CPF-FG (107), CPF-DERBY (94), CPF-AY (89), CPF-WL (79), and Ayer Station (52)—where B&E-dispatched trains, prominently including NS haulage trains handling automotive and MSW traffic and NS trains working Fitchburg Yard, Ayer Yard, the SanVel Auto Ramp, and the Arrowhead Environmental Partners facility, occupy or foul shared mainline tracks and passenger station approaches. See id. at ¶¶ 8–13. Applicants have not committed to addressing these recurring baseline conflicts—much less the compounded switching, dwell, and mainline occupancy impacts that post-consolidation Ayer volume growth will generate—and their failure to model New England operations precludes MBTA from assessing post-transaction passenger delays.

Map 2: The Ayer Terminal



CSX B&A Corridor and Compass Rail

MassDOT has invested heavily in CSX's B&A route to support existing Amtrak service and planned frequency expansions under the Commonwealth's Compass Rail Program (West-East passenger rail). In total, the Commonwealth has over a billion dollars in current and planned investments in the Compass Rail Program, including over $320 million in federal awards for various projects in the program. If UP post-transaction seeks to add trackage-rights trains or run longer (9,000+ foot train length) consists over the B&A to handle Ayer growth, these could encroach upon existing or planned passenger operating windows, thereby negatively impacting current Amtrak service or creating new impediments to planned future service. The Applicants should not be allowed to foreclose, make more expensive, or degrade future passenger service by consuming existing capacity on the B&A route needed for such service and they cannot rely on MassDOT's taxpayer-funded infrastructure investments in the B&A corridor to absorb their unmodeled freight

growth, nor can they use public infrastructure to subsidize their projected operational synergies at the expense of passenger mobility.

Beyond the B&A corridor, unmodeled freight volume or train-length growth routed via Mechanicville over the PAS/B&E mainline similarly threatens to consume capacity needed for planned passenger rail expansions in northern and western Massachusetts. Specifically, the Commonwealth is advancing plans for expanded Amtrak frequencies on the Knowledge Corridor—which intersects the PAS mainline at Greenfield (CPF-385)—as well as the expansion of passenger rail service along the Northern Tier corridor between Wachusett and Greenfield over the PAS mainline. See Rooks V.S. ¶ 18.

Network Propagation and the Lake Shore Limited

The Commonwealth's interest in reliable intercity passenger service extends to upstream host-railroad performance. Amtrak's *Lake Shore Limited*, which provides vital intercity service across Massachusetts, is already identified on the record as one of the NS-hosted routes failing federal host-responsible delay targets, with freight-train interference constituting the largest delay category. *See* https://railroads.dot.gov/elibrary/fy26-q3-performance-and-service-quality-report. Merger-related congestion or integration struggles elsewhere on the combined UP/NS network must not be allowed to propagate into further schedule degradation for Massachusetts passengers.

Cab-Signal / ATC / ACSES Motive Power Readiness

A critical operational gap exists regarding locomotive compatibility. Following the merger, Applicants plan to strip cab-signal infrastructure from NS mainlines while maintaining only a small, dedicated sub-fleet of cab-signal-equipped locomotives for shared passenger territory in New Jersey and Pennsylvania. *See*, *e.g.*, Revised Application, Vol. 2 at 913-914. Applicants have made *no parallel commitment* for Massachusetts, even though CSX's B&A route and MBTA's shared passenger corridors require a combination of cab-signal, Automatic Train Control ("ATC"), Positive Train Control ("PTC"), and Advanced Civil Speed Enforcement System ("ACSES") technology at present. Without a dedicated, reliable pool of equipped motive power—and a plan to prevent non-equipped UP locomotives from fouling shared tracks—freight train delays and resulting severe passenger train disruptions are inevitable. See Rooks V.S. at ¶¶ 4, 19.

C. Unexamined Local Highway, Drayage, and Environmental Impacts

Applicants' truck-diversion analysis touts shifting long-haul freight from highway to rail on a macro-level but ignores the localized micro-impacts around Ayer. Expanding Ayer's lift capacity to 156,000 annual lifts will funnel thousands of additional short-haul drayage trucks onto local Massachusetts roadways and through surrounding communities. Deposition testimony confirmed that {{[redacted]}} *See* McClellan Dep. at 441:11-442:1. The resulting roadway congestion, pavement degradation, noise,

diesel emissions, and public safety hazards remain entirely unquantified by the Applicants. Because Applicants have failed to establish any analytical framework to assess the scope of these localized impacts, it is currently impossible to even formulate a viable mitigation strategy. These impacts must be rigorously evaluated both as an operational feasibility issue in this docket and through the Board's forthcoming National Environmental Policy Act ("NEPA") review.

D. Deficiencies in Committed Gateway Pricing, Short Line Protections, and Transitional Service Remedies

Under the 2001 merger rules, a consolidation must enhance competition, not create vertical foreclosure bottlenecks. While a combined UP/NS system could theoretically offer single-line competition against CSX's New England franchise, it simultaneously creates a severe risk of vertical foreclosure for traffic moving between UP-served origins/destinations in the West and Massachusetts shippers served by CSX or connecting short lines, limiting shipper optionality going forward. The Commonwealth is aware of Massachusetts shippers that currently receive freight originating in the western United States via UP and BNSF, with shipments moving through both NS and CSX, underscoring the importance of preserving competitive routing options.

Applicants' proposed remedy—Committed Gateway Pricing ("CGP")—is structurally flawed even from the most casual assessment. Even after Applicants' July 2026 supplemental expansion of the program, CGP remains an unacceptably narrow, time-bound mechanism that:

- Applies only through four midwestern/southern gateways (Chicago, St. Louis, Memphis, and New Orleans), ignoring critical eastern gateways for Massachusetts bound or originating traffic like Buffalo, Mechanicville, and Rotterdam Junction;

- Categorically excludes major traffic segments vital to New England, including intermodal, finished vehicles, dimensional loads, storage-in-transit, and movements involving railroad-owned facilities;

- Does not extend to traffic that would be handled pursuant to railroad transportation contracts, under which most New England freight traffic currently is transported;
- Excludes interline connections with Canadian National ("CN") and Canadian Pacific Kansas City ("CPKC"), both of which serve as vital competitive outlets for New England freight;

- Completely excludes unit trains, granting the merged carrier unchecked ability to shield high-volume commodities and favor its own directly-served facilities;

- Disqualifies short-line traffic where the short line connects with more than one Class I carrier;

- Places the burden of seeking relief on affected customers and short-line railroads, and risk imposing lengthy and costly proceedings when timely corrective action is needed;

- Categorically excludes new short line customers and shipping lanes established after the consolidation, foreclosing future economic growth and short line-driven localized economic development; and

- Would apply only for the duration of a Board-ordered oversight period, rather than applying indefinitely, unless or until the consolidated carrier could demonstrate to the agency that the asserted protections of the arrangement are no longer needed to protect shipper optionality.

Because these exclusions render the CGP framework practically illusory for captive shippers nationwide, the Commonwealth urges the Board to mandate a comprehensive, network-wide expansion of the CGP program to cure these structural defects. The exclusion of short lines that connect with more than one Class I carrier is especially fatal to the utility of CGP in Massachusetts. Short-line and regional railroads—most notably B&E and other Genesee & Wyoming carriers—are the lifeblood of the Massachusetts freight network, handling first-mile and last-mile distribution across the state. Many of these short lines technically connect with both CSX and NS (or PAS) or have paper/indirect access to multiple Class I carriers, even though a single gateway (such as Mechanicville for NS/CPKC or Rotterdam Junction for CSX) is the most commercially and operationally viable routing for specific traffic. By disqualifying short lines with dual Class I connections, CGP leaves Massachusetts short-line shippers completely exposed to post-merger rate manipulation on the UP/NS proportional leg of an interline move.

Furthermore, the fundamental pricing mechanism of CGP is illusory. It allows the Applicants to set baseline rates using their own prior-year pricing, permitting unchecked, compounding multi-year rate escalations with no defined ceiling. Combined with a lack of enforceable service-quality, car-supply, and interchange-compliance standards, the pricing commitment provides no actual protection if UP/NS degrades interchange service with CSX or B&E to force traffic onto its single-line routes.

Equally deficient is Applicants' proposed remedy for transitional service disruptions and integration meltdowns. Under 49 C.F.R. § 1180.1(c), the Board is specifically charged with guarding against the severe transitional service failures that plagued prior Class I consolidations. Yet Applicants offer little more than generalized assurances that they will pace their integration carefully and avoid repeating past industry mistakes. The sole concrete recourse Applicants propose for service failures—a narrowly drawn arbitration and damages regime—is available only to direct customers (leaving connecting short lines like B&E and other Massachusetts regional carriers without standing) and is so encumbered by high evidentiary thresholds, procedural hurdles, and liability caps that it is practically unusable for small and mid-sized shippers. For Massachusetts industries and short lines positioned at the eastern end of the supply chain—where upstream IT cutovers, yard congestion, or crew shortages on the combined UP/NS network will inevitably ripple outward—such a cramped, customer-only arbitration regime offers no meaningful protection against integration-induced service meltdowns.

In the end, if this proposed combination were to be rejected as contrary to the public interest, the patent and extensive inadequacies of CGP, the limitations of its current framework, and the anti-competitive impacts that would both flow from its application and its suspension at some future point (as the Applicants propose would happen) would be reason enough.

REQUESTED CONDITIONS

To protect the public interest and ensure that the proposed transaction, if it were to be approved, would comply with 49 U.S.C. § 11324(c) and 49 C.F.R. part 1180, the Commonwealth respectfully requests that the Board condition any approval of the proposed consolidation upon the following five core protective conditions:

Condition 1: Ayer Operating Plan, Terminal Capacity, and Local Access Gate

Reconciliation and Operational Modeling

Prior to implementing any consolidation-related volume increases at the Ayer intermodal or automotive terminals that would require train lengths exceeding the current 9,000-foot restriction, necessitate additional train frequencies on either the PAS/B&E or B&A routes, or approach the facility's estimated 110,000 annual lift estimate, Applicants shall submit a reconciled, transparent forecast of daily and annual lift volumes and automotive carloads at Ayer, supported by rigorous, validated operational modeling of the New England network. This modeling must demonstrate exactly how projected volume growth affects train lengths, train frequencies, train routings, scheduling, and switching operations over both the CSX B&A trackage-rights route and the PAS/B&E corridor. As part of this reconciliation, Applicants shall specifically resolve the internal contradiction between their narrative claim that all Ayer intermodal traffic will move via their CSX B&A trackage rights and their Optimized Plan profile for Train ZG2NE

(showing an Ayer intermodal block moving to Mechanicville), clarifying whether the ZG2NE profile is an error or whether Applicants contemplate routing single-stack or clearance-modified intermodal traffic over the PAS/B&E corridor.

Infrastructure and Trackage-Rights Triggers

If actual or projected Ayer volumes exceed the capacity of the existing single daily 9,000-foot train pair on the B&A, thereby triggering the need to modify existing trackage-rights agreements or mainline or terminal infrastructure beyond the proposed parking expansion at the Ayer intermodal terminal (assuming CSX and NS would each be amenable to such trackage rights agreement adjustments), Applicants shall provide at least 180 days' advance notice to MassDOT and MBTA, jointly develop a mutually acceptable operating and capital mitigation plan, and fund any necessary yard, terminal or mainline capacity improvements to prevent congestion spillback onto MBTA's Fitchburg Line or CSX's B&A route that will increase FTI and reduce MBTA or Amtrak OTP compared to current levels or interfere with planned future intercity passenger rail service.

Local Drayage and Roadway Mitigation

Applicants shall provide terminal-level drayage traffic projections to MassDOT and affected local municipalities surrounding Ayer, participate in a joint roadway-impact and safety study, and contribute targeted capital funding to mitigate adverse highway, grade-crossing, safety, noise, and emissions impacts resulting from terminal expansion.

Condition 2: Promoting Passenger Rail, Motive Power Adequacy, and Joint Planning

Formal Joint Planning and Operating Windows

Applicants shall engage in formal joint planning with MassDOT, MBTA, and Amtrak prior to implementing any freight service changes at the MBTA Fitchburg Line/Ayer physical track interface or CSX's B&A route that increase train frequencies, extend train lengths, or expand yard switching lead times in a manner that encroaches upon established passenger operating windows. Applicants shall adhere to strictly defined freight operating windows—building upon and expanding the existing B&A restriction prohibiting NS trackage-rights trains between 2:00 p.m. and 7:00 p.m.—to protect both existing commuter/intercity schedules and planned future passenger frequencies under MassDOT's Compass Rail Program. To the extent freight growth threatens capacity between Ayer (MP 36.0) and Willows (MP 33.7) or other MBTA-owned segments, Applicants shall fund necessary parallel trackage and interlocking upgrades prescribed by MBTA.

Enforceable Amtrak and PRIIA Commitments

Consistent with the passenger rail protections recently mandated by the Board in *Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500, slip op. at 171-72 (STB served Mar. 15, 2023), Applicants shall be bound by enforceable conditions to honor all statutory, contractual, and settlement rights of Amtrak across the combined UP/NS network, achieve federal PRIIA on-time performance and host-responsible delay standards (specifically including the *Lake Shore*

Limited), and cooperate in good faith to accommodate state-supported passenger rail expansions in Massachusetts.

Dedicated Cab-Signal / ATC / ACSES Locomotive Pool

Applicants shall be required to establish, maintain, and dedicate a sufficient pool of locomotives equipped with operational cab-signal, ATC, and ACSES technology specifically assigned to New England service for as long as operating conditions require, and implement strict operating protocols to ensure that unequipped UP or NS locomotives never enter CSX B&A or MBTA shared passenger territories as lead units.

Support for Future Passenger Rail Expansion

The Applicants' failure to account for reasonably foreseeable Federal Railroad Administration Corridor ID and state-led passenger rail development is a material deficiency in their planning. To cure this omission, the Applicants must agree to support future additional Amtrak service on the Knowledge Corridor via the intersection of the Conn River Line and the Pan Am Southern mainline in Greenfield at CPF-385, as well as the future expansion of passenger rail service on the Northern Tier Line between Wachusett and Greenfield via the Pan Am Southern mainline, in furtherance of the Commonwealth's Compass Rail Plan, Northern Tier passenger rail plans, and federally backed Corridor ID initiatives.

Maintaining fluidity on MBTA's Fitchburg Line

Applicants must be obligated to ensure that freight train interference delays associated with Applicants' direct, trackage-rights, or PAS/B&E haulage traffic impacting MBTA commuter trains operating via the Fitchburg Line—including at CPF-FG, CPF-DERBY, CPF-AY, CPF-WL, and Ayer Station—do not increase beyond currently documented levels. Any increase in freight train interference delays must be addressed and resolved via an established dispute resolution process. If issues cannot be resolved and delay minutes continue to increase, Applicants should provide for capacity-improvements on shared trackage or transfer dispatching control of this route to the MBTA. See Rooks V.S. ¶ 12.

Condition 3: Preservation of PAS / B&E Service, Governance, and Capital Investment

Maintenance of Capital Investment

Applicants shall maintain or increase historical capital and maintenance-of-way investment levels in Pan Am Southern LLC to ensure the PAS/B&E corridor remains a fluid and competitive freight route compliant with Federal Railroad Administration track safety standards for Class 2 and 3 operating speeds. See Rooks V.S. at ¶ 3. Applicants shall disclose all projected train lengths, tonnages, and frequencies moving via Mechanicville over PAS/B&E and commit to fund any infrastructure upgrades (such as siding extensions) required to handle longer post-consolidation consists without degrading corridor velocity and commuter train OTP. In particular, MBTA would request that Applicants commit their

support to the following infrastructure projects to mitigate delays caused by freight interference and improve reliability along the corridor:

- Adding a third main track between CPF-WL and CPF-CAMP, thereby providing a dedicated track for freight operations that work Ayer Yard or customers along the main line without threatening impact to adjacent passenger train operations (*see* Rooks V.S. at ¶¶ 14–15 & Exh. 2); and

- Capacity improvements proximate to Fitchburg—specifically, reconstructing Fitchburg Yard tracks and extending the Freight Main West and Freight Main East tracks—to permit clearing freight trains from the main line while undertaking local and switching work (see Rooks V.S. at ¶ 16).

Joint Venture Governance, Oversight, and Operations Protocols

Applicants shall consult in advance with MassDOT regarding any PAS joint-venture governance disputes with CSX that could delay necessary capital projects or materially alter service in Massachusetts. Furthermore, Applicants shall consult in advance with MassDOT prior to assigning or transferring NS's 50% ownership interest in PAS to Genesee & Wyoming Inc., its subsidiary Berkshire & Eastern Railroad, or any other entity. As a condition of this merger, any such transfer or assignment must include a binding, enforceable requirement that the assignee fully assumes all of NS's existing capital, maintenance, and service obligations regarding the PAS corridor, including obligations to accommodate planned passenger rail expansions, ensuring no degradation of the Commonwealth's prior investments, future passenger rail initiatives, or northern-tier freight service.

Condition 4: Enhanced Gateway, Short-Line, and Competitive Access Protections

Elimination of the Multi-Class I and Short-Line Exclusion

The Board should require Applicants to overhaul the CGP program network-wide to eliminate the multi-Class I short-line exclusion. If the Board were to decline to mandate a global correction, it must, at a minimum, establish a standalone Massachusetts Gateway Protection Condition covering all interline traffic originating or terminating on short-line and regional railroads in the Commonwealth (including B&E), regardless of whether the short line physically or constructively connects with more than one Class I carrier and should include CPKC and Canadian National as Class I carriers that can participate for traffic originating or terminating in Massachusetts and originating or terminating at a Union Pacific facility, given the unique network geography of New England.

Expansion of Scope, Gateways, and Duration

The Board should mandate a network-wide expansion of CGP eligibility to include intermodal, automotive, and currently excluded carload commodities, as well as unit trains, and new post-merger business. Absent a global fix, these expansions must be mandated for all New England traffic, specifically applying to key New England gateways including Mechanicville and Rotterdam Junction, NY. The CGP pricing benchmark shall be reduced from the 70th percentile of comparable rates to the median (50th percentile) or lower, and annual gateway rate increases must be strictly capped at the rate of inflation. The program

shall remain in effect for the longer of the formal oversight period or 10 years, continuing indefinitely thereafter until Applicants prove to the Board by clear and convincing evidence that competitive conditions no longer warrant it.

Service-Quality Parity and Expedited Remedies

All gateway pricing protections shall be paired with binding service-performance standards governing interchange frequency, car supply, transit times, transitional integration performance, and non-discriminatory handling at Mechanicville, Rotterdam Junction, and other New England gateways. Breaches of these thresholds—or transitional service disruptions impacting New England traffic—shall entitle affected shippers and short lines to expedited, binding STB arbitration and liquidated remedies. In any such arbitration, the burden of proof shall rest upon UP to establish by clear and convincing evidence that any contested rate manipulation, interchange restriction, or service degradation is justified by objective operational necessity and is entirely free of retaliatory animus.

Condition 5: Long-Term Oversight, Reporting, and Local Commercial Engagement

Extended Oversight and Thorough Reporting

Because Applicants' projected implementation and traffic growth span well beyond the statutory five-year minimum, the Board shall retain formal oversight of the transaction for a minimum of ten years. This oversight shall remain in effect indefinitely thereafter, terminable only upon a formal petition by

Applicants and a Board finding that oversight is no longer necessary to protect the Commonwealth's interests.

During such oversight, Applicants shall submit quarterly, Massachusetts-specific reports to the Board, MassDOT, and MBTA tracking: (a) Ayer daily/monthly lift volumes, auto carloads, dwell times, and drayage gate counts; (b) train lengths and frequencies over the B&A and PAS/B&E; (c) interchange volumes and on-time compliance at Mechanicville and Rotterdam Junction; and (d) measurable indicators of FTI and OTP for MBTA and Amtrak passenger trains operating on Applicants' territory in the Commonwealth or impacting such trains.

To support this oversight and the unprecedented scope of this transaction and the on-going obligations likely facing the Board if it approves this transaction and the creation and operation of this mammoth new carrier, we respectfully suggest that the Board establish a special committee or other entity available under law made up of appropriate experts to act as a focused oversight resource. Such an entity could promptly review required data submitted by Applicants and others, vigilantly monitor implementation and performance of the Board's imposed conditions, and serve as a fact-finding body for shippers, carriers, and the public alike for issues regarding the merged carrier's implementation of the transaction. It could be structured to be highly accessible, efficient in gathering information, prompt in making recommendations to the Board for action on a regularly scheduled and frequent basis. This would help ensure that the many

potential parties facing issues are not forsaken amidst long lines or fail to even seek the Board's assistance because of the cost and time required to participate. Just as the Applicants propose to grow, we believe the Board itself, if it approves the transaction, will need to expand its own capabilities and the utilization of its regulatory power to ensure that it is not outmatched by the sheer size and scope of the new carrier.

Dedicated New England Presence and Consultation

Applicants shall establish and maintain a dedicated commercial and government-affairs presence in New England, with designated senior points of contact required to meet quarterly with MassDOT, MBTA, Massachusetts short lines, and regional economic-development agencies to review service performance, resolve operational conflicts, and pursue initiatives to grow freight rail mode share in the Commonwealth. This will help ensure that the Commonwealth and the Applicants can build a productive partnership.

CONCLUSION

The Commonwealth of Massachusetts cannot support a generational Class I rail consolidation creating the largest railroad in United States history that treats New England as a modeling blind spot. Applicants could have explained directly to the Commonwealth or through their application the various positive impacts they anticipate will arise from their combination for Massachusetts shippers and the public. They could have made commitments or proposed

strategies and investments to prevent or mitigate any of the many conceivable harms that this transaction could cause. They did not. Instead, the Applicants have treated the Commonwealth essentially as a peripheral, end-of-the-line bystander, leaving Massachusetts to do its best to piece together and guess what the impact of the new merged carrier might be on the rail network in the state and on our residents, businesses, motorists, and communities.

This is not how the post-2001 merger rules are supposed to work. The Applicants are not proposing a "normal" merger along the type of regional consolidations that marked the pre- and post-Staggers Act periods. They are proposing to create the first transcontinental U.S. carrier, which will have roughly 50 percent market share of U.S. domestic rail freight traffic (*see* BNSF Railway Company, Comments on Completeness of Amended Application, at 2 (filed May 8, 2026) (BNSF-24)) and impact every state, likely in ways both subtle and great. The burden is on the Applicants to prove to states like the Commonwealth that this transaction is in the public interest. They have not. Applicants have failed to reconcile their shifting forecasts for the Ayer terminal, ignored the operational and capital needs of the vital PAS/B&E corridor, offered no concrete plan to protect MBTA and Amtrak passenger rail service or supply cab-signal-equipped motive power, and structured their CGP proposal in a manner that leaves Massachusetts short lines and shippers vulnerable to vertical foreclosure. Under 49 U.S.C. § 11324 and 49 C.F.R. part 1180, the Board should reject Applicants' unsupported

assurances and, if it determines to approve the transaction, impose the comprehensive, enforceable conditions requested herein by MassDOT and MBTA.

Respectfully submitted,

/s/ *R. A. Wimbish*

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Dated: November 18, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION AND THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

HIGHLY CONFIDENTIAL EXHIBIT A
EXTRACT FROM DEPOSITION OF MICHAEL R. MCCLELLAN
OCTOBER 9, 2026

OMMITTED FROM PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION AND THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

EXHIBIT B
VERIFIED STATEMENT OF MICHAEL ROOKS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION AND THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

Verified Statement of Michael Rooks, Chief Railroad Officer Massachusetts Bay Transportation Authority

Introduction and Background

1. I am Michael Rooks, Chief Railroad Officer of the Massachusetts Bay Transportation Authority (MBTA). In my capacity as Chief Railroad Officer, I oversee the operation, maintenance, safety, dispatching coordination, and infrastructure planning of the MBTA Commuter Rail network, including the Fitchburg Main Line corridor. I have extensive experience in railroad operations, shared-corridor passenger and freight service coordination, track and signal infrastructure, and federal regulatory compliance. Prior to my experience overseeing MBTA's commuter rail network, I served as General Manager of Pan Am Southern, the joint venture between Norfolk Southern and then Pan Am Railways. I submit this Verified Statement in support of the Comments and Request for Conditions of the Commonwealth of Massachusetts Department of Transportation ("MassDOT") and the MBTA.

Agency Overview

2. The MBTA is the public transportation agency responsible for providing commuter rail, rapid transit, bus, and ferry services throughout Greater Boston and eastern and central

Massachusetts. Along with MassDOT, MBTA is a primary public steward of railroad infrastructure and passenger mobility in the Commonwealth, owning and operating hundreds of miles of rail right-of-way where commuter, intercity passenger, and freight rail operations are closely intertwined. Among these corridors is the MBTA-owned Fitchburg Main Line, which carries scheduled MBTA commuter rail trains between Wachusett, Fitchburg, Ayer, and Boston's North Station while directly interfacing with and hosting freight operations conducted by Norfolk Southern Railway Company ("NS"), CSX Transportation, Inc. ("CSX"), and Pan Am Southern LLC ("PAS") / Berkshire & Eastern Railroad ("B&E").

Existing Freight Operations and Rail Infrastructure

Track Conditions and Safety Systems

3. Based on my experience and knowledge of the current operating conditions, B&E-operated PAS District 3 consists primarily of a combination of Federal Railroad Administration (FRA) Class 2 and Class 3 mainline track. Under federal regulations, Class 2 track permits maximum freight train operating speeds of 25 miles per hour, while Class 3 track permits maximum freight train operating speeds of 40 miles per hour. These track classifications are important to ensuring the corridor remains a viable and competitive route for freight traffic operating in New England.

4. Important rail safety initiatives have already been fully implemented on the corridor including the activation of Positive Train Control ("PTC") and cab signal technology between CPF-WL (Willows) and CPF-335 (Westminster). While Class I road locomotives commonly are PTC-equipped, operating over shared MBTA passenger territory requires lead freight locomotives to be specifically equipped and configured with operational cab-signal, Automatic Train Control ("ATC"), and Advanced Civil Speed Enforcement System ("ACSES") technology—a specialized passenger-corridor train control overlay distinct from standard freight PTC. Cab signals provide locomotive crews with continuous signal indications inside the operating cab, while ATC and ACSES enforce speed and civil restrictions to prevent train-to-train collisions and overspeed derailments. Because freight locomotives lacking operational cab-signal, ATC, and ACSES equipment cannot operate as lead units over shared MBTA territory without causing severe operational delays and passenger service disruptions, it is essential that Applicants establish and maintain a dedicated, reliable pool of properly equipped locomotives for New England service.

Existing Freight Traffic and Train Characteristics

5. Based on my knowledge of existing operations, Norfolk Southern (NS) haulage trains B100 and B101 operate regularly over the B&E corridor between Mechanicville, New York, and

Ayer, Massachusetts, and handle automotive traffic (serving the SanVel auto ramp) and municipal solid waste ("MSW") traffic (serving major Ayer-area customers including Arrowhead Environmental Partners and Republic Services). These trains typically operate at lengths of approximately 5,000 to 6,000 feet. Their operation requires sufficient track capacity to accommodate the entire train, particularly when entering or exiting yards and completing switching activities at terminals along the Fitchburg Line.

6. Based on my knowledge of existing operations, the B&E also operates merchandise trains EDAY and AYED, which typically handle approximately 50 railcars daily. These trains operate between Ayer and East Deerfield, Massachusetts, where traffic is then sent on a separate NS haulage rights train to Mechanicville. In addition, local freight trains operate between Ayer and Fitchburg to serve customers located along the main line. These local movements typically consist of approximately five to ten railcars, although their operating characteristics differ from those of the longer haulage and merchandise trains. The MBTA's Fitchburg Line commuter trains operate between Wachusett (just west of Fitchburg, and east of East Deerfield) and Boston North Station, via Fitchburg and Ayer.

7. Based on my experience, longer trains may require additional time and track capacity to enter yards, clear controlled points, or complete movements that involve setting off and picking up railcars. In evaluating the impacts of potential merger-related traffic growth, it is important to consider not only the number of freight trains operating each day but also their lengths, the type of traffic being handled, the times at which they operate, and the work they must perform along the route.

Existing Freight-Related Impacts on MBTA Passenger Service

Recorded Operating Conflicts

8. Based on my knowledge and experience and MBTA operational analysis offered as Exhibit 1 to this Verified Statement, freight operations already create recurring operating conflicts along portions of the MBTA Fitchburg Line, particularly near Ayer and Fitchburg, where trains must access yards, serve local customers, or interact with scheduled passenger movements. As detailed in Exhibit 1, MBTA's tracking from September 2023 through September 2026 recorded 643 total freight-train conflict occurrences across the Fitchburg Line—rising from 13 conflicts per month in late 2023 to 23 per month in 2025 and 17 per month in the first nine months of 2026—averaging approximately 10 primary delay minutes per conflict (plus 2 to 3 residual delay minutes) and reducing Fitchburg Line on-time performance ("OTP") by 2.01% in 2025 and 1.49% year-to-date in 2026. Of those total events, 421 repeated occurrences of freight-train interference ("FTI") and freight-train-

caused delays were concentrated at just five locations: CPF-FG (107), CPF-DERBY (94), CPF-AY (89), CPF-WL (79), and Ayer Station (52).

Freight Yard and Switching Movements

9. **CPF-FG – Fitchburg Yard**: Between September 2023 and September 2026, 107 occurrences of freight-train interference and delays were recorded at CPF-FG by MBTA through the agency's daily On-Time-Performance tracking. These occurrences are associated with freight work events at Fitchburg Yard, where waste and automotive traffic is set off or picked up by NS haulage trains B100 and B101. These work events involve freight trains stopping and performing switching activities rather than simply moving through the corridor. When such activities occupy or restrict access to the main line, they can interfere with scheduled MBTA passenger movements. Providing additional capacity for freight trains to clear the main line while performing these activities would help address this recurring source of conflict.

10. **CPF-AY – Ayer Yard Operations:** At CPF-AY, 89 occurrences were recorded between September 2023 and September 2026. These occurrences are associated with freight trains operated by NS, CSX, and B&E performing work at Ayer Yard. Yard-related activities can require freight trains to occupy mainline tracks while railcars are switched, trains are assembled, or trains are doubled out by combining groups of cars from separate tracks. Such movements can temporarily restrict the capacity available for other trains, including MBTA passenger service.

11. **CPF-WL – Ayer Automotive and Waste Traffic**: At CPF-WL, 79 occurrences were recorded during the September 2023 through September 2026 period. These occurrences are associated with NS automotive freight movements serving the SanVel location and waste movements traveling to or from Arrowhead Environmental Partners, both in Ayer. These freight operations require movements through the area that must be coordinated with MBTA's scheduled passenger service. Conflicts can arise when freight trains need to access these facilities or move through the controlled point at times when passenger trains are scheduled to operate.

Dispatching and Train Movement Conflicts

12. **CPF-DERBY – Freight and Passenger Train Coordination**: During the same period, 94 occurrences were recorded at CPF-DERBY. These events are associated with dispatching decisions (on a shared line segment where B&E is currently responsible for dispatching) and the coordination of train meets along the corridor. MBTA's operating plan provides for planned train meets between CPF-DERBY and CPF-CAMP, intentionally avoiding conflicts

in the vicinity of Ayer and Fitchburg Yards, where freight switching activity can create additional operating constraints. When dispatching decisions do not align with these planned meeting locations, passenger trains may experience delays while conflicting movements are resolved. Maintaining coordinated dispatching practices is therefore an important component of reliable passenger operations, and if freight-train interference delays increase post-merger and cannot be resolved through dispute resolution and capacity upgrades, transferring dispatching control of this shared route to the MBTA would be warranted.

13. **Ayer Station – Passenger Station Operations**: At Ayer Station, 52 occurrences of delays due to freight-train interference were recorded during the same period. These events are associated with dispatching decisions that route freight trains through the station during scheduled passenger train operating periods. Such movements can create conflicts with passenger operations, particularly where station movements must comply with NORAC Rule 121, which establishes requirements to protect passengers at stations with intervening tracks.

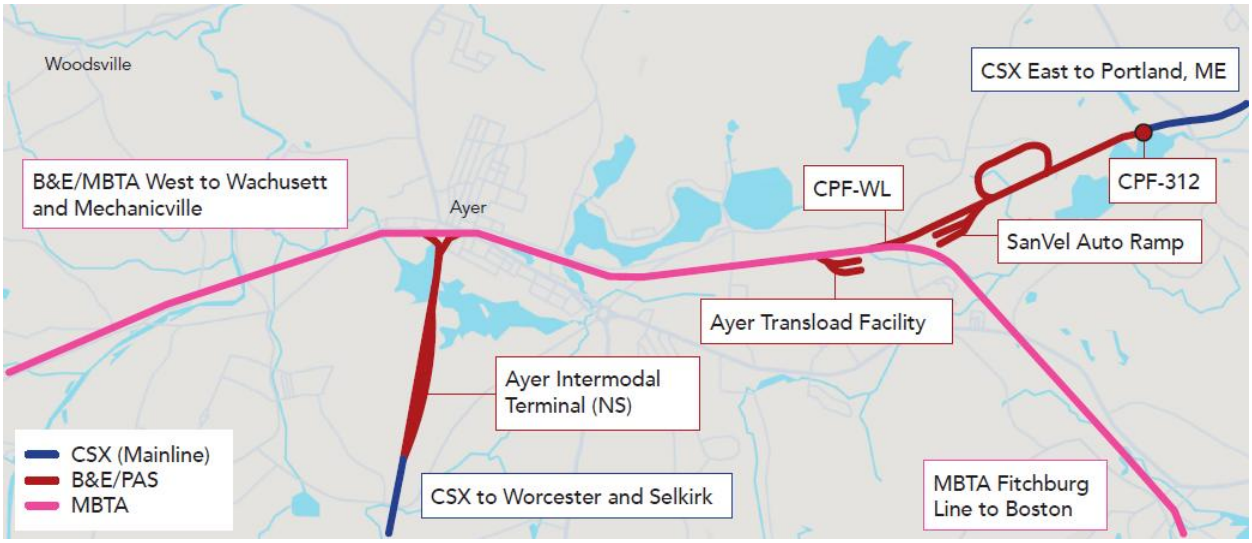
Potential Infrastructure Improvements

Third Main Track Between CPF-WL and CPF-CAMP

14. Based on my experience of current operations and familiarity with the territory, I believe that one infrastructure improvement that would help mitigate existing and potential future freight-related impacts to MBTA Fitchburg Line service is the construction of a third main track between CPF-WL and CPF-CAMP, as illustrated on the track chart diagram attached as Exhibit 2 to this Verified Statement. I believe that this additional track would provide dedicated capacity for freight trains accessing Ayer Yard or serving customers along the main line in the Ayer Terminal Area (depicted in Map: The Ayer Terminal). At present, freight trains performing these activities may occupy mainline track capacity on a shared corridor with MBTA that is needed to accommodate scheduled passenger operations.

15. The proposed third main track would allow freight trains to conduct yard-related movements, including the setting off and picking up of railcars, while mitigating interference to passenger service. Providing additional track capacity would reduce the need to hold or delay MBTA trains while freight movements are completed and would improve the ability to maintain passenger train schedules. I believe this separation would be particularly important if freight traffic increases as a result of the proposed merger.

Map: The Ayer Terminal



Additional Capacity Around Fitchburg Yard

16. I believe additional capacity improvements are also needed in the vicinity of Fitchburg Yard. Freight trains operating in this area regularly conduct work events, including setting off and picking up railcars. These activities can require freight trains to occupy or otherwise interfere with main-line tracks while switching is performed. Reconstruction of yard tracks and the extension of the Freight Main West and Freight Main East tracks will allow freight trains to conduct their work events while reducing conflicts with scheduled passenger operations and improving overall corridor fluidity.

Assessment of Potential Merger-Related Impacts

17. The recorded occurrences at CPF-FG, CPF-DERBY, CPF-AY, CPF-WL, and Ayer Station demonstrate that existing freight operations already create recurring challenges for passenger service along the Fitchburg Line. These conflicts are associated with several different operating activities, including yard switching, train meets, local freight movements, and the routing of freight trains through passenger station areas.

18. The proposed merger's potential impact on MBTA operations should therefore be evaluated in light of the corridor's existing operating conditions, rather than solely on the basis of projected daily freight train counts or theoretical track capacity. Any additional freight traffic must be considered alongside existing freight train lengths, switching requirements, dispatching practices, and scheduled passenger operations. In particular, any post-merger growth in intermodal or automotive volumes at Ayer—whether moving via NS's trackage rights over CSX's Boston and Albany line into Ayer or routed via Mechanicville over the

PAS/B&E corridor—will directly compound switching activity, terminal dwell, and mainline track occupancy at CPF-AY and CPF-WL unless rigorously modeled and mitigated in advance. Unmodeled freight volume or train-length growth over the PAS/B&E mainline would likewise threaten corridor capacity needed to accommodate planned passenger rail expansions, including additional Amtrak service on the Knowledge Corridor intersecting the PAS mainline at Greenfield (CPF-385) and expanded passenger rail service along the Northern Tier Line between Wachusett and Greenfield.

19. In my opinion, protecting current and future MBTA passenger service will require careful coordination of freight operations and appropriate infrastructure improvements. The addition of a third main track between CPF-WL and CPF-CAMP, together with capacity improvements around Fitchburg and coupled with a dedicated pool of freight locomotives properly equipped with operational cab-signal, ATC, and ACSES technology, would provide opportunities to separate freight work events from passenger movements, enhance corridor safety and fluidity, and reduce the likelihood of recurring operating conflicts.

Conclusion

20. In conclusion, based on my experience and knowledge of existing railroad operations, I believe that the proposed merger's potential impacts on MBTA passenger service must be evaluated with consideration of the operational constraints and recurring freight-related delays already experienced along the Fitchburg Line. The existing conflicts demonstrate the importance of understanding how additional freight traffic would operate in practice on this specific corridor. Without appropriate infrastructure improvements and operational coordination, additional freight traffic could exacerbate existing delays and place further pressure on the corridor's available capacity. I believe it is essential that the Applicants demonstrate how projected traffic growth can be accommodated without adversely affecting the safety, reliability, and continued operation of MBTA passenger service.

I, Michael Rooks, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 18, 2026

/s/ Michael Rooks

Michael Rooks
Chief Railroad Officer
Massachusetts Bay Transportation Authority

EXHIBIT 1: BERKSHIRE AND EASTERN FREIGHT CONFLICT ANALYSIS

Berkshire and Eastern Freight Conflict Analysis

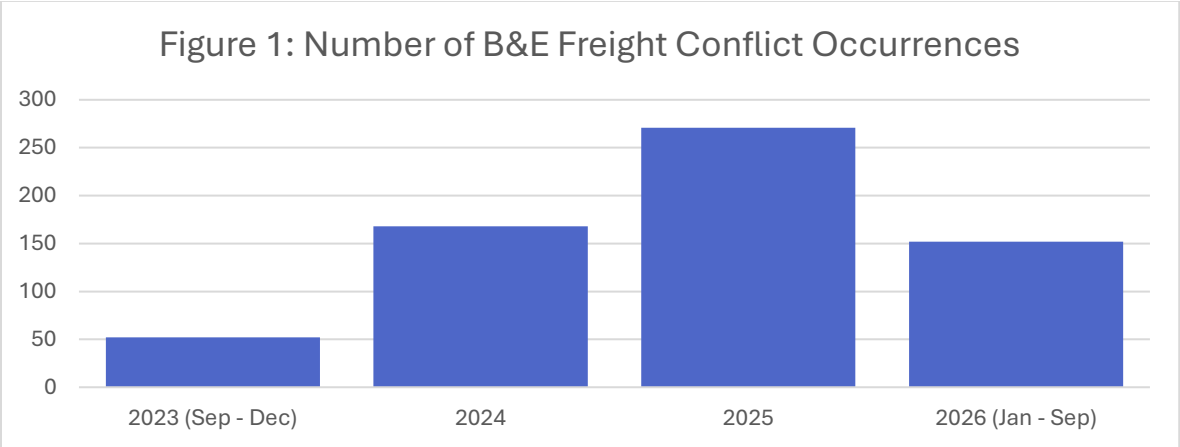
October 28, 2026
Data from Sep 1, 2023 – Sep 30, 2026, Fitchburg Line only

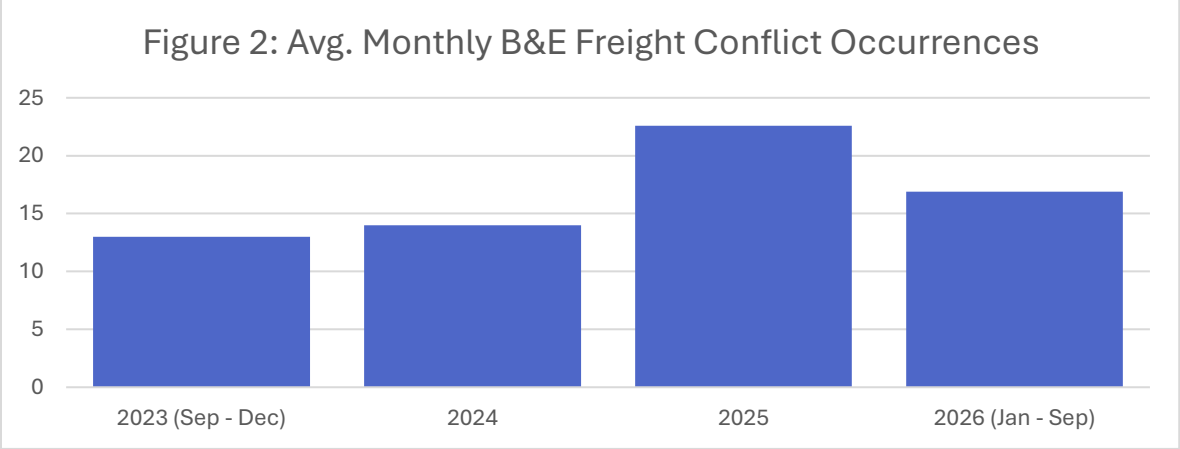
Executive Summary

- B&E freight conflicts have generally increased from 2023 (13 per month) to 2026 (17 per month) with a peak in 2025 (23 per month).
- 2026's B&E freight conflict occurrences have been driven by three months (January, June, and July) with high numbers of conflicts; however, these are attributable to higher levels of activity rather than any highly disruptive individual events.
- Total delay minutes from B&E freight conflicts follow a similar trend as total freight conflict occurrences. Average delay minutes per freight conflict have remained consistent at 10 minutes per occurrence for the entire period 2023-2026.
- OTP losses due to B&E freight conflicts were highest in 2025 (2.01%) with 2026 year-to-date at 1.49% outpacing 2023 and 2024.

Occurrences

B&E freight train conflicts with Fitchburg Line trains have generally increased from 2023 to 2026. Figure 1 shows the **total** freight conflicts in each year, although 2023 and 2026 are partial years in the dataset. Figure 2 shows the **average monthly** freight conflicts to allow for a direct comparison between years.

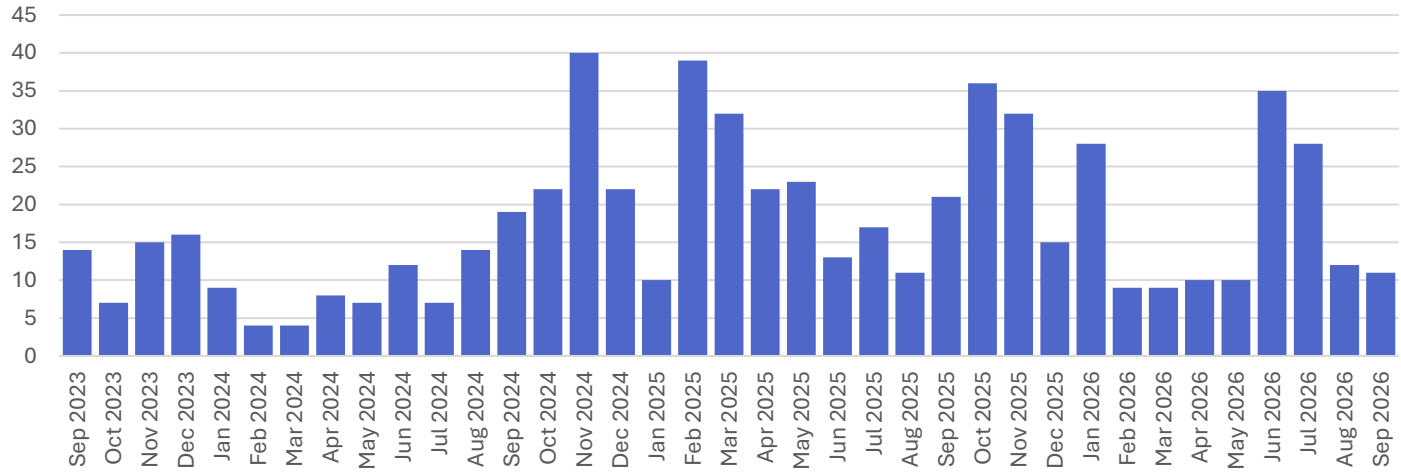




September through December 2023 saw an average of 13 conflicts per month. This is a very similar rate to 2024's 14 conflicts per month, resulting in a total of 168 conflicts over the year.

However, 2025 saw 271 conflicts in total, or approx. 23 per month on average, an increase of 61% relative to 2024. 2026 is also trending higher than 2024 with 17 freight conflicts per month on average (a 21% increase). 2026 featured 152 freight train conflicts in the first nine months of the year, nearly exceeding the total for 2024 with three months left in the year.

Figure 3: Number of B&E Freight Conflict Occurrences by Month



There is wide variability in month-to-month freight conflicts, shown in Figure 3. There have been as few as 4 conflicts per month (Feb & Mar 2024) and as many as 40 conflicts per month (Nov 2024). 2025's high number of overall conflicts was driven by two periods of increased conflicts in February through May and September through November, where each month featured between 21 and 39 conflicts.

2026 has seen a consistent "baseline" rate of freight conflicts of approx. 10 conflicts per month, with spikes in January, June, and July. These months with higher numbers of conflicts are the result of higher day-to-day activity rather than individual major events — the maximum number of freight conflicts observed on any particular day of 2026 is four. Note that events like derailments (e.g., the derailment of B&E train EDSA on Dec 28, 2025) are *not* considered to be "freight train conflicts" in TRMS.

The table to the right shows the most common locations for these delays. CPF-FG and CPF-DERBY are the top in the years 2023 through 2026; however, the following three — CPF-AY, CPF-WL, and Ayer Station are all clustered around the eastern portion of B&E territory shared with Fitchburg Line commuter rail trains.

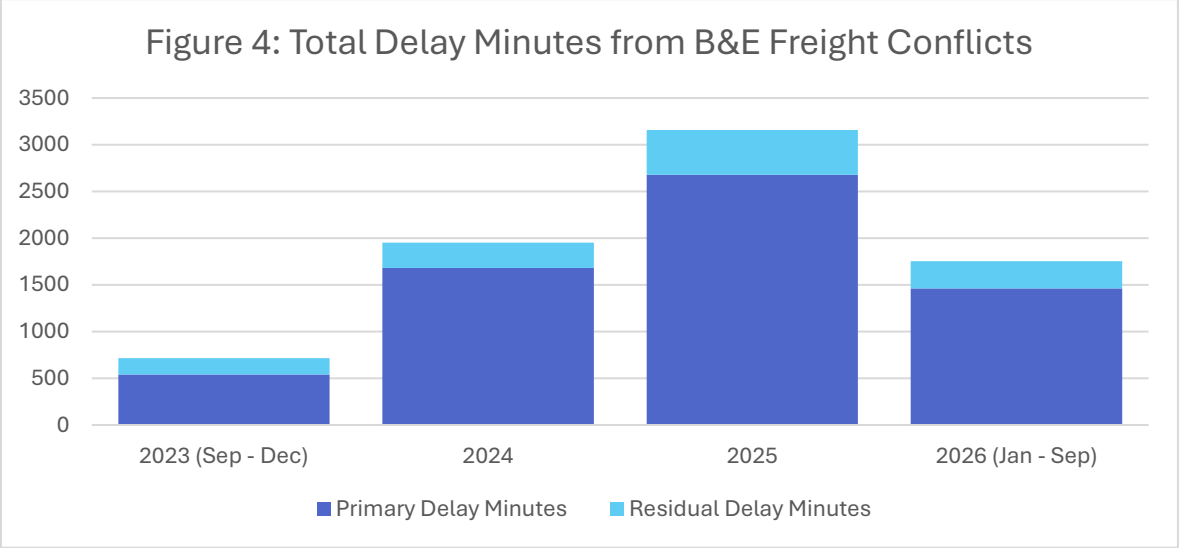
Location	Occurrences (Sep 2023 – Sep 2026)
CPF-FG	107
CPF-DERBY	94
CPF-AY	89
CPF-WL	79
Ayer Station	52

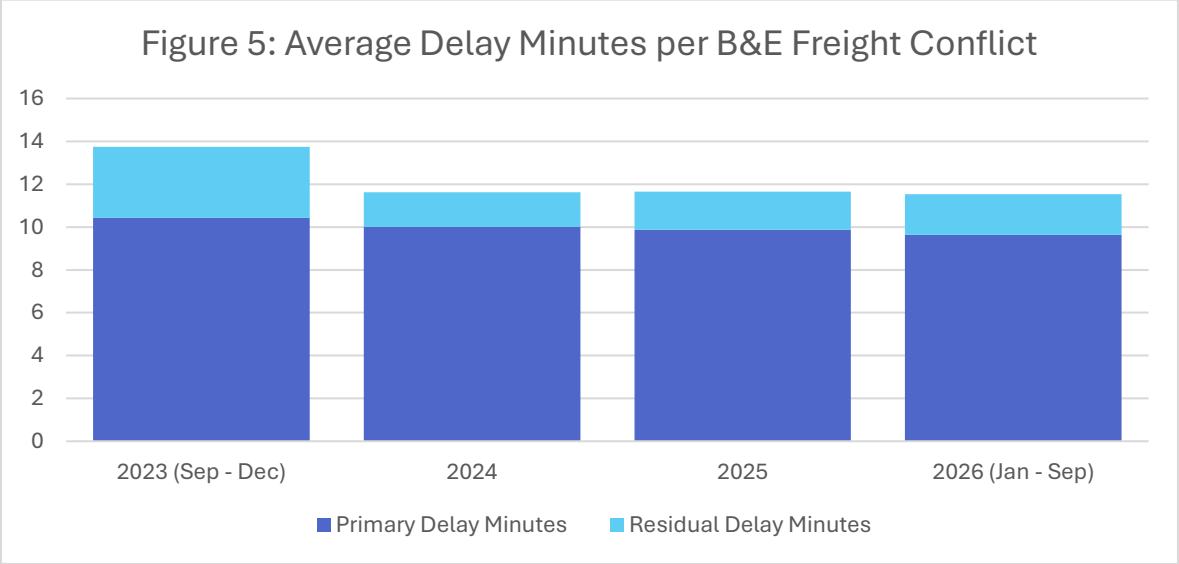
Delay Minutes

Total delay minutes from B&E freight conflicts are shown below as yearly totals in Figure 4. For direct comparison between years, the average delay minutes per freight train conflict is shown in Figure 5.

Delay minutes have remained very consistent over years relative to the number of freight train conflicts. In all years 2023 through 2026, average delay minutes per freight conflict have been approximately 10 minutes (primary delays only, which measures the delay minutes only for those trains directly in conflict with a freight train).

Residual delay minutes can result from late turns of trains delayed by freight conflicts or resulting conflicts from Commuter Rail trains being out-of-slot due to the earlier freight conflict. On average, residual delays were approx. 3 minutes per conflict in 2023, decreasing to an average of 2 minutes per conflict in 2024 through 2026.





OTP Loss

Overall Fitchburg Line OTP loss associated with B&E freight conflicts, shown in Figure 6, does not track exactly with occurrences nor delay minutes. This is because a train delayed by a freight train conflict can also be delayed by another unrelated occurrence (e.g., a switch failure), which then results in the OTP loss being split between the freight train conflict and the other delay(s).

However, the general impact trend of freight conflict OTP loss being highest in 2025 (2.01% OTP loss) and with 2026 year-to-date (1.49% OTP loss) outpacing 2023/2024 remains the same.

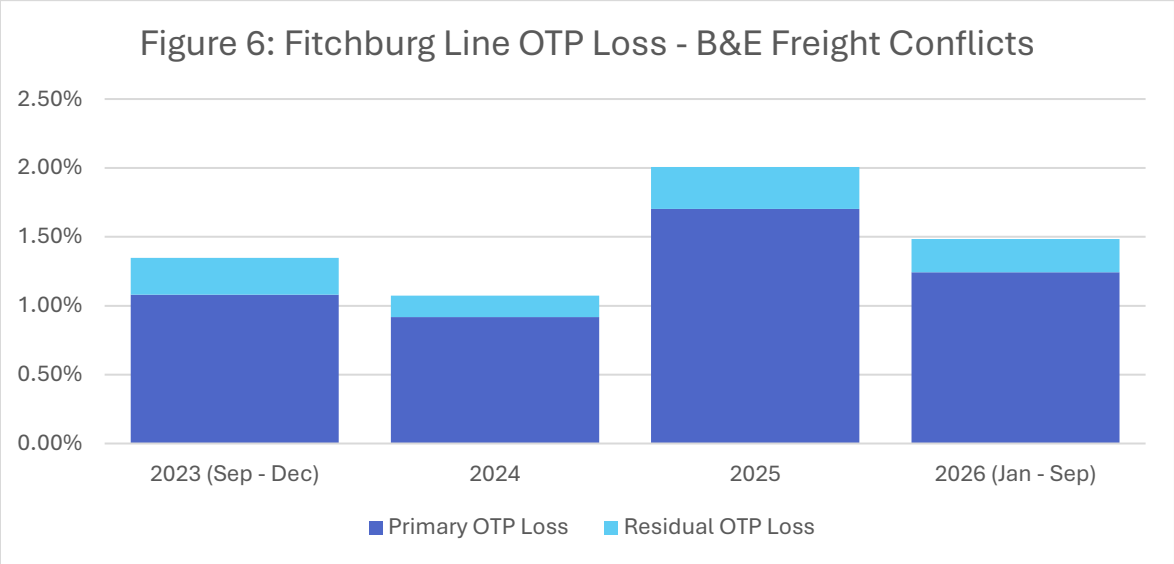


Figure 7 shows the monthly OTP loss from B&E freight conflicts. Similar to overall occurrences, 2025's higher OTP loss levels were driven by higher losses between February and May as well as between October and November. 2026's losses similarly were concentrated in the months of January, June, and July. In all of these months, OTP loss attributable to B&E freight conflicts exceeded 2.00% OTP loss.

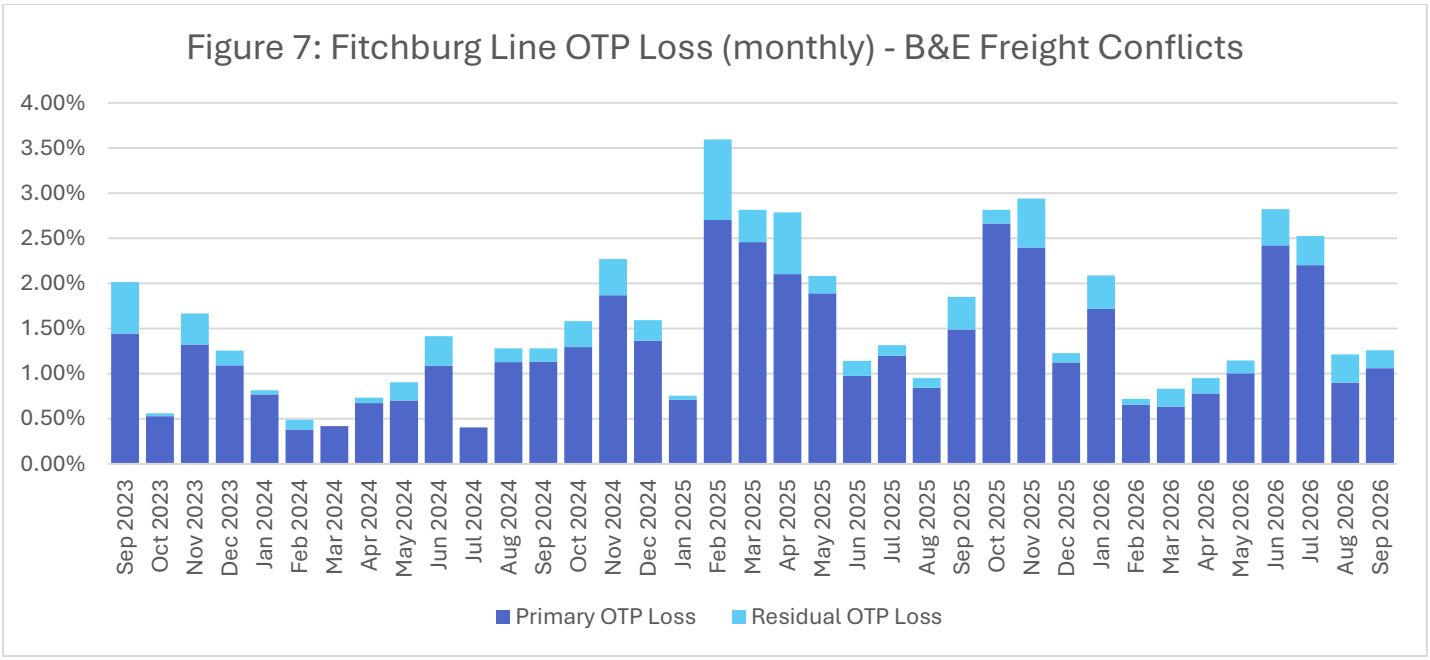
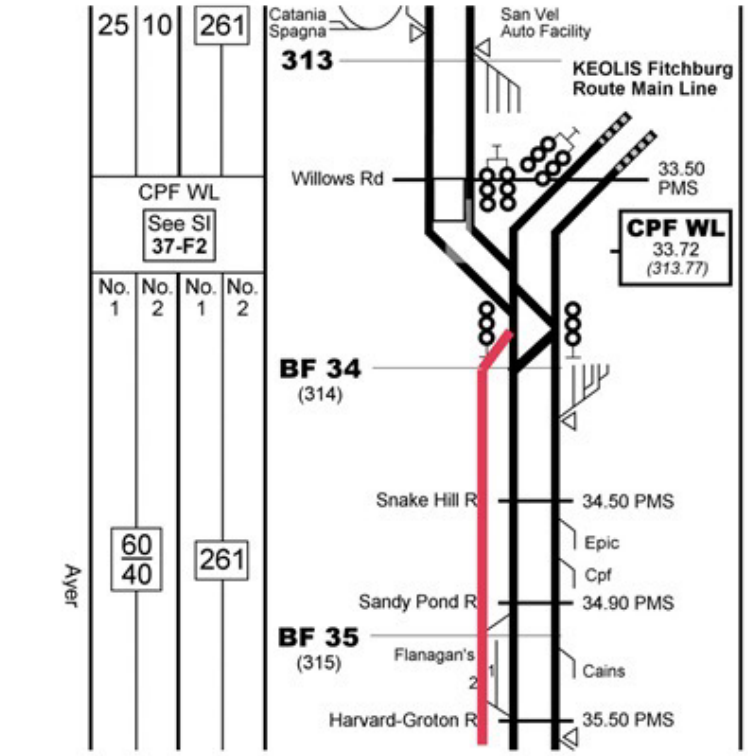
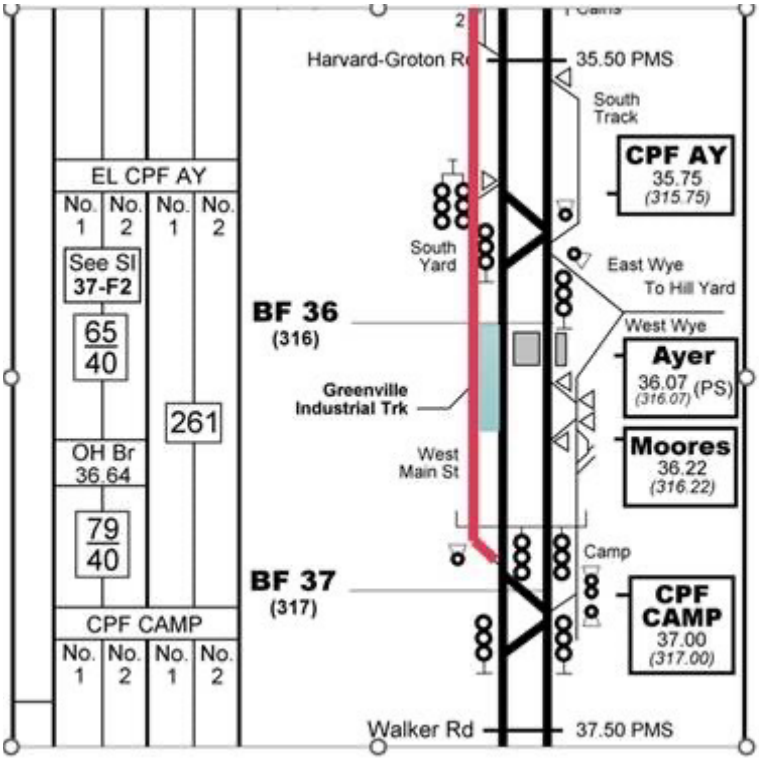


EXHIBIT 2: PROPOSED THIRD MAIN TRACK BETWEEN CPF-WL AND CPF-CAMP


25
10
261
CPF WL
See Sl
37-F2
No. 1
No. 2
No. 1
No. 2
Ayer
60
40
261
Catania
Spagna
San Vel
Auto Facility
313
KEOLIS Fitchburg
Route Main Line
Willows Rd
33.50
PMS
CPF WL
33.72
(313.77)
BF 34
(314)
Snake Hill R
34.50 PMS
Epic
Cpf
Sandy Pond R
34.90 PMS
BF 35
(315)
Flanagan's
Cains
Harvard-Groton R
35.50 PMS


EL CPF AY
No. 1
No. 2
No. 1
No. 2
See Sl
37-F2
65
40
261
OH Br
36.64
79
40
CPF CAMP
No. 1
No. 2
No. 1
No. 2
Harvard-Groton R
35.50 PMS
South
Track
CPF AY
35.75
(315.75)
South
Yard
East Wye
To Hill Yard
BF 36
(316)
West Wye
Ayer
36.07 (PS)
(316.07)
Greenville
Industrial Trk
Moores
36.22
(316.22)
West
Main St
Camp
BF 37
(317)
CPF
CAMP
37.00
(317.00)
Walker Rd
37.50 PMS

CERTIFICATE OF SERVICE

I hereby certify on behalf of the Massachusetts Department of Transportation and Massachusetts Bay Transportation Authority that I have this 18th day of November, 2026, served the foregoing Comments and Request for Conditions upon all parties of record in the FD 36873 docket and in all related sub-dockets.

/s/ *R. A. Wimbish*
Robert A. Wimbish