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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

COMMENTS AND REQUESTS FOR CONDITIONS OF CHICAGO, FT. WAYNE & EASTERN RAILROAD

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CHICAGO, FT. WAYNE & EASTERN RAILROAD

In accordance with the Board's Decision No. 30 served in this proceeding on August 18, 2026, Chicago, Ft. Wayne & Eastern Railroad, a division of Central Railroad Company of Indianapolis ("CFE") submits these comments and requests for conditions. The Comments and Requests for Conditions is supported by the Verified Statement of Marty Pohlod ("Pohlod VS") and the Verified Statement of Rob Russell ("Russell VS). In a separate filing, CFE is simultaneously submitting its Responsive Application for trackage rights.

CFE neither supports nor opposes the Union Pacific Corporation ("UP" or "Union Pacific") Application to acquire control of Norfolk Southern Corporation ("NS" or "Norfolk Southern").[1] However, CFE respectfully requests that the Board impose CFE's requested conditions to ameliorate the competitive harm that the Transaction will cause to CFE.

The Transaction poses two distinct harms to CFE. First, UP's expert has admitted that if the UP/NS combination proceeds, CFE traffic would be diverted to the newly combined UP/NS.[2]

[1] UP's proposal to acquire control of NS is referenced to herein as the "Application" or the "Transaction".
[2] Errata Supplemental Verified Statement of David T. Hunt at Supp. Page 360.

This diversion of traffic is the only route UP identified in the entire country as under threat by the Transaction. While UP's expert downplays the impact to CFE,[3] CFE's own analysis finds that UP materially underrepresents the traffic loss and as such, UP also understates the impact on the essential rail service that CFE provides.

Second, the Transaction will likely result in UP de-prioritizing short line traffic in the Watershed. The Application clearly states Union Pacific's position: single-line service is superior to interchanged service because interchanges pose onerous costs and delays.[4] Nearly 100% of short line traffic is interchanged. On a network, particularly in the Watershed,[5] where UP intends to substantially increase traffic, UP's statements indicate that it will prioritize single-line traffic over traffic where interchange is necessary, i.e., all short line traffic.[6]

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

If the Transaction is approved UP is unlikely to provide competitive options for shorter haul rail traffic and especially for traffic which CFER currently competes for with NS.

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[3] *Id.* at Supp. Page 361
[4] Amended Railroad Control Application, STB Finance Docket No. 36873, Vol. 1, Pg 229, (filed Apr. 30, 2026 (cited to herein as App.Vol.).
[5] The Watershed is defined as 250 miles from the four key watershed gateways, which are located in Chicago, St. Louis, Memphis, and New Orleans. App. Vol. 1, Page 13. Similarly, "watershed markets" is defined as an economic region in the U.S. "where UP or NS would haul less than 250 miles before or after interchange. These markets are characterized by short-haul handoff lanes that sit right on the fault lines between the Class I railroad networks." App.Vol. 1, Pg 228.
[6] Pohlod VS at 4.

In order to ameliorate the anticompetitive impact and to provide an opportunity to offset at least some of the expected harms of the UP/NS Transaction on CFE customers and the market CFE serves, including its ability to maintain the same level of operations, CFE seeks trackage rights to provide it with new alternative routings to western destinations and other railroads.

I. Background

A. CFE is a "Watershed" Carrier that Relies on Union Pacific as a western gateway partner to competes against Norfolk Southern

CFE is a Class II railroad that operates over approximately 279 miles of track in Indiana and Ohio. It is located directly in the Watershed and on one end interchanges daily with its primary interchange partner – UP – as well as other western carriers in Chicago via the Indiana Harbor Belt Railroad.[7] On the other end of its line, CF&E competes directly with NS, where both railroads serve some of the same customers directly, and in the region as a whole, serving grain elevators, auto terminals and transloads that compete with each other.[8] The CF&E and its customers rely on UP as a vital competitive partner for its western traffic through Chicago. In fact, more than 50% of CFE traffic that goes via Chicago is interchanged to UP.[9]

Further, the CFE provides a neutral overhead route for traffic from the contiguous short line, the Indiana & Ohio Railway ("IORY") to reach a western gateway which is equally important for that short line's customer base (and to support CFE service). If the Board approves the transaction, CFE, its customers, and other connecting short line carriers and their customers will lose the CFE – UP route that competes directly with NS and there is certainty that there will be both competitive and financial harm as a result.[10]

[7] *Id.* at 3.
[8] *Id.*
[9] *Id.*
[10] *Id.*

1. CFE has rebuilt the railroad through increased service, investment, and competitive connectivity.

When Genesee & Wyoming, Inc. acquired CFE in 2012 the railroad's business and its track conditions were in challenged state. Only 52% of the track could be classified as Federal Railroad Administration Class III. The rest of the line could only operate at 10 mph. As a result, service to Chicago was limited to three times per week. Through material investment in infrastructure, equipment, operations and customer service, the CFE is now a competitive, attractive option, fulfilling the demand for rail over shorter distances that wasn't previously well met by the market.[11]

2. 2. CFE's flexibility and connectivity enabled it to create a more competitive rail option for GM vs. its incumbent rail solution, despite that the CFE is located 15-miles away from their facility.

CFE demonstrated its competitive value by developing a new service option for General Motors' Fort Wayne, Indiana assembly plant which had historically been served exclusively by Norfolk Southern ("NS") which connects directly to facility. In 2020, GM asked CFE to create a competitive alternative for the 150-mile portion of its westbound moves via Chicago where interchange is made with GM's selected western carrier, Union Pacific (who then moves the traffic long-haul to final destination). Understanding GM needed a service and pricing package it was not being provided, by 2021, CFE, GM, and Precision Vehicle Logistics ("PVL") partnered to build a finished-vehicle ramp to handle the traffic. CFE and PVL offered GM a sufficiently competitive service plan that GM incurs all the additional cost and time related to draying vehicles the 15 miles from the plant to the new terminal instead of loading directly at their facility.[12]

[11] *Id.*
[12] *Id.* at 7.

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

1. The Transaction will cause CFE to lose volumes and revenue that will materially impact CFE's rail service.

As the Pohlod VS details, the proposed UP/NS transaction is expected to materially reduce CF&E's traffic—eliminating at least [redacted] existing originated and terminated carloads (plus overhead traffic) and jeopardize several thousand additional carloads in development—primarily by diverting GM and other dual-served volumes as CF&E effectively loses its key western connection to UP.[13]

The UP/NS transaction would divert traffic away from CFE, especially from its Chicago service, forcing it to mitigate the significant revenue loss by cutting costs—likely reducing train and customer service frequency and reassessing (and potentially reducing) track maintenance and capital spending. In short, without the diverted volumes lost as a result of the Transaction, CFE will not have sufficient traffic and revenue to sustain current service levels and investment.

The problem is further exacerbated since [redacted][14]

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

The Application itself appears to provide limited consideration and commentary to short lines, offering relatively generic and simplistic references. According to the UP Application, the "growth that our merger will facilitate will be a tide that rises for all, opening for short lines new

[13] *Id. at 14.*
[14] *Id. at 16.*

opportunities to reach national and global markets."[15] It continues, "[s]hort line partners benefit from new connections and growth potential through access to new markets."[16] And the Application exclaims, a "faster, seamless, coast-to-coast network will give short lines the ability to deliver superior service to their customers and access to more markets unburdened by artificial barriers and delays." [17]

As specifically related to short lines in the Watershed, the Application states, "much of this transaction will open up new watershed markets . . . for the UP and NS; so too will opportunity be afforded to short lines, especially those with service in the heartland, unlocking new markets and truck-to-rail diversion opportunities."[18]

The Application's puffery masks uncertainty for short line rail carriers in the Watershed and specifically to CFE as the lone carrier identified by UP as threatened by the Transaction. If the Board approves UP's control of NS, UP—a key gateway connection for CFE—will be acquiring CFE's direct competitor. Post-Transaction, the combined UP/NS will no longer have the same incentive to offer CFE the competitive access and service that UP offers today. The combined entity will have different priorities. In its Application, UP states, "[t]he proposed transaction creates single-line service opportunities for more than 88,000 county-to-county lanes nationwide, including 45,000 lanes in the watershed, where the challenges of providing attractive interline rail service are magnified."[19] These lanes are where CFE operates and has found success competing against NS. In the case of GM and other shippers, the diversion would not be from truck to rail; it would be a diversion of CFE-UP traffic to UP/NS single-line service.

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

In addition, UP had to be prodded by the Board to analyze the impacts of the transaction beyond its marketing language. In Decision 21, served May 28, 2026, the Board sought additional information for each route where the UP/NS combined market share will increase and the impact on competing or alternative routes. The analysis that UP produced acknowledges the negative impact of the Transaction on CFE, but downplays the revenue loss.[20]

CFE is not as confident. As described in the Verified Statement supporting this comment, CFE is concerned about the demonstrated loss in revenue it will face and that, post-Transaction, UP/NS will divert carloads that CFE now interchanges with UP to UP/NS single-line service. CFE is also concerned that, post-Transaction, UP will prioritize its limited network capacity for its own single-line traffic to the detriment of existing interchange traffic. UP will likely be even less interested in cooperating with a short line when UP would move the traffic fewer than 250 miles, especially when its focus is on allocating network capacity to longer-haul, single-line service.[21]

Further, statements on the record in this proceeding strongly suggest that the Application's references to short line carriers had been written merely as a form of propaganda. According to NS's Chief Strategy Officer in an email to UP, he [redacted]."[22]

[20] Errata Supplemental Verified Statement of David T. Hunt at Supp. Page 360-61.
[21] Pohlod VS at 4.
[22] Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 3, Exhibit A, NS_00329313 (entered into the record, Nov. 6, 2026)(filing id 312810).

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

The UP Application boasts that the Transaction will provide opportunities to Watershed areas "underserved by rail."[23] It describes the Watershed as "characterized by shorter-haul routes on both sides of an interchange where rail networks meet."[24] The UP Application describes a challenge for Watershed shippers, "unattractive rate and service options because the eastern carrier(s) would receive relatively little benefit from carrying the traffic or investing to improve service."[25]

"The Application describes interchange as a problem for carriers because it raises costs: "the central interchange gateways between UP and NS" are "where delays and costs accumulate." The Application also calls interchange a "burden between two railroads."[26]

In its Application, UP explains the problem with partnerships, "[t]he benefits of the UP/NS merger cannot be achieved through mere partnership arrangements between UP and NS"[27] because "joint alliances have built-in limits."[28]

The solution to each of these problems, according to the UP Application, is the UP/NS combination. UP's numerous "problem statements" raise concerns because each item that UP identifies as a problem, CFE has embraced as an opportunity. UP acknowledges that Watershed moves provide little benefit to Class I carriers, but CFE has built a viable business serving this market. UP identifies interchange and partnership as problems to be solved, but as explained in

[23] App. Vol. 1, Page 44-45.
[24] App. Vol 1, Page 261.
[25] App. Vol. 1, Page 44-45.
[26] App. Vol. 1, Page 244.
[27] App. Vol 1, Page 231.
[28] App. Vol 1, Page 338-339.

the Verified Statement supporting these Comments, interchange and partnership are the cornerstone to a short line's business model.[29]

4. The Application Proposes No Conditions to Ameliorate the Harm to CFE or to Improve Competition in the CFE Market.

The Application does not specifically propose any conditions to resolve harms caused by the Transaction or to improve competition in the CFE market. Even with its own expert identifying harm to CFE, UP offered no remedy much less a pro-competitive condition.

Indeed, as the Board noted, UP's proposed Competitive Gateway Pricing ("CGP") is "the sole competitive enhancement Applicants propose."[30] However, CGP will not alleviate the harm caused by the combined UP/NS deprioritizing short-haul Watershed traffic or the harm caused by the combined UP/NS diverting CFE traffic to UP/NS.

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

Union Pacific's CEO has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith. Mr. Vena has been quoted as saying, "[i]f you allow---if we allowed x railroad to run on our railroad for 800 miles, we would charge them a per car mile charge that actually would make it more expensive for them to get to that destination. I've thought about just [agreeing] because, guess what, we would just reset the price higher for us. Okay?"[31]

[29] Pohlod VS at 2.
[30] Pohlod VS at 11.
[31] Pohlod VS at 13; Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 5 (entered into the record, Nov. 6, 2026)(filing id 312810).

II. Legal Standard

A. Criteria for Approving the Transaction

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

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

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

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

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

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

Although the Board must consider each of these factors, the ultimate statutory inquiry is whether the transaction is consistent with the public interest.[32] In approving a transaction, the Board may impose conditions governing the transaction, including the divestiture of parallel tracks or the granting of trackage rights and access to other facilities, to alleviate anticompetitive effects.[33]

B. Public Interest Test

In 2001, the Board revised its regulations governing major rail consolidations to impose "a heavier burden to show that a major rail combination is consistent with the public interest" ("2001 Rule").[34] The 2001 Rule requires an applicant "to provide a plan for enhancing competition" so

[32] *See* 49 U.S.C. § 11324(c).
[33] *Id*.
[34] *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 9 (served June 11, 2001) [hereinafter *2001 Rule*].

that the Board may "remedy every competitive harm that would stem from any proposal that [it] decide[s] to approve."[35]

In determining whether a proposed transaction is consistent with the public interest, the Board considers criteria set out in the governing statute using a balancing test to weigh numerous factors as established in the 2001 Rule.[36] Specifically, the Board must weigh the goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees.[37] The Board must also ensure than a transaction would promote a competitive, efficient, and reliable national rail system.[38] Accordingly, a merger serves the public interest only where substantial and demonstrable gains in important public benefits, including improved service and safety, enhanced competition, and greater economic efficiency, outweigh the transaction's anticompetitive effects, potential service disruptions, or other merger-related harms.[39]

The 2001 Rule requires applicants to offset potential harms of the proposed merger by proposing conditions "that would not simply preserve but also enhance competition."[40] If a proposed merger is not, on its face, consistent with the public interest, the Board "will either deny it or impose sufficient conditions to ensure that it is in the public interest."[41]

C. Treatment of Class II and III Railroads

The Board gives particular consideration to the effect of major rail consolidations on Class II and Class III railroads and identifies their interests as a key component of merger review and

[35] *Id*. at 20.
[36] *Id*. at 16; 49 CFR § 1180.1(b)-(c); 49 U.S.C. §§ 10101, 11324(b).
[37] *Id*. at 14; 49 C.F.R. § 1180.1(b)
[38] *Id*.
[39] *Id*. § 1180.1(c).
[40] *Id*. § 1180.1(d).
[41] *2001 Rule*, at 13.

the balancing test in determining public interest.[42] Applicants must explain "how they would preserve competitive options for shippers and for Class II and III rail carriers."[43] Under the 2001 Rule,

> [A]pplicants must address the anticipated effects of a proposed merger on regional and shortline railroads, identify any benefits that those small railroads and their customers would realize as a result of the proposed transaction, and develop suggested remedies for any anticipated harms to the public interest by virtue of a merger's adverse impacts on regional and shortline railroads and ports.[44]

Consistent with this approach, the Board places "greater emphasis to the role of Class II and Class III carriers and ports in the broader transportation infrastructure" in conducting its balancing test.[45] Where competitive or other merger-related harms to Class II or Class III remain, the Board will impose necessary conditions "to ameliorate or redress those harms". [46]

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

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

[42] *Id*. at 27.
[43] 49 C.F.R. § 1180.6(b)(10)(i).
[44] *2001 Rule*, at 27.
[45] *Id*. at 15.
[46] *See id*. at 27.

> adverse impacts of this transaction, we will impose them as appropriate.[47]

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

III. Criteria for Imposing Conditions

Under 49 U.S.C. §11324(c), the Board has "broad authority to impose conditions" on a Class I merger transaction to preserve and enhance competition.[48] The Board may issue conditions when a proposed merger would reduce competition, harm essential rail services, or result in transitional service disruptions or other service problems.[49] The Board may exercise its conditioning authority whenever appropriate conditions would protect the public interest without unduly diminishing the public benefits of the proposed transaction.[50]

A. Essential Services

Harm to a carrier's ability to provide essential rail services is assessed in two steps. The Board first examines whether the carrier will be financially and competitively able to withstand the anticipated loss of traffic resulting from the transaction.[51] To make this determination, the Board considers the anticipated traffic diversions and resulting revenue losses, together with the carrier's financial condition, to determine whether those losses threaten the carrier's ability to continue providing service.[52]

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[47] *CSX Corp., et al.–Control and Operating Leases/Agreements–Conrail Inc., et al.*, STB Finance Docket No. 33388, 1998 WL 456510, Decision No. 89, slip op. at *54 (served July 20, 1998).
[48] 49 C.F.R. § 1180.1(d).
[49] *Id*. § 1180.1(c)(i)-(iii).
[50] *See id*. § 1180.1(d).
[51] *See UP/CNW*, at *82–83.
[52] *See id.* at *83–84.

If the transaction threatens the carrier's ability to continue providing service, the Board then determines whether the threatened services are essential.[53] A service is essential where there is sufficient public need for the service and adequate alternative transportation is not available.[54] Accordingly, the Board considers the public need for the threatened service and whether other carriers or modes of transportation provide adequate alternatives.[55]

IV. Argument

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

If the Board approves the Transaction, CFE seeks trackage rights to provide CFE with connectivity to western gateways as an alternative to UP. These rights will not allow CFE to compete for the carloads that a combined UP/NS will divert from CFE. Nor will they preserve the current optionality CFE's customers enjoy at the Chicago gateway. However, CFE seeks conditions to allow it an opportunity to find new business opportunities and alternative access.

The obvious harm that CFE will face is the loss of revenue resulting from a combined UP/NS diverting CFE traffic to themselves. As the Pohlod VS explains, the Transaction would very cause CFE to cut back on the service it currently offers. This will impact CFE's shippers. In order to remedy this harm to both CFE and its remaining shippers, CFE is seeking trackage rights to replace the revenue lost as a result of the transaction.

Second, the Application's own statements show that Union Pacific will focus its efforts on profitable long-haul traffic and will deprioritize traffic that is less than 250 miles that requires UP to interchange. The stated purpose of the Transaction is UP's ability to offer single line service on a transcontinental scale because any rail traffic that is interchanged between carriers is a

[53] *See id.* at *84–85.
[54] *See* 49 C.F.R. § 1180.1(c)(2)(ii); *UP/CNW*, at *85; *BN/SFP*, at *46.
[55] *See UP/CNW*, at *85–86.

"burden."[56] Because all CFE traffic with UP is interchanged, UP is likely to de-market CFE traffic in favor of its long-haul traffic if it views interchange as a burden.[57] Further, the Application demonstrates that Union Pacific is not interested in traffic that is less than 250 miles. The UP Application explains that traffic under this range is unattractive because Class I carriers receive little benefit in carrying the traffic or investing to improve service.[58] Finally, it is evident that UP would concentrate on its transcontinental traffic because it has specifically stated that "joint alliances have built-in limits."[59]

If the transaction is approved, this fact and the traffic that a combined UP/NS will divert traffic from CFE to UP/NS will limit CFE's ability to service its customers at risk of degraded service. The competitive harm that CFE will face as a result of the Transaction could be softened by CFE's proposed trackage rights.

B. If The Board Grants CFE's Trackage Rights, It Should Impose Conditions to Protect CFE From Bad Faith Negotiating Tactics.

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

Union Pacific's CEO has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith. Mr. Vena has been quoted as saying, "[i]f you allow---if we allowed x railroad to run on our railroad for 800 miles, we would charge them a per car mile

[56] App. Vol. 1, Page 244.
[57] Pohlod VS at 10.
[58] App. Vol. 1, Page 44-45.
[59] App. Vol 1, Page 338-339.

charge that actually would make it more expensive for them to get to that destination. I've thought about just [agreeing] because, guess what, we would just reset the price higher for us. Okay?"[60]

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

C. CFE's Conditions are in the Public Interest

CFE's trackage rights conditions are in the public interest because the trackage rights will allow CFE to continue to be a short line within the Watershed that can provide a western option to shippers even after a combined UP/NS divert CFE's traffic and after UP de-prioritizes its connection with CFE. The trackage rights CFE proposes would allow CFE to rebuild, just as it did in 2012.

D. Description of CFE Trackage Rights Requests

If the Board approves the Transaction, CFE respectfully requests trackage rights:

[60] Pohlod VS at 13; Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 5 (entered into the record, Nov. 6, 2026)(filing id 312810).

1. Between Fort Wayne, IN on the Chicago, Fort Wayne & Eastern Railway and Logansport, IN on the Toledo, Peoria & Western Railway: allows interchange with the Toledo, Peoria & Western Railway

2. Between Hobart, IN (NS CP Lake) and running to Chicago, IL via Fort Wayne, IN to preserve connectivity to Chicago area gateways, to allow interchange with:

a) Indiana Harbor Belt Railway at Hammond / Osborn, IN for further access to Gibson Yard and Blue Island Yard

b) Belt Railway of Chicago at Pullman Junction via Calumet Yard

c) Chicago Rail Link at Pullman Junction via Calumet Yard

d) Chicago South Shore Railway at Kensington, IL

e) CN at Van Loon (Gary), IN (I-94 overpass just south of West 25th Avenue)

3. Over NS between Tolleston, IN and Dune, IN to make interchange with CN. Currently diamond not in place to allow connection (was planned). Contingent on downstream merger involving CSX Transportation and requires diamond to be put in place

V. Conclusion

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

Respectfully submitted,



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VERIFIED STATEMENTS

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VERIFIED STATEMENT OF MARTY POHLOD FOR THE CHICAGO, FT.WAYNE & EASTERN RAILROAD

I. Introduction

My name is Marty Pohlod, I am Vice President ("VP") of National Accounts and Industrial Development for Genesee & Wyoming Railroad Services, Inc. ("G&W"). I have 36 years in the railroad industry including time at Wheeling & Lake Erie, Southern Pacific, Ohio Central and have been supporting Genesee & Wyoming railroads since 2008. My roles have been primarily in the commercial side of the business, including Marketing & Sales, Customer Service, Revenue Accounting, Industrial Development and Real Estate. I also have operations experience and served 3 years as Region Senior VP for G&W's Midwest Region from 2017-2020, where I had full profit & loss responsibility for all departments and functions of the railroads in that region (from Wyoming east to the central Ohio). The Chicago, Ft. Wayne & Eastern Railroad, a division of Central Railroad Company of Indianapolis (CF&E), was part of my VP of Marketing responsibilities from 2013-2017, and one of the railroads for which I was responsible as Region Senior VP thereafter. My department continues to support business growth and development on the CF&E and all G&W owned short lines. In my position, I handle large, national accounts, and I have a clear understanding of how customers with multiple facilities package and purchase their

transportation needs, how Class I rail carriers compete and co-operate to win this business and the important role short lines play to enhance competitive options.

A. About CF&E and the Market it Serves.

CF&E is a Class II railroad that operates over approximately 279 miles of track in Indiana and Ohio. A segment of the CF&E network includes a 251- mile line segment from Crestline, OH to Gary, IN (the "Line") that CF&E acquired via a lease with CSX Transportation Inc. (CSX) in 2004.

CF&E is a short line railroad success story. Since 2012, when Genessee & Wyoming Inc. acquired the line, CF&E has meaningfully invested in its infrastructure and increased service unlocking a growth in carload volumes of {{[redacted]}}% from {{[redacted]}} carloads per year to {{[redacted]}} per year in 2025. CF&E serves multiple customers that are dual served by the Norfolk Southern Railroad ("NS") and CF&E has won business from those customers for the 150-mile journey from Ft. Wayne, IN to Chicago where CF&E interchanges with the Union Pacific Railroad ("UP") who is CF&E's key partner in its ability to provide competitive access for its customers to the Chicago gateway.

B. Summary of CF&E's Concerns with UP's Acquisition of NS.

CF&E neither supports nor opposes the UP application. However, if the Board approves the application, CF&E requests that the transaction be conditioned on granting CF&E trackage rights to reduce competitive harm and the harm to CF&E's essential services caused by the transaction.

UP's own analysis of potential viability threatening freight diversions resulting from the Acquisition identified only one route in the entire United States that was impacted. That route was

CF&E's westbound moves of autos from Ft. Wayne to Chicago and interchanged with UP.[1] The impact of UP's acquisition on the CF&E causes us grave concern. Please note, based on our own analysis and that of our engaged expert, Rob Russell, please refer to his verified statement, using actual traffic, UP's estimated impact materially understates the actual potential traffic loss. Appreciating the impact of this loss, we expect it will result in a significant reduction in the service that CF&E provide in this region.

The CF&E is not a limited "feeder" line with just one connection that sits far from a western gateway. The CF&E sits directly in the Watershed[2] (defined by UP as the area running 250 miles to the east and west of the Mississippi River) and on one end interchanges with western carriers in Chicago via the Indiana Harbor Belt Railroad on a daily basis, including with UP, its primary interchange partner. On the other end, CF&E competes directly with NS, both at the customer level, where both railroads serve some of the same customers directly, as well as in the region as a whole, serving grain elevators, auto terminals and transloads that compete with each other. The CF&E and its customers depend on UP as the key competitive outlet for its western traffic through Chicago (more than 50% of CFER traffic that goes via Chicago is interchanged to UP). In addition, the CF&E provides a neutral overhead route for traffic from the contiguous short line, the Indiana & Ohio Railway (IORY) to reach a western gateway which is equally important for that short line's customer base (and to support CF&E service). If the acquisition is completed, both the CF&E, its customers and other contiguous short lines and their customers will lose the CF&E-UP routing on

[1] Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, Supplemental Verified Statement of David T. Hunt, July 20, 2026, section 6.8.2, page 38 (Supp. Page 360)
[2] As defined in the Joint Verified Statement of Kenny Rocker and Claude E. "Ed" Elkins, page 8, paragraph 15, as part of Union Pacific Corporation and Union Pacific Railroad Company Amended Application of April 30, 2026 to control Norfolk Southern Corporation and Norfolk Southern Railway Company, Volume 1, page 282

all traffic that competes with NS and there is certainty that there will be both competitive and financial harm as a result.

Further, as detailed below, CF&E is concerned by statements that have been expressed by UP that when applied to CF&E indicate that CF&E and its customers will suffer even greater harm by this transaction than the harms outlined by the UP application.

First, per UP's application, single-line service is superior to traffic that is interchanged as interchange handoffs add delay, cost, complexity, and reduce accountability.[3] Almost 100% of short line traffic, including the CFER's traffic to UP (and NS for non-Chicago lanes) is interchanged. On a network, particularly in the Watershed, where UP plans to meaningfully increase traffic, UP will prioritize single-line traffic over traffic that it must interchange, i.e., all short line traffic.

Second, by describing rail moves within the Watershed as being a market historically unappealing to Class Is due to their shorter length of haul, UP is clearly defining that it is not interested in hauling traffic less than 250 miles.[4] Whereas Class Is, and particularly UP and NS, had been more open to cooperating with short lines to move more regional traffic, particularly as Class I volume growth had flattened[5], we believe, if successful, it is unlikely UP will provide competitive options for shorter haul rail moves, especially now that it will be focused on growing

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

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

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

the single service, transcontinental, long-haul business that is their rationale for this UP-NS transaction ("Transaction").

As this statement demonstrates, and as UP's own application identifies, the UP acquisition of NS will reduce a competitive option for CF&E's customer base and, by diverting carloads away from CF&E, will harm and negatively impact CF&E's ability to provide essential rail services.

II. CF&E is a Short Line Success Story

A. CF&E - Rebuilding a short line railroad through increased service, investment and competitive connectivity

CF&E (the "Line") is a Class II railroad that operates over approximately 279 miles of track in Indiana and Ohio. A segment of the CF&E network includes a 251- mile line segment from Crestline, OH to Gary, IN (the "Line") that CF&E acquired via a lease with CSX in 2004. In the early 1990s, Conrail operated the Line but relegated it to a secondary, local industry route. Norfolk Southern acquired the segment between Fort Wayne, IN and Gary, IN (122 miles) from Conrail in 1994 to add capacity to its only Chicago route (single track ex- Norfolk & Western, itself ex-ex-New York, Chicago and St. Louis) from Ohio and the rest of its Southeastern network as a parallel route. The CSX-NS acquisition of Conrail in 1999 allocated the line to CSX.

NS relinquished its ownership from Ft. Wayne to Gary, but retained overhead trackage rights across the entire line. However, the NS trackage rights agreement stipulates that the line would be maintained at the Federal Railroad Administration Class III standard allowing trains to travel 40 mph.

When CSX leased the Line to short line holding company Rail America ("RA") in 2004, traffic was {{[redacted]}} carloads of business, with only an approximate {{[redacted]}} carloads moving

to western destinations. By the end of 2012, when Genesee & Wyoming, Inc. purchased Rail America and took ownership of the CF&E, traffic had declined to {{[redacted]}} carloads

The decline in business from 2004-2012 went hand in hand with the state of track conditions. In 2013 only 130 miles of the 251-mile mainline (52%) could be classified at the Federal Rail Administration (FRA) Class III standard required by the inherited NS trackage rights agreement. The remainder of the infrastructure was operating at the FRA Class I (10 mph) standard. The Railroad only provided service frequency to Chicago three times per week and service to Lima, Ohio five times per week.

Since that time, CF&E aggressively marketed and grew the business, so that by 2025 annual carload volumes had reached {{[redacted]}} ({{[redacted]}} growth). CF&E's success was only possible due to the investment of millions of dollars in track infrastructure, more powerful and modern locomotives, and the acquisition of more than {{[redacted]}} bulkhead flatcars to support business growth for steel customer, Steel Dynamics, Inc. (SDI), a facility that is dual served by NS.

CF&E's effort unlocked sufficient traffic and earnings growth for the Railroad to both (i) make the needed capital investments to return the entire 251 mile mainline to FRA Class III (40mph) standards and – critically - to (ii) increase service frequency to Chicago from three (3) days per week to five (5) days per week and now, backed by customer demand, to seven (7) days per week. Further, the CF&E has also increased service frequency to Lima, OH from 5 days per week to 7 days per week. CF&E's service improvements provides its customers with security of service and Class I interchange.

CF&E has placed itself in a virtuous cycle of growth. Its investment and increased service attracts new traffic, but that new traffic depends on CF&E maintaining this higher level of service and track infrastructure.

Competitive access to the Chicago gateway and access to UP are vital elements in CF&E's ability to provide the service its does and effectively compete with NS for much of this traffic.

B. CF&E Case Study in Success – Precision Vehicle Logistics Auto Terminal, Ft. Wayne, IN

A meaningful example of CF&E's ability to compete with NS is the service product CF&E developed to serve the General Motors (GM) Ft. Wayne, IN Assembly plant. With the facility exclusively served by NS, they historically handled 100% of GM's rail volumes to all destinations.

In 2020, even though CF&E did not directly serve their Ft. Wayne plant, GM requested CF&E to develop a competitive option for its traffic moving ~150 miles to Chicago to connect with GM's chosen western carrier, Union Pacific. Presumably, GM sought out CF&E as their incumbent was not providing the competitive option and service package GM required on this shorter haul route. Note, GM did not approach CF&E for eastern destinations, just for the short haul traffic moving through Chicago that would be interchanged with UP.

By 2021, working in partnership with GM, CF&E and automotive handler, Precision Vehicle Logistics (PVL), developed and constructed a finished vehicle ramp to handle these automobiles. Despite the newly constructed vehicle ramp being located 15-miles away from the GM facility, the competitiveness of the CF&E is such that GM chooses to dray each vehicle 15-miles from its facility to the terminal.



Figure 1:Image Depicts the CF&E/PVL Facility Constructed for GM

In addition to the GM traffic moving through the western gateway in Chicago, the CF&E also directly competes with NS at the dual served SDI plant in Arcola, IN, Bunge in Decatur IN, by means of an STB-imposed Conrail transaction interchange at Fort Wayne, IN, and Procter & Gamble in Lima, OH, by virtue of that customer being open to a reciprocal switch. CF&E and NS also both serve transload terminals on their lines that compete with each other in this Watershed market. Both the directly dual served customers and the transloads and terminals serving the local market rely on the CF&E to provide a competitive option to Western Gateways.

Critically, the CF&E also provides a vital link to the Chicago gateway for those customers on the IORY who also exist in the greater Watershed. But for the IORY, and by extension the CF&E, these customers would be locked into less desirable shorter haul service by Class I rail carriers; a situation that would be exacerbated by combination of UP and NS.

III. Union Pacific's Proposed Acquisition of Norfolk Southern Ignores Harms to Short Line Railroads and will Specifically Harm CF&E

Union Pacific's proposed acquisition of Norfolk Southern is an unprecedented undertaking that, if approved, will meaningfully transform the transportation landscape of the

United States. CF&E is not opposed to the Transaction, assuming there are appropriate protections for other industry participants like the CF&E. The railroad appreciates the potential advantages a combined Union Pacific and Norfolk Southern could create via the creation of single line, transcontinental service. However, CF&E is concerned for our specific customers and the market we serve and, whether, post transaction CF&E will be able to continue to provide the same level of competitive options and service levels as it does at present and that CF&E continues to remain in a position to sustainably invest and grow. In evaluating the UP application[6] CF&E believes that the application fails to adequately address the potential impact on certain short lines and the CF&E in particular.

UP has advocated in its filing that the only meaningful avenue for volume growth is through the creation of a transcontinental railroad.[7] Yet, as widely recognized by the industry[8], the Board,[9] and UP itself, short lines have been able to grow consistently, often at double the growth rates of Class Is. Many reasons explain this, for example, unlike Class I railroads, short lines benefit from not having to price traffic to meet the requirements of a sophisticated, national pricing model which often limits the ability of a rail carrier to offer a differentiated rate or to haul traffic over shorter distances. Short line railroads are free of this obligation which allows short lines to be nimble and to convert traffic from truck to rail. Nor do short lines share the economic pressures of competing to generate a sub-60% operating ratio to satisfy investors. Instead, a

[6] STB Docket No. FD 36873, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company
[7] Verified Statement of Mark George, page 17, paragraph 42; Union Pacific Corporation and Union Pacific Railroad Company Amended Application of April 30, 2026 to control Norfolk Southern Corporation and Norfolk Southern Railway Company, Volume 1, page 259
[8] OliverWyman, "Unleash The Short Lines", 2024
[9] Surface Transportation Board, Hearing On Growth In The Freight Rail Industry Docket No. EP 775, Day 1 (September 16, 2024), transcript pages 131, 267

short line benefits from being in a position to focus purely on generating incremental business such that it will move an additional car whether it is going 2 miles, 20 miles, 200 miles or is participating in a small part of a 2,000 mile move across the country.

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

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

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

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

The application clearly states the catalyst for the Transaction is the ability to offer single line service on a transcontinental scale and any rail traffic that is interchanged between carriers is less efficient, higher-cost and, by definition, less desirable.[10] Short lines are almost entirely dependent on interchanging traffic with Class Is and by definition, all traffic that UP shares with

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

short lines is interchanged. CF&E is concerned that post transaction UP will prioritize its limited network capacity to its own single line traffic to the detriment of existing interchange traffic.

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

UP defines the Watershed Area as 250 miles to the east and west of the Mississippi River[11]. UP states that the Watershed Area is without competitive rail service because the shorter haul portion of the move is not of interest for the Class I carrier. Short line railroads within this Watershed Area, including CF&E, have been able to grow because they continually focus on moving shorter haul, regional and local traffic. Similar to our concern about the prioritization of non-interchanging traffic, our concern is that UP will be even less interested in cooperating with a short line where UP is moving the traffic less than 250 miles, especially when the focus is on allocating network capacity to even greater volumes of longer-haul, single line service.

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

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

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

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

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

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

Under our new rule, applicants must address the anticipated effects of a proposed merger on regional and short line railroads, identify any benefits that those smaller railroads and their customers would realize as a result of the proposed transaction, and develop suggested remedies for any anticipated harms to the public interest by virtue of a merger's adverse impacts on regional and short line railroads and ports.[12]

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

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

The UP application fails to address the negative impact that lost revenue has on short line rail carriers. CF&E respectfully requests that the Board grant considerable weight to evidence showing that the transaction could cause a short line to lose revenue as a reason for imposing a

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

condition. For a short line rail carrier, any loss of traffic, even 10% or less can have an outsized impact on a short line rail carrier's service and viability. With a relatively fixed operating and capital cost base, short lines are also not able to cut costs aggressively when traffic falls. When traffic does fall and a short line rail carrier has no choice to cut service or investment, the impact of this is typically much greater than what it would be for a Class I carrier.

A forced reduction in service might mean eliminating days of service to a particular customer or branch line or reducing speeds from 25 mph to 10 mph. Eliminating service or lowering speed can cause a downward spiral to a short line rail carrier. Poor service can cause customers to switch from rail to truck, this in turn means that the short line must cut more service and investment. This limits the short line rail carrier's ability to generate the required cashflow to invest in its infrastructure, meet maintenance costs, and provide the flexible service. As service levels deteriorates, the short line carrier can lose even more business and the downward spiral continues.

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

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

Regarding the potential conditioning of trackage rights, UP's Chief Executive Officer, Mr. James Vena has also made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith if the Board were to impose trackage rights as a condition. Mr. Vena has been quoted as saying, "But on top of that, this is what it would do. If you allow---if we allowed x railroad to run on our railroad for 800 miles, we would charge them a per car mile

charge that actually would make it more expensive for them to get to that destination. I've thought about just [agreeing] because, guess what, we would just reset the price higher for us. Okay?" The Board should impose oversight conditions in this proceeding to ensure that any trackage rights that may be imposed include pro-competitive rates, equal dispatch, and equal access to railroad facilities (ex. sidings). Further, the Board should impose conditions that a short line rail carrier can enforce without lengthy litigation. If the Board allows this transaction to proceed, Union Pacific will be one of the largest companies in the United States. It has resources to delay the imposition of the Board's conditions through litigation that can easily outlast any short line rail carrier. The Board should not allow UP to thwart its conditions.

IV. The proposed merger will likely cause CF&E to lose over {{ }} carloads.

CF&E expects the proposed merger will eliminate at least {{ }} current carloads CFE originates and terminates as well as additional overhead traffic.[13] CF&E also expects several thousand carloads of traffic in development, including on the CF&E and from contiguous short lines, will be negatively impacted. Of the current traffic this will primarily be the loss of the GM volumes as well as the other dual served customers as CF&E will effectively lose its key western connection to UP.

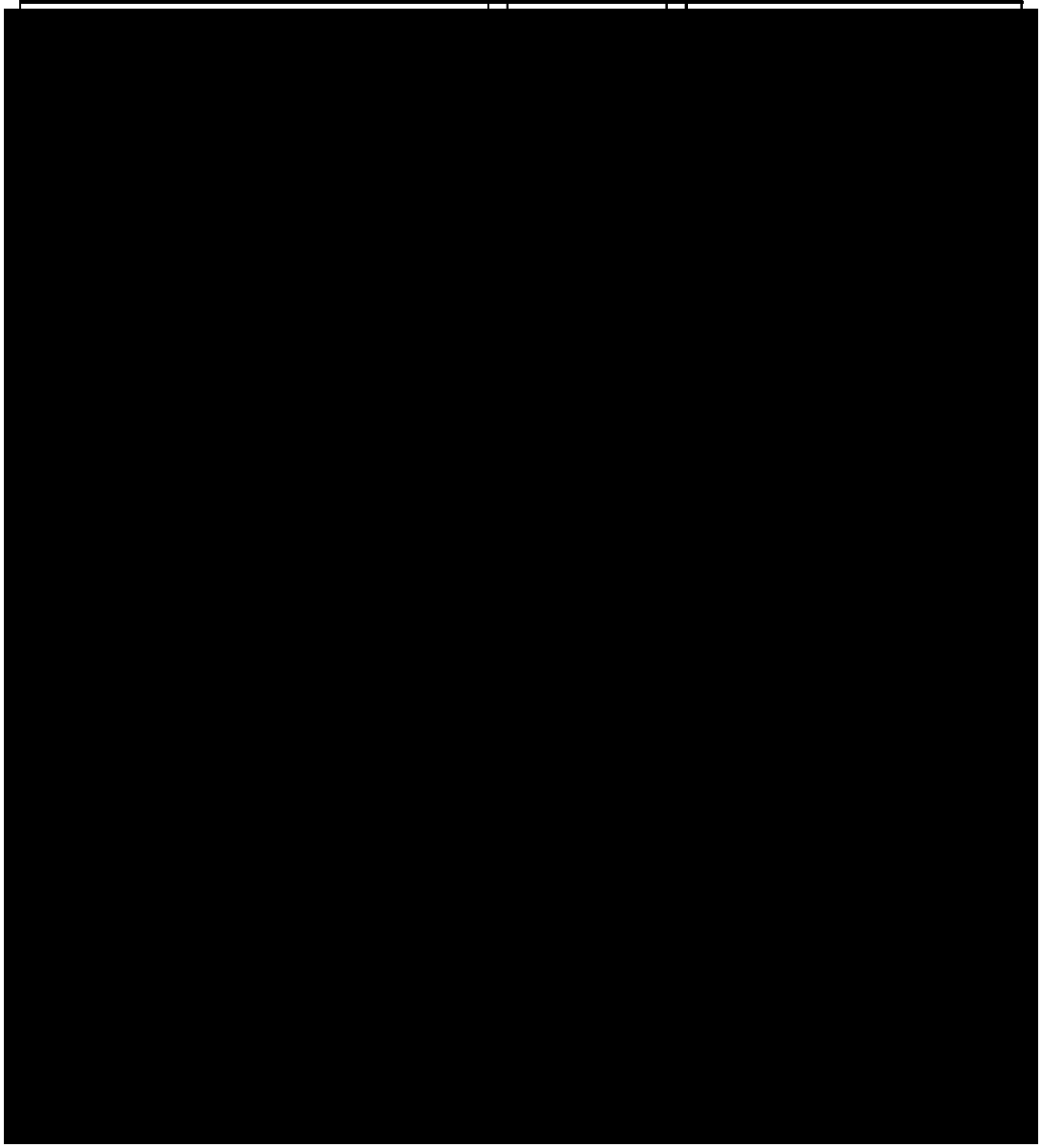
In UP's own application it identified the CF&E route from Ft. Wayne, IN to Chicago, IL as the only route in the entire United States as potentially being at risk as a result of UP's acquisition of NS. In the Errata Supplemental Verified Statement of David T. Hunt, UP estimated a total potential loss of {{ }}% of all outbound auto volumes from the PVL terminal, which materially understates what the expected impact will be. As provided for in the verified statement of Robert Russell, Mr. Russell estimates that CF&E will lose {{ }}% of all auto

[13] Verified Statement of Rob Russell at XXX.

volumes, and not limited to just outbound auto volumes but inbound auto volumes coming via Chicago.[14] Further CF&E will also lose much of the merchandise traffic coming via the Western gateways, traffic which the Hunt analysis did not consider and incorporate. In total Mr. Russell estimates this would represent approximately {{[redacted]}} annual carloads. CF&E's own workpapers, using actual data for 2025, estimate that the lost volumes from the Acquisition will be approximately {{[redacted]}} carloads, comprising ${{[redacted]}} million in revenue for CF&E as summarized in the table below. This (a) traffic immediately lost or eroded over time ({{[redacted]}} carloads, comprising ${{[redacted]}} million revenue) and (b) traffic expected to have mileage reduced on CF&E (i.e., interchanged at Lima, OH rather than Chicago, IL) reducing CF&E's portion of the move and related compensation (reduced rates on {{[redacted]}} carloads, comprising ${{[redacted]}}mn revenue).

[14] Verified Statement of Rob Russell at XX.

CF&E - Est. Carload and Revenue Loss from UP-NS (2025E)



A. A loss of {{ }} carloads will force CF&E to mitigate the significant revenue loss and represents more than {{ }}% of its western gateway volume and almost {{ }}% of total CF&E revenues

Due to the loss of traffic directly caused by the UP/NS transaction, CF&E will be forced to mitigate the significant revenue loss. As a result, train service frequency, including frequency

of service to customer facilities, will be harmed, and track maintenance capex levels will need to be reviewed and potentially reduced.

CF&E's problem is simple, without this traffic it will no longer have sufficient traffic and revenue to sustain service and capex at present levels.

Further taxing CF&E's resources is that {{[redacted]}}. While CF&E is not contemplating any change to this commitment, the Board should understand that CF&E will continue to have this maintenance obligation while much of the current volume that supports the required investment will be diverted away {{[redacted]}}.

With such a significant revenue loss, CF&E would need to explore ways to mitigate this loss whilst balancing against maintaining service levels for CF&E's other customers and potential new business opportunities. In the table below CF&E presents {{[redacted]}}

[redacted]

[redacted]

[redacted]

[redacted]}}

CF&E - Est. Reduction in Operating Costs from UP-NS (2025E)

[redacted]

{[redacted]}{

Therefore, based on estimates for 2025, {{[redacted]

[redacted]

[redacted]

[redacted]}}

CF&E - Estimated EBITDA Loss from UP-NS (2025E)

[redacted]

}

We also expect the reduced service, and related loss of redundancy, will lead to a further loss of volumes (and its related revenue) as this level of service frequency has been a key driver

of CF&E's ability to grow business, but this is more difficult to estimate and has not been included in the above estimates.

B. Despite acknowledging that CF&E will lose revenue, Union Pacific downplays the impact and offers no conditions to offset this harm.

The CF&E understands that the impetus for UP's proposal to acquire NS is to more efficiently capture "watershed" traffic. UP has proposed to preserve and enhance competition via broad commitments to service and rates through Committed Gateway Pricing. CF&E does not believe that such commitment provides a viable remedy to resolve the harms to CF&E that will occur due to this transaction. Further, these conditions proposed by the UP application do not properly address and fundamentally misunderstands the role certain short lines play in the more regional and local transportation landscape, especially in markets where western gateway connectivity to UP is key on one side and where the short line directly competes with NS on the other (or vice versa, although this is more limited).

C. If the Board approves the transaction, CF&E seeks conditions that will allow it to develop new business to offset the clear harm that the UP/NS combination is going to cause.

CF&E is requesting that the Board impose its requested trackage rights to offset the harms caused to it by this transaction. However, CF&E's proposed remedies do not offset the entirety of the harm that UP's acquisition of NS will cause. It is difficult to identify a remedy to preserve what has been a desired and useful customer rail freight option in the Watershed. The requested trackage rights to connect CF&E to all Chicago carriers' interchange yards and to Toledo, Peoria & Western Railway Corp. (TPW), generate no clear traffic recovery opportunities. The CF&E trackage rights requests are intended to provide CF&E an opportunity to re-build what this transaction is going to take away. The trackage right conditions that CF&E requests is an attempt

by CF&E to find a way to develop new business by creating a new shorter haul, regional modal conversion or local replacement traffic opportunities at some point in the future and to ensure that it has a clear alternative gateway to the west via the TPW, direct access to other shippers in Chicago and connections to other short lines and at trackage rights rates that ensure competitiveness. We propose the Board impose the same trackage rights rates that NS has to use the CFER and IORY under the premise that if it works and is appropriate for NS to use to access these railroads on a competitive basis the same should hold true for these railroads to operate over NS-UP.

Direct connections to other carriers in Chicago, versus via a terminal railroad, is key as it allows for more efficient interchange and partnership and also eliminates the need to pay the terminal switch rate which can inhibit rail volumes.

This pending economic and competitive harm to CF&E and its customers is also the reason CF&E affiliated short lines in the Watershed, the IORY and TPW, request trackage rights as they seek to offset the damage to their service and customers from the proposed Transaction. While these short lines are affiliates, their filings stand on their own and are based on the independent facts and circumstances of how the proposed UP transaction might impact their viability and competitiveness. There is an obvious need for these short lines and their current and future customers to have the ability to access each other. Together, short lines connected to and in the Watershed can potentially develop regional traffic growth that represent truck to rail conversations that would not otherwise be converted post UP acquisition of NS because the combined railroad will not have the incentive to develop these local markets.

For the CF&E, it is hoped the proposed remedies might, over a longer period of time, enable a modicum of alternate rail freight service for shippers and communities with interconnected, creative, aggressive local freight rail lines to reach across the Watershed.

Contiguous and commercially effective rail freight routes of sufficient length are a scarce resource. Only two such companies (Class Is) exist on either side of the Watershed. Indeed, most short lines are created and deliberately contained to connect solely to the Class I railroad. This severely limits the commercial effectiveness of those line segments in a world where more competitive and effective rail freight is needed, not less.

While the proposed merger would certainly create some efficiencies and new service options in the watershed for UP/NS and its customers, it further reduces options for many customers and threatens the long-term viability of these short lines in this region. It is conceivable that rail lines like CF&E, IORY or TPW could eventually be reduced in their utility to island pockets of local rail freight service connected only to Class Is further condensing rail freight options if their ability to compete is not preserved.

The CF&E, like other short lines in the Watershed and its proximity, has shown during its history the ability to solicit, develop, invest and execute the provision of useful, convenient and necessary rail freight service in local, single-line, truck-dominated markets as well as traditional interline rail freight. Shippers, communities and the environment benefit from this focused effort. The Class I railroads also benefit from a robust, creative and healthy feeder line network which is effective in modal conversion and *has no practical negative impact on Class I traffic*. The CF&E urges the Board to take this step and grant these requests to CF&E to remedy the competitive harm to shippers, the financial damage to the CF&E and other local short lines and to preserve the vital, yet scarce resource of commercially effective contiguous short line rail freight routes for customers and communities in the Watershed.

V. CF&E Proposes the following Conditions to Remedy the Anti-Competitive Harm and the Harm to CF&E's Essential Rail Service Caused by the Transaction.

It is undisputed that the UP acquisition will cause CF&E to lose revenue and customers will lose a competitive option. UP offers no condition to offset this harm. The remedies that CF&E is proposing will not allow CF&E to compete for the carloads that a combined UP/NS will take from CF&E nor preserve the current optionality CF&E's customers have at the Chicago gateway. However, CF&E seeks conditions to allow it an opportunity to find new business opportunities and alternative access. As such, CF&E respectfully requests that the Board impose the following conditions on the transaction, if the Board authorizes UP to acquire NS.

A. Trackage Rights

CF&E seeks the following trackage rights to mitigate the loss of traffic caused by the UP/NS Transaction and ensure alternative access.

1. Between Fort Wayne, IN on the Chicago, Fort Wayne & Eastern Railway and Logansport, IN on the Toledo, Peoria & Western Railway: allows interchange with the Toledo, Peoria & Western Railway

2. Between Hobart, IN (NS CP Lake) and running to Chicago, IL via Fort Wayne, IN to preserve connectivity to Chicago area gateways, to allow interchange with:

a) Indiana Harbor Belt Railway at Hammond / Osborn, IN for further access to Gibson Yard and Blue Island Yard

b) Belt Railway of Chicago at Pullman Junction via Calumet Yard

c) Chicago Rail Link at Pullman Junction via Calumet Yard

d) Chicago South Shore Railway at Kensington, IL

e) CN at Van Loon (Gary), IN (I-94 overpass just south of West 25th Avenue)

3. *Over NS between Tolleston, IN and Dune, IN to make interchange with CN. Currently diamond not in place to allow connection (was planned). Contingent on downstream merger involving CSX Transportation and requires diamond to be put in place*

B. Reasonable terms

CF&E respectfully requests that the Board impose the above listed traffic rights under the reasonable terms proposed in the CF&E Responsive application. CF&E is proposing it pays to Norfolk Southern the same trackage rights rate as Norfolk Southern pays to run over the CF&E from Crestline OH, to Gary, IN as per its {{[redacted]}} trackage rights agreement, currently {{[redacted]}} per car mile and {{[redacted]}} per intermodal container mile. Further, CF&E seeks equal dispatching and equal access to facilities.

C. Indefinite Oversight

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

VERIFICATION

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

Executed on this 18th day of November, 2026



Marty Pohlod

Public Version Redacted

Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

_____

COMMENTS AND REQUESTS FOR CONDITIONS OF

CHICAGO, FT. WAYNE & EASTERN RAILROAD

_____

VERIFIED STATEMENT OF ROB RUSSELL

My name is Rob Russell, Managing Partner at Russell-Kroese Partners LLC, a logistics consulting company located in Omaha NE focused on supporting clients doing business in the rail shipping industry. I am a 25-year rail industry veteran having been a former Union Pacific (UP) executive from 2002 – 2018. At UP, I held multiple positions in Finance, Operating, and the Marketing and Sales departments during my tenure. In my last position as Assistant Vice President of Network & Industrial Development reporting to the Chief Commercial Officer, I was responsible for Commercial Strategy, Pricing, Short Lines, Interline, Ports, Industrial Development, and Mergers & Acquisitions from the Commercial perspective.

Upon leaving UP in 2018, I founded CWR Solutions, a rail consultancy focusing on helping stakeholders do business with rail. CWR Solutions has a 50% ownership stake in Russell-Kroese Partners LLC which I formed with my Partner, Shawntell Kroese, also a former UP executive, in 2023. I have extensive Commercial network and business development

experience from my time at UP including overseeing, directing, and performing similar analysis to what Oliver and Wyman (O&W) provided on behalf of UP.

I was retained by the Chicago, Ft. Wayne & Eastern Railroad (CFE) to analyze UP's verified statements, evaluate their assessment methodology, and evaluate their predictive outcomes relative to the CFE's actual business.

Based on my assessment of the Supplemental Verified Statement of Mr. David T. Hunt dated July 20, 2026 and supplemented with an errata on September 11, 2026, Mr. Hunt's methodology in Section 6.8 and 6.8.2 in particular are in line with industry best practices given the data I understand Mr. Hunt had available to him. However, the degree of UP-NS impact, outcome assessment, and thus Mr. Hunt's conclusion in regard to the projected "minimal" impact to the CFE if the Board approves the UP-NS transaction fails to capture the actual impact to CFE to a significant degree.

In Mr. Hunt's supplemental verified statement, Mr. Hunt's analysis asserts that 57% of the CFE's existing westbound (WB) Auto traffic at his calculation of {{[redacted]}} revenue carloads and 16% of the CFE's WB manifest traffic at his calculation of {{[redacted]}} carloads will be lost to the new UP-NS network based on 2023 volumes as follows[1]:

Exhibit 1. from Mr. Hunt's Statement[2]:

Service Type	Base Cars	Post UP-NS Cars	Cars Lost to UP-NS	% Loss
WB Autos	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	57%
WB Merchandise	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	16%
Total WB Risk	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	41%

Key in the analysis provided by Mr. Hunt are four points to consider:

[1] Supplemental Verified Statement of David T. Hunt dated July 20, 2026 section 6.8.2 MS1.16.
[2] Rob Russell workpapers, exhibit 1, CFE Summary

1. The “Base Carloads” Mr. Hunt provided are estimates of the actual CFE Auto and Manifest carloads which the CFE handled in 2023. We will compare these estimates with CFE’s 2023 actual waybills in the categories Mr. Hunt segmented the business into.
2. In the case of the Automotive traffic, Mr. Hunt suggests only 2/3rds (67%) of the westbound (WB) CFE-UP traffic would be converted from CFE interchange with UP to direct UP-NS. Mr. Hunt’s analysis does not provide a rationale as to why UP redirects only 67% of the traffic and not 100%.
3. Mr. Hunt does not conclude post-acquisition that eastbound automotive and merchandise volumes involving UP will impact the CFE. Based upon my analysis of CFE’s waybill data, I feel significant eastbound merchandise and automotive traffic is likely to be lost to the new UP-NS not accounted for in Mr. Hunt’s analysis.
4. Mr. Hunt does not discuss whether the PVL Auto Terminal (the CFE Auto Customer) could remain viable post transaction following his estimated 57% loss of WB Auto’s traffic to UP-NS.

When considering these four points, Mr. Hunt’s analysis underestimates the number of carloads that CFE will lose to the combined UP/NS and thus his conclusion that the impact of the UP-NS transaction will have minimal impact to the ongoing viability of the CFE is unsupported.

Relative to (1), CFE’s actual 2023 WB Auto volumes were {{ }} revenue carloads based on 2023 waybill data provided by the CFE to me[3] vs. Mr. Hunt’s derived {{ }} carloads. Mr. Hunt is short {{ }} carloads or 20% of CFE’s actual WB Autos volume, a significant miss but not unexpected given the limits of his analysis.

[3] Rob Russell workpapers, Auto_PVL Volume 2023

Relative to (1) for CFE's WB merchandise traffic, CFE's actual WB merchandise volumes were {{[redacted]}} revenue carloads[4], short of the total {{[redacted]}} carloads estimated by Mr. Hunt. Mr. Hunt projected {{[redacted]}} or 16% of his total WB carloads would be lost. Based on my analysis looking at OD pairs and routings, I conclude {{[redacted]}} carloads[5] or 32% of WB merchandise carloads are likely to be lost from the CFE to UP-NS. This includes {{[redacted]}} "bridged" (originated on another railroad like NS) carloads which UP-NS would intercept as or from the originating railroad and {{[redacted]}} local origins UP-NS would handle from adjacent UP-NS origins[5]. In addition, subsequent analysis performed by CFE at the specific receiver level reviewing Serving Carrier Reciprocal Switch (SCRS) records for access which I reviewed with CFE and endorse, suggests the loss would be even greater thus my analysis is conservative as to the total likely WB merchandise impact from a UP-NS transaction.

Relative to (2), based on my 25 years of experience in this industry, having held commercial executive positions at Class I and Short Line railroads, I don't see how anything less than 100% conversion of the UP-CFE Auto freight would occur. The 67% conversion is a reasonable academic assumption to hedge short for budgeting growth targets though understates what would occur in practicality. If 67% of the freight would convert from CFE-UP to single line UP-NS, 100% of it would convert. There is no reasonable commercial scenario I can think of where the new UP-NS management team would accept anything less than 100% conversion and support two separate services. Efficiency (unit cost), effectiveness (service simplicity), and financials (profitability), indicate that UP would support only it's direct, new UP-NS service and box out the CFE completely for all traffic it handles within 5 years post transaction.

[4] Rob Russell workpapers, Total EB and WB CHI 2023
[5] Rob Russell workpapers, Merchandise Analysis 2023

Exhibit 2, Comparing Mr. Hunt's WB findings with CFE's data and my findings[6]

2023 WB CFE	Mr Hunt's Data & Analysis			CFE Data / RSR Analysis		
	Base	Lost	% Lost	Base	Lost	% Lost
WB Auto	{{[redacted]}}	{{[redacted]}}	57%	{{[redacted]}}	{{[redacted]}}	87%
WB Merchandise	{{[redacted]}}	{{[redacted]}}	16%	{{[redacted]}}	{{[redacted]}}	32%
Total WB	{{[redacted]}}	{{[redacted]}}	41%	{{[redacted]}}	{{[redacted]}}	67%

Regarding (3) for CFE Auto volume, EB volume to the CFE from UP needs to be reconsidered as the origin railroad, in this case mostly UP, plays the most significant role in how freight will route to the CFE. I disagree with Mr. Hunt's finding that no CFE EB Auto nor meaningful CFE EB Merchandise traffic will be lost by the CFE to UP-NS. Using CFE's 2023 waybill data, {{[redacted]}} EB auto loads[7] were handled by CFE of which UP either originated or bridged (originated on another RR like FXE which does not connect with the CFE) {{[redacted]}} auto loads[7]. Based on my analysis, I believe these {{[redacted]}} of the {{[redacted]}} total EB auto loads are likely UP-NS conversions from CFE to UP-NS solutions which is an 89% reduction in CFE's EB auto carloads. Based on my experience, UP will find a way to convert these to their new solution and take these from the CFE utilizing a variety of commercial and operating tools available to facilitate the conversions as I once had when in their service.

Regarding (3) for CFE EB merchandise carloads, {{[redacted]}} of CFE's {{[redacted]}} EB merchandise carloads originated or were bridged by the UP to the CFE to NS or other rail solutions UP-NS will directly connect with[8]. Of these carloads, based on my analysis, I believe over {{[redacted]}} of the {{[redacted]}} EB merchandise carloads (10%) will be converted by UP-NS from the CFE[8]. In addition, subsequent analysis performed by CFE at the specific receiver level

[6] Rob Russell workpapers, Exhibit 2, CFE Summary
[7] Rob Russell workpapers, Auto_PVL Volume 2023
[8] Rob Russell workpapers, Merchandise Analysis 2023, Total EB and WB CHI 2023

looking at SCRS records suggests the loss would be even greater and thus my analysis may be conservative to the total likely EB impact. Regardless, Mr. Hunt's assessment that EB Auto and Merchandise traffic is not likely at risk given UP's large role in directing the freight is incorrect and significant amounts of this freight will be converted to UP-NS without CFE.

Exhibit 3, Comparing Mr. Hunt's EB findings with CFE's data and my findings[9]

2023 EB CFE	Mr Hunt's Data & Analysis			CFE Data / RSR Analysis		
	Base	Lost	% Lost	Base	Lost	% Lost
EB Auto	{{[redacted]}}	{{[redacted]}}	0%	{{[redacted]}}	{{[redacted]}}	89%
EB Merchandise	{{[redacted]}}	{{[redacted]}}	4%	{{[redacted]}}	{{[redacted]}}	10%
Total	{{[redacted]}}	{{[redacted]}}	3%	{{[redacted]}}	{{[redacted]}}	24%

Relative to (4), Mr. Hunt's assertion that only 57% of the CFE WB auto traffic would be lost, he does not contemplate the ongoing viability of the terminal and therefore, the analysis is incomplete. Per CFE provided waybill data, total revenue carloads for the customer (Precision Vehicle Logistics a.k.a. PVL) were {{[redacted]}} with {{[redacted]}} EB and {{[redacted]}} WB[10]. Of the WB, Mr. Hunt estimated 57% or {{[redacted]}} (note his short miss at {{[redacted]}} carloads[11]) carloads or 41% of PVL's total business would be lost. In my experience, this makes the PVL operation less commercially viable as an ongoing terminal and its loss would reduce competition in the area leaving GM with only a UP-NS routing and no alternative, effectively a 2 rail option to 1 rail option casualty. However, Mr. Hunt's analysis as described above had several errors which need to be corrected. I believe of the {{[redacted]}} carloads handled by the terminal in 2023, {{[redacted]}} or 87% of the traffic would be lost by the terminal and CFE to the post transaction UP-NS essentially rendering the terminal no longer financially viable and thus subject to closing

[9] Rob Russell workpapers, Exhibit 3, CFE Summary
[10] Rob Russell workpapers, Auto_PVL Volume 2023
[11] Supplemental Verified Statement of David T. Hunt dated July 20, 2026 section 6.8.2 MS1.16.

or being repurposed for different business than autos. Per the CFE, the premise for the terminal is to allow the CFE to handle traffic that NS did not want to handle via a short haul to Chicago. After the UP-NS transaction, the foundational need for the terminal which encompasses 87% of the traffic is no longer present and the terminal will likely no longer exist in its current form and function.

In summary, Mr. Hunt's analysis failed to consider impacts to traffic destined for the CFE in addition to the risk to traffic which the CFE "bridges" between the Union Pacific and other railroads the CFE connects to. In many routes, the new UP-NS will not need the CFE to "bridge" traffic from the UP to points east of the CFE and therefore the new UP-NS will route that traffic around the CFE. Mr. Hunt's analysis also significantly underestimates and does not account for the amount of actual volume in the above categories which the CFE moved in 2023. Bringing in actual CFE volumes and evaluating it's risk of loss to the combined UP-NS using various Class I Commercial targeting methodologies, I believe post transaction, the CFE will lose approximately 87% of its total automotive traffic or {{ }} revenue cars and will lose 36% of its UP interchanged merchandise traffic or {{ }} revenue cars over a period of three to five years post transaction resulting in a loss of 67% or {{ }} revenue cars comprised of the CFE Autos and CFE-UP merchandise traffic. This is more than double the UP's assessed risk of {{ }} cars as follows[12]:

[12] Supplemental Verified Statement of David T. Hunt dated July 20, 2026 section 6.8.2 MS1.16.

Exhibit 4, Summary - CFE's data and my findings[13]

Service Type	Base Cars	Post UP-NS Cars	CFE Cars lost to UP-NS	% Loss
WB Auto	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	87%
EB Auto	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	89%
Autos	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	87%
WB Merchandise	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	32%
EB Merchandise	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	39%
Merchandise	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	14%
Total Risk	{{[redacted]}}	{{[redacted]}}	{{[redacted]}}	42%

It is important to reiterate as described above, the loss of 87% of the automotive traffic which comes from one customer, PVL, that customer's ability to operate as an ongoing business is likely in jeopardy, resulting in the loss of all Auto's traffic from the CFE and essentially making the GM plant PVL serves a "2 to 1" casualty.

Exhibit 5, Comparing Mr. Hunt's combined findings with CFE's data and my findings[14]

2023 CFE (Both Dir)	Mr Hunt's Data & Analysis			CFE Data / RSR Analysis		
	Base	Lost	% Lost	Base	Lost	% Lost
WB + EB Auto	{{[redacted]}}	{{[redacted]}}	36%	{{[redacted]}}	{{[redacted]}}	87%
WB + EB Merchandise	{{[redacted]}}	{{[redacted]}}	7%	{{[redacted]}}	{{[redacted]}}	14%
Total	{{[redacted]}}	{{[redacted]}}	18%	{{[redacted]}}	{{[redacted]}}	42%

In summary, Mr. Hunt's analysis asserted CFE would lose {{[redacted]}} Auto and Merchandise revenue loads (18%) from a base of {{[redacted]}} revenue loads. My analysis finds the CFE will lose a minimum of {{[redacted]}} revenue loads (42%) from a base of {{[redacted]}} revenue loads – 250% more revenue loads lost. Because the negative impact as a result of the UP-NS transaction is so significant, I conducted further analysis with the CFE commercial team who used SCRS records for carrier access combined with their intimate knowledge of those

[13] Rob Russell workpapers, Exhibit 4, CFE Summary
[14] Rob Russell workpapers, Exhibit 5, CFE Summary

specific supply chains at the specific customer facility level and they determined the likely impacts would be even greater than my analysis resulting in an excess of {{[redacted]}} revenue loads lost by the CFE to the new UP-NS.

For the reasons set forth above, it is my professional opinion that Mr. Hunt's verified statement understates the impact of the UP-NS transaction on the CFE by more than 250% per exhibit 5 above.

VERIFICATION

I, Rob Russell, Managing Partner at Russell-Kroese Partners LLC, declare under penalty of perjury that the forgoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18th day of November, 2026



CERTIFICATE OF SERVICE

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



Justin J. Marks