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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

COMMENTS AND REQUESTS FOR CONDITIONS OF THE COMMONWEALTH OF VIRGINIA

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As Secretary of Transportation for the Commonwealth of Virginia, I write to share comments from the Commonwealth and its transportation agencies and authorities regarding the transaction proposed in this proceeding ("Transaction") by Union Pacific Corporation, Union Pacific Railroad Company (together, "UP"), and Norfolk Southern Corporation and Norfolk Southern Railway Company (together, "NS") (collectively UP and NS, the "Applicants"). These comments represent the perspectives of the Virginia Department of Rail and Public Transportation ("DRPT"), the Virginia Passenger Rail Authority ("VPRA"), and the Virginia Port Authority ("VPA") and its wholly owned terminal operating subsidiary, Virginia International Terminals, LLC ("VIT"), collectively the Port of Virginia ("POV").

The Commonwealth of Virginia's transportation network, including passenger rail services, short line railroads, rail-served industries, and the Port of Virginia, relies heavily on the continued viability and reliability of rail service operating over NS-controlled infrastructure. NS owns over 60% of the rail network in the Commonwealth and operates along approximately 2,000 of the 3,000 total route miles of railroad, making it the largest railroad in Virginia and vital for public service. About 315 route miles of NS track in Virginia carries passenger rail, including Amtrak long distance Crescent and Cardinal trains, Virginia-sponsored Amtrak routes between Norfolk and Petersburg and between Alexandria and Roanoke.

Virginia's state-supported Amtrak ridership and revenues depend on the one-seat rides to the Northeast Corridor provided by extending Amtrak Northeast Regional train equipment onto Virginia's state-supported routes. Virginia has an existing operating agreement (PRIIA 209 agreement) which establishes the framework for Virginia's current and planned service growth. Therefore, the Applicants should recognize the interdependencies Virginia's state-supported service has with Amtrak as a service provider enabling seamless connections to the Northeast Corridor. This reality is critical to the success of existing and future service growth of Virginia's state-supported intercity service.

DRPT's partner agency, the Virginia Passenger Rail Authority (VPRA), has active construction projects on NS right-of-way to expand passenger rail to Christiansburg as part of the Transforming Rail in Virginia initiative made possible in western Virginia's I-81 corridor through agreements with NS and significant investment by the Commonwealth to extend and grow state-supported Amtrak services.

Norfolk's Lambert's Point Coal Terminal is the Northern Hemisphere's largest coal transload facility for global steel and power markets, and a destination for coal transported by NS along its east-west Heartland Corridor to the Hampton Roads region and the Port of Virginia. NS' primary north-south intermodal and merchandise freight service between southeast and northeast US markets follows the Crescent Corridor through Virginia, shuttling intermodal freight from the Port of Virginia to Virginia's Inland Port in Front Royal with double stacked trains made possible through joint investments between NS and DRPT to raise clearances in the early 2000s and 2010s.

NS' long history and continued partnership with the Commonwealth continue, as shown by DRPT grant-funded NS projects for which the Commonwealth retains contingent interest to this day. Annual railcar counts on these jointly developed tracks demonstrate that investments made decades ago are still diverting trucks from the national Interstate system and Virginia highways. The Norfolk Portsmouth Beltline (NPBL), majority-owned by NS, is among the nine short line railroads that operate

in Virginia and take part in DRPT's Rail Preservation Fund (RPF) Program. NPBL currently has seven active RPF-funded state-of-good-repair projects and two active FREIGHT grant-funded projects for capital improvements. NPBL interchanges with NS, CSX, and two other short lines, providing important rail connections surrounding the Port of Virginia.

Given the shared history and intertwined future, the Commonwealth of Virginia understands the significance of the proposed UP-NS merger and the weight of potential impacts to Virginia's transportation network and broader economy. As the Surface Transportation Board ("Board") reviews the UP-NS merger proposal, I respectfully request on behalf of the Commonwealth the Board's consideration of the following.

The proposed merger is a risk to cost and service level stability for freight rail customers in Virginia, including short line railroads. Shippers and industry groups commenting on the merger note the risk of higher freight rates and reduced choice for freight customers, and reduced interchange options for connecting short line railroads. This puts close to 600 Virginia companies and five short line railroads that depend on NS rail service at risk for higher rates and degraded service. DRPT is concerned that higher rates and the risks posed by service degradation would be borne by Virginia businesses and could increase to the point that rail is no longer a viable mode. Companies that currently ship by rail in Virginia could opt to ship by truck or even relocate out of state.

Request for Conditions

Accordingly, the Commonwealth of Virginia respectfully requests the Board consider impacts to state-supported passenger rail programs that rely on Amtrak's statutory authority to operate on host railroads and provide a shared fleet to ensure cost effective passenger rail services with meaningful connections and travel times for the traveling public.

- The Board should require the Applicants to recognize the continued use of PRIIA Section 209 agreements as a mechanism for states to contract with Amtrak for existing and future expansion of intercity passenger rail services.

The reduced freight competitiveness in Virginia likely to result from the proposed merger would have a compounding negative impact on the Port of Virginia (POV), as the merged UP-NS entity would be able to control the flow of intermodal traffic and the competitive landscape between and among ports across the nation, removing competitive options from shippers in favor of high profits earned on the Applicants' preferred longer routes.

- Should the Board be inclined to approve the Amended Application, appropriate conditions are necessary to redress competitive harm by maintaining competitive service levels, preserving POV's market access, including service to the Virginia Inland Port, and uphold existing performance standards. In this way, merger conditions are a key tool to ensure that Virginia's shippers, inland markets, and supply-chain partners are not disadvantaged by structural changes in the national rail network. Considering the need for remedies and conditions the Commonwealth's position is that Board should not approve the Amended Application unless it approves POV's Responsive Application regarding access and the flow of traffic in and out of NIT and imposing the following conditions to redress some of the competitive harm created by the transaction and to enhance competition: Applicants will divest to POV approximately 1.3 mile long rail line owned by NS that serves NIT and extends from the Quartermaster Junction to West Junction, inclusive of all switches and underlying land ("the Line"). To help create direct rail-to-rail competition at NIT, POV's Responsive Application seeks divestiture by NS to POV of the one side of the loop of track in and out of NIT that VPA does not already own and control, which would create direct rail-to-rail competition and allow POV, rather than Applicant, to control and provide on an equal basis to all

carriers that use the Line for ingress and egress from NIT, thereby improving efficiency and expanding overall rail capacity at NIT.1 As a result, any rail carrier, not just Applicant, would have equal access to all three legs of the wye at Quartermaster Junction, allowing all carriers to deliver through the south and pull outbound freight from the north. No rail carrier's operation in and out of NIT would be materially less efficient or otherwise limited in its commercial viability, allowing rail carrier choice for shippers utilizing POV.2

- Applicants will abide by pre-determined operational and service commitments established by the Board to protect shippers, short lines and POV from service degradation and to assure that rates and service levels will remain stable.
- Applicants will maintain, at a minimum, all service lanes, frequences, cutoff times, and transit times in effect as of May 29, 2026, with no material degradation post-merger absent mutual agreement by Applicants and POV, including but not limited to:
    - Maintaining the existing service to/from Front Royal, Virginia, and require the ability to expand service up to seven days per week at the request of POV;
    - Preserving the Chicago gateway as the primary interchange for Applicants' traffic supporting POV, ensuring continued access to Applicants' served markets west of Chicago; and
    - For any lane not operating at seven days per week as of May 29, 2026, establishment of a process to institute new, competitive service when mutually agreed volume thresholds, which are defined in advance, are met.

[1] To be clear, POV seeks divestiture of the Line to the points of connection with VPA-owned track and real estate so that VIT controls the operations into, through, and out of NIT. VIT will provide rail services around the loop and provide all carriers trackage rights to use the line.
[2] There are no local customers on the Line so there would be no change in service to local customers.

- Applicants will limit rate increases to inflation-based adjustments only, with no merger-related premiums or accessorial increases, applicable to both POV as a direct customer and ocean carriers utilizing POV terminals.
- Applicants will add new (competitive with other East coast ports) intermodal services to/from Memphis, Atlanta, and Charlotte operating seven days per week, with target transits of three-to-four days, to be implemented within an agreed launch window within six months after close of the transaction.
- Applicants will honor the terms of DRPT's twelve NS grant agreements and nine NBPL grant agreements, recognizing this in writing. If Applicants cease previously agreed upon performance for these projects, DRPT would be entitled to "claw back" the value of its contingent interest in these projects, estimated in excess of $34 million. (This value does not include interest, which would be required as part of the repayment and calculated at the time of the "claw back".) In discussions held in May 2026 with NS representatives, DRPT was assured that any existing grant agreement terms would be honored should the merger be approved. The Commonwealth requests this be an explicit condition of Board approval.
- Applicants will offer the Commonwealth a "First Option to Purchase" for any discontinued or underused rail as a result of the merger for potential use by short lines, passenger rail, or rail-to-trail projects. This is a way for rail lines to be kept in transportation service, preventing right-of-way from being sold off in a piecemeal fashion or potentially reverting back to original owners.
- Applicants will increase investment in freight and passenger capacity on the I-81/Western Rail/Washington, DC to Bristol/NS "Crescent Corridor," making the corridor viable for expanded passenger and intermodal freight service, through implementation of a funding and capital improvement plan by the Applicants to double track existing NS track and build sidings for

passenger and freight capacity similar to the improvements with CSX in the Washington, DC to Richmond corridor.

In sum, the Commonwealth of Virginia's transportation network relies heavily on the continued viability and reliability of rail service operating over NS-controlled infrastructure. Recognizing the critical importance of this network, the Commonwealth has made substantial investments in partnership with NS over several decades. As proposed, this merger presents potential major risks and serious adverse impacts to Virginia's transportation system, economy, and freight and passenger rail operations. The Board should not approve the transaction, unless the Board (i) approves POV's Responsive Application to redress competitive harm and to enhance rail-to-rail competition by providing POV control over access and the flow of traffic in and out of NIT for efficiency and service which will preserve and enhance competition, and (ii) imposing the conditions outlined in this letter regarding the Applicants' commitment to the service and operational conditions listed and discussed herein.

Respectfully submitted,



Nick Donohue
Secretary of Transportation
Commonwealth of Virginia
1111 East Broad Street, Richmond, VA 23219

CC: Parties of Record