IMRR-3
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**

313128

**COMMENTS AND REQUESTS FOR CONDITIONS OF ILLINOIS & MIDLAND RAILROAD, INC.**

ENTERED
Office of Chief Counsel
November 18, 2026
Part of
Public Record

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523

Justin J. Marks
Maya Patel
Clark Hill PLC
601 13th Street NW, Suite 600
Washington, DC 20005
(202) 772-0916

UPNScontrol@clarkhill.com

November 18, 2026

*Counsel for Illinois & Midland Railroad, Inc.*

**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**
**ILLINOIS & MIDLAND RAILROAD, INC.**

In accordance with the Board's Decision No. 30 served in this proceeding on August 18, 2026, Illinois & Midland Railroad, Inc. ("IMRR") submits these comments and requests for conditions. The Comments and Requests for Conditions is supported by the Verified Statement of Marty Pohlod ("Pohlod VS"). In a separate filing, IMRR is simultaneously submitting its Responsive Application for trackage rights. IMRR 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, IMRR respectfully requests that the Board impose IMRR's requested conditions to ameliorate the competitive harm that the Transaction will cause to IMRR.

The Application clearly states Union Pacific's position: single-line service is superior to interchanged service because interchanges pose onerous costs and delays.[2] Nearly 100% of short line traffic is interchanged. On a network, particularly in the Watershed,[3] where UP intends to

[1] UP's proposal to acquire control of NS is referenced to herein as the "Application" or the "Transaction".
[2] APP.VOL. 1, Pg 229.
[3] The Watershed is defined as 250 miles from the four key watershed gateways, which are located in Chicago, St. Louis, Memphis, and New Orleans. App. Vol. 1, Page 13. Similarly, "watershed markets" is defined as an economic region in the U.S. "where UP or NS would haul less than 250 miles before or after interchange. These markets are characterized by short-haul

substantially increase traffic, UP's statements indicate that it will prioritize single-line traffic over traffic where interchange is necessary, i.e., all short line traffic.[4]

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

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

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 IMRR customers and the market IMRR serves, as well as to safeguard that it can use its location in the Watershed with multiple interchanges to provide alternative access and connectivity for other rail carriers, including other short lines, IMRR seeks the requested trackage rights.

## I. Background

### A. About IMRR

IMRR is a Class III railroad that operates over 97 miles of track in Illinois, running north-south between Peoria/Pekin and Springfield.[5] In 2025, IMRR handled approximately [redacted] carloads, [redacted] of which were coal. As relevant to the Transaction, IMRR interchanges with

handoff lanes that sit right on the fault lines between the Class I railroad networks." APP.VOL. 1, Pg 228.

[4] Pohlod VS at 2.

[5] *Id.*

Union Pacific ("UP") in Crescent and Springfield, Illinois. Norfolk Southern Railway Company ("NS") also operates in Springfield.[6]

Built in 1888, the IMRR was used to move coal from the Illinois coal fields in and around the area to its generating facilities in Chicago. As Illinois utilities converted to Powder River Basin coal, the railroad reversed direction: coal moved inbound to power generating facilities that had been built on and around IMRR to take advantage of the local coal the utilities were now converting away from.[7] Since its acquisition by Genesee & Wyoming ("G&W") in 1996, IMRR has continued to play an important role handling inbound coal, which accounted for [redacted]% of its 2025 freight revenues.[8] With the scheduled closure of much of its customer base, however, that coal business is expected to drop by [redacted]% over the next three years.[9] As when it transformed itself after the decline of local coal decades ago, IMRR will again need to adapt to remain a viable independent short line, particularly if it is to compete in a post-UP/NS combination.[10]

IMRR's location and its connectivity to other railroads and the Illinois River is key to its business. At its northern end, IMRR has direct access to UP and BNSF Railway ("BNSF"), and it connects to the Peoria Gateway of the Tazewell and Peoria Railroad ("TZPR"), which provides access to CN and multiple short lines, including the Keokuk Junction Railway, the Toledo, Peoria & Western Railway ("TPW"), and the Iowa Interstate Railroad.[11] Through the TPW, IMRR has further connections east with CSX Transportation ("CSX") and, again, UP, CN, and NS, as well as other short lines.[12] At Springfield, in the south, IMRR interchanges with CN and UP and has an

[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

important connection to Canadian Pacific Kansas City (CPKC).[13] Because IMRR sits in the Watershed with access to both UP and NS (via the TZPR switch), it can interchange with either carrier to move traffic in any direction.[14]

Positioned in the Watershed and in the middle of the national rail network, with multiple connections, IMRR focuses on handling east-west overhead traffic.[15] A key consideration in that role is IMRR's ability to interchange with CPKC at Springfield. IMRR and CPKC currently interchange there, but CPKC must use trackage rights over both UP and CN to reach IMRR's yard. IMRR has no reciprocal rights to reach CPKC; only CPKC can come to IMRR.[16] For CPKC, its line to Springfield is one of the furthest points east on its U.S. network, approximately 300 miles from Kansas City. Reaching IMRR gives CPKC the option to connect to further competitive eastern routings (and vice versa for IMRR), including over IMRR to eastern carriers and short lines, in direct competition with a combined UP/NS.[17] IMRR's affiliates, TPW and Indiana & Ohio Railway Company ("IORY"), have likewise requested conditions in this proceeding to secure alternative access.[18]

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

*1. The Transaction will eliminate a competitive interchange for IMRR and put its connection to CPKC at risk.*

Today, IMRR can interchange with either UP or NS to reach any direction.[19] IMRR operates in the Watershed, where it both competes with and partners with NS and UP, which

[13] *Id.*
[14] *Id. at 3.*
[15] *Id.*
[16] *Id.* at 11.
[17] *Id.*
[18] *Id.* at 4.
[19] *Id.* at 3.

operate in close proximity and previously could potentially compete with each other to provide IMRR's customers options.[20] Where IMRR would interchange with UP, it competes with NS, and where IMRR would interchange with NS, it competes with UP.[21] If the Board approves the Transaction, UP and NS will become a combined network, and IMRR will lose a competitive interchange. IMRR will be precluded from those carriers as competitive options.[22]

That harm is compounded at Springfield. The landscape for short lines will change materially if the Board approves the Application, and connections to Class Is, especially for east-west traffic, will be a key consideration.[23] IMRR's greater concern for its future viability is ensuring that it can continue to interchange effectively with a competitive interchange partner, here, CPKC.[24] Because CPKC must traverse UP to reach IMRR, and IMRR cannot reach CPKC, CPKC's ability to access IMRR will become increasingly difficult after the Transaction.[25] IMRR is concerned that CPKC will retain the right to interchange with IMRR following the Transaction, but that, in practice, the right may be operationally challenging.[26]

Secure connectivity to CPKC would allow IMRR to develop additional local and regional traffic to offset other harm that the Transaction and IMRR's position in the Watershed may cause.[27] It matters even more given the greater likelihood of further Class I consolidation as a result of the Transaction. For short lines in the Watershed that depend on connectivity and on providing customers optionality to eastern and western carriers, whether directly or as an overhead carrier,

[20] *Id.* at 10.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* at 11.

further consolidation would be an even greater threat to their viability and would close off further alternative routings.[28]

*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 basic 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 opportunities to reach national and global markets."[29] It continues, "[s]hort line partners benefit from new connections and growth potential through access to new markets."[30] 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." [31]

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."[32]

The unsubstantiated outlook masks uncertainty for short line rail carriers in the Watershed. 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

[28] *Id.*
[29] App. Vol. 1, Page 264.
[30] App. Vol. 1, Page 260.
[31] App. Vol. A, Page 264.
[32] App. Vol. 1, Page 326.

interline rail service are magnified."[33] The Application clearly states that the catalyst for the Transaction is the ability to offer single-line service on a transcontinental scale, and that rail traffic interchanged between carriers is less efficient, higher-cost, and, by definition, less desirable.[34] Short lines are almost entirely dependent on interchanging traffic with Class Is, and all traffic UP shares with short lines is interchanged. UP will prioritize its own traffic on its network and disadvantage traffic seeking to interchange with it, particularly from lower-density short lines.[35] IMRR is therefore concerned that, after the Transaction, UP will devote its limited network capacity to its own single-line traffic to the detriment of existing interchange traffic.[36]

Short lines within the Watershed Area, including IMRR, have grown because they continually focus on moving shorter-haul, regional, and local traffic.[37] IMRR's concern is that UP will be even less interested in cooperating with a short line where UP would move the traffic fewer than 250 miles, especially when its focus is on allocating network capacity to even greater volumes of longer-haul, single-line service.[38] UP's stated self-interest in acquiring NS is to establish a transcontinental railroad focused on the profitable long haul. After the Transaction, the combined UP/NS will no longer have the same incentive to offer IMRR the competitive access and service that UP offers today, and that shift will harm the customer base IMRR built in partnership with UP.[39]

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

[33] App. Vol. 1, Page 38.
[34] App. Vol. 1, Page 261.
[35] Pohlod VS at 6.
[36] *Id.*
[37] *Id.* at 6.
[38] *Id.* at 7.
[39] *Id.*

NS's Chief Strategy Officer in an email to UP, he [redacted]

[redacted]

[redacted]." [40]

*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."[41] It describes the Watershed as "characterized by shorter-haul routes on both sides of an interchange where rail networks meet."[42] 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."[43]

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."[44]

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"[45] because "joint alliances have built-in limits."[46]

[40] 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).
[41] App. Vol. 1, Page 44-45.
[42] App. Vol 1, Page 261.
[43] App. Vol. 1, Page 44-45.
[44] App. Vol. 1, Page 244.
[45] App. Vol 1, Page 231.
[46] App. Vol 1, Page 338-339.

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, IMRR has embraced as an opportunity. UP acknowledges that intra-Watershed moves provide little benefit to Class I carriers, but IMRR is building business within this region. UP identifies interchange and partnership as problems to be solved, but as explained in the Verified Statement supporting these Comments, interchange and partnership are the cornerstone to a short line's business model.[47]

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

The Application does not specifically propose any conditions to resolve harms caused by the Transaction or to improve competition in the IMRR market. 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 IMRR 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?"[48]

[47] Pohlod VS at 7.
[48] Pohlod VS at 10; 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.[49] 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.[50]

### 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").[51] The 2001 Rule requires an applicant "to provide a plan for enhancing competition" so

[49] *See* 49 U.S.C. § 11324(c).
[50] *Id*.
[51] *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."[52]

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.[53] 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.[54] The Board must also ensure than a transaction would promote a competitive, efficient, and reliable national rail system.[55] 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.[56]

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."[57] 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."[58]

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

[52] *Id*. at 20.
[53] *Id*. at 16; 49 C.F.R. § 1180.1(b)-(c); 49 U.S.C. §§ 10101, 11324(b).
[54] *Id*. at 14; 49 C.F.R. § 1180.1(b)
[55] *Id*.
[56] *Id*. § 1180.1(c).
[57] *Id*. § 1180.1(d).
[58] *2001 Rule*, at 13.

the balancing test in determining public interest.[59] Applicants must explain "how they would preserve competitive options for shippers and for Class II and III rail carriers."[60] 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.[61]

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.[62] 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". [63]

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

[59] *Id*. at 27.
[60] 49 C.F.R. § 1180.6(b)(10)(i).
[61] *2001 Rule*, at 27.
[62] *Id*. at 15.
[63] *See id*. at 27.

> adverse impacts of this transaction, we will impose them as appropriate.[64]

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.[65] 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.[66] 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.[67]

### A. Criteria for Determining Service Problems

In evaluating a proposed major rail consolidation, the Board considers whether the transaction is likely to result in transitional service disruptions or other service problems.[68] Where such service problems are likely to result from the transaction, the Board may impose appropriate conditions to protect the public interest and ensure that the transaction promotes adequate and reliable rail service.[69]

In determining whether conditions are warranted, the Board should consider whether the proposed transaction is likely to impair the quality, reliability, or adequacy of rail service and

---

[64] *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).
[65] 49 C.F.R. § 1180.1(d).
[66] *Id.* § 1180.1(c)(i)-(iii).
[67] *See id.* § 1180.1(d).
[68] 49 C.F.R. § 1180.1(c)(2)(iii).
[69] *See id.* §§ 1180.1(c)(2)(iii), (d); 49 U.S.C. § 11324(c).

whether appropriate conditions would prevent or ameliorate those transaction-related service harms without unduly diminishing the transaction's public benefits.[70]

## IV. Argument

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

The Pohlod VS outlines the harms IMRR will likely experience if the Transaction is approved. Three stand out.

First, IMRR will lose a competitive interchange. Today, IMRR can interchange with either UP or NS to move traffic in any direction, and the two carriers have been potential competitors in providing IMRR's customers options. After the Transaction, IMRR's optionality of competitive connections to an independent UP and an independent NS will collapse into a single combined network. That loss is of the kind the Board has recognized warrants a remedy for short lines.

Second, the Application's own statements show that a much larger UP will prioritize long-haul, single-line traffic and will be less motivated to interchange with short lines, particularly in the Watershed. The stated catalyst for the Transaction is the ability to offer single-line service on a transcontinental scale, and the Application describes interchanged traffic as a "burden" and being less efficient, higher-cost, and less desirable.[71] Because all traffic UP shares with IMRR is interchanged, IMRR's traffic is at risk of being deprioritized. And UP has defined the Watershed as the area where the shorter-haul portion of a move is not of interest to the Class I carrier, which leaves IMRR's regional and local traffic at the greatest risk.

Third, the requested trackage rights directly address IMRR's dependence on a workable connection to CPKC. CPKC can reach IMRR only by using trackage rights over both UP and CN,

[70] *See* 49 C.F.R. § 1180.1(c)(2)(iii), (d).
[71] App. Vol. 1, Page 244.

and IMRR has no reciprocal right to reach CPKC. After the Transaction, CPKC's right to interchange with IMRR may be operationally challenging in practice.[72] Trackage rights over the Springfield rail connection will ensure that IMRR can provide more seamless connectivity to CPKC, which IMRR needs for its own customers to address the first two harms and, perhaps even more importantly, to maintain its ability to act as an overhead route for other carriers requiring alternative connections, particularly other short lines, as the requests of IMRR's affiliates, TPW and IORY, in this proceeding also seek.

If the Board approves the Transaction, IMRR seeks trackage rights, at reasonable rates and terms. These rights will reduce the harm the Transaction would cause IMRR and preserve its ability to serve its customers and to act as an overhead route. These rights would also give IMRR the opportunity to develop additional local and regional traffic to offset other harm resulting from the Transaction and from IMRR's position in the Watershed. That opportunity is critical for a railroad that expects its coal business, [redacted]% of 2025 freight revenues, to fall by [redacted]% over the next three years.[73] Preserving IMRR's connectivity to CPKC and to other short lines is the focus of this filing.[74]

B. If the Board Grants IMRR's Trackage Rights, It Should Impose Conditions to Ensure They Are Reasonable and to Protect IMRR from Bad-Faith Negotiating Tactics.

Union Pacific's CEO has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith if the Board imposes them. 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]

[72] Pohlod VS at 11.
[73] *Id*. at 2-3.
[74] *Id*. at 4.

because, guess what, we would just reset the price higher for us. Okay?"[75] The Board should therefore use its conditioning authority to ensure that any trackage rights it imposes are reasonable and competitive, with pro-competitive rates, equal dispatch, and equal access to railroad facilities such as sidings. The Board should also impose conditions that a short line 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, with the resources to delay the imposition of the Board's conditions through litigation that can easily outlast any short line. The Board should not allow UP to thwart its conditions.

*1. Reasonable Terms and Oversight*

IMRR therefore proposes reasonable terms. As set out in its Responsive Application, IMRR would pay UP the same trackage rights rate that UP pays to run over IMRR between Barr, Illinois and Springfield, Illinois (9.7 miles) under its August 27, 1997 trackage rights agreement, currently [redacted] per car mile. IMRR also requests that the Board obligate Union Pacific to provide equal dispatch and equal access to railroad facilities on the trackage rights lines, and that it impose an oversight period lasting in perpetuity so that IMRR has a remedy at the Board and the conditions are enforceable now and into the future.

C. IMRR's Conditions Are in the Public Interest.

IMRR's requested conditions are in the public interest because they will allow IMRR to remain a competitive short line in the Watershed that can offer shippers and other railroads a seamless connection to CPKC and an independent overhead route, even if a combined UP/NS deprioritizes interchange with short lines. They will also give IMRR the opportunity to develop

[75] *Id*. at 9-10; Letter from David L. Meyer, Attorney for CPKC to the Chief of Case Administration, Surface Transportation Board, at 4, n.13 (entered into the record, Nov. 6, 2026)(filing id 312810).

additional local and regional traffic to offset harm from the Transaction, which matters all the more because IMRR's coal business is expected to fall by [redacted]% over the next three years. And the conditions are narrow. They concern a single connection in Springfield at reasonable rates and do not impede the single-line, transcontinental service that IMRR acknowledges a combined UP/NS may offer.

D. Description of IMRR's Trackage Rights Request.

IMRR respectfully requests trackage rights over a line of railroad in Springfield, Illinois that NS and UP are currently constructing to route current rail traffic around Springfield. IMRR seeks trackage rights (effective upon completion of the project) over this line of railroad known as the NS/UP Springfield Rail Improvements Project Line starting at the connection point with the IMRR in Springfield and then extending over an existing NS line to the NS connection with Canadian Pacific Railway Company just east of Route 4 and north of Interstate 72 at KC Junction.

## V. Conclusion

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

Respectfully submitted,



Eric M. Hocky
CLARK HILL PLC
Two Commerce Square
2001 Market St. Suite 2620
Philadelphia, PA 19103
(215) 640-8523

Justin J. Marks
CLARK HILL PLC
601 13th Street NW, Suite 600
Washington, DC 20005
(202) 772-0916

UPNScontrol@clarkhill.com

*Counsel for Illinois & Midland Railroad, Inc.*

Dated: November 18, 2026

**VERIFIED STATEMENT**

**Before the**

**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36873

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

---

# VERIFIED STATEMENT OF MARTIN POHLOD ON BEHALF OF ILLINOIS & MIDLAND RAILROAD, INC.

## I. Introduction

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

A. About IMRR and the Market it Serves.

IMRR is a Class III railroad that operates over 97 miles of track in Illinois, running in a north-south direction between Peoria / Pekin and Springfield, Illinois. In 2025 IMRR handled approximately {{[redacted]}} carloads, {{[redacted]}} of which were coal. As relevant to Union Pacific's ("UP") proposed acquisition of Norfolk Southern Railway Company ("NS") (the "Transaction" or "Acquisition"), IMRR interchanges with UP in Crescent and Springfield, Illinois. NS also operates in Springfield.

IMRR (the "Railroad", the "Line") operates in the Watershed, the region much discussed by UP in its presentations and filings concerning its potential acquisition of NS. Always independent and built in 1888, the rail line was owned between 1905 and 1987 by the utility company, Commonwealth Edison, who used it to move coal from the Illinois coal fields that were located in and around the surrounding area to its generating facilities in Chicago. As Illinois utilities converted to Powder River Basin coal the railroad switched directions and coal was instead railed inbound to power generating facilities that had been built on and around IMRR (previously built there to take advantage of the local coal they were now converting away from).

IMRR's location and connectivity to other railroads and the Illinois River provides many advantages. On the northern end, the IMRR has direct access to UP and BNSF, where it also connects to the Peoria Gateway of Tazewell & Peoria Railroad (TZPR) which then provides access to CN and multiple short lines, including the Keokuk Junction Railway, Toledo, Peoria & Western Railway (TPW) and the Iowa Interstate Railroad. Through the TPW, the IMRR then has further connections east with CSX Transportation ("CSX") and then again with UP, CN and NS as well as other additional short lines. In the south, at Springfield, IL, the IMRR interchanges with CN and UP and an important connection to CPKC.

As it has for most of its recent history, and since its acquisition by Genesee & Wyoming in 1996, IMRR continues to play an important role handling inbound coal (75% of 2025 freight revenues). However, with the scheduled closure of much of its customer base, this amount is expected to drop by 50% over the next three years. Similar as to when the Railroad transformed itself following the decline of the local coal decades ago, the IMRR will again need to adapt to remain a viable independent short line railroad, particularly if it is to compete in a post-UP-NS combination.

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

IMRR neither supports nor opposes the UP application. However, if the Board approves the application, IMRR requests that it be conditioned on granting IMRR trackage rights to reduce competitive harm caused by the Transaction.

UP proposes to create a transcontinental network, focused on long haul single-service. It will prioritize its own traffic on its network and disadvantage other traffic seeking to interchange with UP, particularly from lower density short lines.

IMRR sits in the watershed and has access to both UP and NS (via TZPR switch) and can interchange with either, to go in any direction. Post Acquisition, if approved, IMRR will lose a competitive interchange as NS and UP will become a combined network who - we expect - will prioritize its own, single line, long haul traffic.

Positioned in the watershed and in the middle of the national rail network with multiple connections, IMRR is also well positioned to handle east-west overhead traffic. Post Acquisition and creation of a transcontinental network, if approved, alternative options for shippers and other railroads, especially short lines, will become even more important. A key consideration for IMRR's role to handle overhead east-west traffic is its ability to interchange with CPKC in

Springfield, IL. This connection currently requires CPKC to run over UP and then CN using trackage rights.

IMRR requests the Board condition the UP/NS Transaction to allow for IMRR to use trackage rights, at reasonable rates and terms, over the proposed Springfield rail connection and then over UP to allow it to make a more seamless interchange with CPKC at a location southwest of Springfield, IL just east of Route 4 and north of I-72. This remedy (i) reduces the harm to IMRR from the Transaction as its optionality of competitive connections to an independent UP and an independent NS combine; (ii) a much larger UP prioritizes long haul, single line traffic and is less motivated to interchange with short line carriers, particularly in the Watershed; and (iii) ensures IMRR can effectively provide more seamless connectivity to CPKC, which it needs for its own customers to address points (i) and (ii) and perhaps even more importantly to maintain its ability to act as an overhead route for other carriers requiring alternative connections, particularly other short lines and particularly when considered with the conditions and comments requests to this Transaction of IMRR's affiliates, the TPW and Indiana & Ohio Railway Company (IORY), to have such alternative access.

It is preservation of this connectivity to other short lines and CPKC that are the focus on this filing.

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

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. IMRR is not opposed to the Transaction, assuming there are appropriate protections for other industry participants like IMRR. The railroad appreciates the potential advantages a combined

Union Pacific and Norfolk Southern could create via the creation of single line, transcontinental service. However, IMRR is concerned for our specific customers and the market we serve, including as an independent overhead route, and whether, post Transaction, IMRR will be able to continue to provide the same level of competitive options and service levels as it does today so IMRR can continue to sustainably invest and grow. In evaluating the Application IMRR believes that the Application fails to adequately address the potential impact on certain short lines and the IMRR in particular.

UP has advocated in its filing that the only meaningful avenue for volume growth is through the creation of a transcontinental railroad.[1] Yet, as widely recognized by the industry[2], the Board,[3] and UP itself in its application, 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 that often limits the ability of a rail carrier to offer a differentiated rate or to haul traffic over shorter distances. Short line railroads are free of this obligation which allows short lines to be nimble and to convert traffic from truck to rail. Nor do short lines share the economic pressures of competing to generate a sub-60% operating ratio to satisfy investors. Instead, a short line benefits from being in a position to focus purely on generating incremental business such that

[1] 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
[2] OliverWyman, "Unleash The Short Lines", 2024
[3] Surface Transportation Board, Hearing On Growth In The Freight Rail Industry Docket No. EP 775, Day 1 (September 16, 2024), transcript pages 131, 267

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.

UP's Acquisition of NS creates multiple concerns to the short line industry generally and to the IMRR 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 IMRR's requested conditions, IMRR respectfully requests that the Board consider the following harms that will impact IMRR.

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.[4] Short lines are almost entirely dependent on interchanging traffic with Class Is and by definition, all traffic that UP shares with short lines is interchanged. IMRR is concerned that post Transaction UP will prioritize its

[4] 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

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[5]. 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 IMRR, 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 IMRR 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 did to the IMRR pre-Transaction. The combined UP/NS will have different priorities. IMRR 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.

[5] 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. IMRR does not believe that these proposed remedies properly address and fundamentally misunderstand the role IMRR and certain short lines play in the more regional and local transportation landscape.

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

Under our new rule, applicants must address the anticipated effects of a proposed merger on regional and shortline railroads, identify any benefits that those smaller railroads and their customers would realize as a result of the proposed Transaction, and develop suggested remedies for any anticipated harms to the public interest by virtue of a merger's adverse impacts on regional and shortline railroads and ports.[6]

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.

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

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

A forced reduction in service might mean eliminating days of service to a particular customer or branch line or reducing speeds from 25 mph to 10 mph. Eliminating service or lowering speed can cause a downward spiral to a short line rail carrier. Poor service can cause customers to switch from rail to truck, this in turn means that the short line must cut more service 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, which impacts not only the short line carrier, but all of the local customers who depend on the short line to move their traffic.

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

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

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

B. <u>The UP/NS Transaction, if approved will cause IMRR competitive harm.</u>

If the Board approves the UP/NS Transaction, the combination of UP and NS will cause IMRR competitive harm because IMRR loses competitive options. IMRR operates in the Watershed, and as such it directly competes with and partners with NS and UP, who both operate

in close proximity, and who previously were potentially competing with each other to provide IMRR's customers options. As in other cases, with similarly placed short lines, IMRR competes with NS where IMRR would interchange with UP and IMRR competes with UP where IMRR would interchange with NS. If the Board approves UP's Acquisition of NS, IMRR will be precluded from those carriers as a competitive option.

1. *The remedy to prevent competitive harm to IMRR is to ensure that IMRR continues to have access to CPKC.*

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

As regards to the UP Acquisition of NS, IMRR's greater concern for its future viability is ensuring that it can continue to interchange effectively with a competitive interchange partner. In this instance, it is CPKC. IMRR and CPKC currently interchange in Springfield, IL. However, CPKC must use trackage rights over both UP and CN to come into the IMRR yard. IMRR does not have reciprocal rights to go to CPKC, only CPKC can come to the IMRR. Post-Transaction, CPKC's ability to access IMRR will become increasingly difficult.

Any potential CPKC – IMRR business would most likely be a west-east move. For CPKC, their line to Springfield is one of the furthest points east on their U.S. network. From here, the CPKC then runs approximately 300 miles west to Kansas City. Being able to reach the IMRR provides CPKC with optionality to connect to further competitive eastern routings, including over the IMRR to reach eastern carriers and short lines. This routing would be in direct competition with a newly combined UP-NS.

Given that CPKC has to traverse UP to reach the IMRR and that the IMRR does not have the ability to reach the CPKC we are concerned that following the Transaction CPKC will have the right to interchange with IMRR, but in practice, that right may be operationally challenging.

By ensuring this connection it will allow the IMRR the ability to develop additional local and regional traffic to offset potential other harm that occurs as a result of this Transaction and IMRR's position in the Watershed.

IMRR further believes that secured connectivity to CPKC is of greater importance as we consider the greater likelihood of further Class I consolidation that will occur as a result of this Transaction. For those short lines operating in the Watershed and dependent on connectivity and providing optionality to customers to eastern and western carriers (either directly or as an overhead carrier) further consolidation would represent an even great threat to their viability and further closing of alternative routings.

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

The conditions proposed by UP – Committed Gateway Pricing fail to provide the certainty and security needed to support long-term investment and optionality. In order to remedy the Union Pacific application's failures and to protect the IMRR and its customers from the negative competitive impacts of the UP/NS Transaction, IMRR respectfully requests that the Board adopt the following conditions.

### A. Trackage Rights

IMRR respectfully requests trackage rights over a line of railroad in Springfield, Illinois that NS and UP are currently constructing to route current rail traffic around Springfield. IMRR seeks trackage rights (effective upon completion of the project) over this line of railroad known as

the NS/UP Springfield Rail Improvements Project Line starting at the connection point with the IMRR in Springfield and then extending over an existing NS line to the NS connection with Canadian Pacific Railway Company just east of Route 4 and north of Interstate 72.

B. Reasonable terms

IMRR respectfully requests that the Board impose the above-mentioned traffic rights under the reasonable terms proposed in the IMRR Responsive Application. IMRR is proposing to pay UP the same trackage rights rate as UP pays to run over the Illinois & Midland Railroad from Barr, IL to Springfield, IL (9.7 miles) per its 8/27/1997 trackage rights agreement, currently {{ }} per car mile.

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

C. Indefinite Oversight

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

# VERIFICATION

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

Executed on this 18th day of November 2026



**CERTIFICATE OF SERVICE**

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



_____

Justin J. Marks