CUOH-3
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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**

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# COMMENTS AND REQUESTS FOR CONDITIONS OF THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY

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November 18, 2026

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**COMMENTS AND REQUESTS FOR CONDITIONS OF**
**THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY**

In accordance with the Board's Decision No. 30 served in this proceeding on August 18, 2026, The Columbus & Ohio River Rail Road Company ("CUOH") submits these comments and requests for conditions. The Comments and Requests for Conditions is supported by the Verified Statement of Leila Ford ("Ford VS"). In a separate filing, CUOH is simultaneously submitting its Responsive Application for trackage rights. CUOH 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, CUOH respectfully requests that the Board impose CUOH's requested conditions to ameliorate the competitive harm that the Transaction will cause to CUOH.

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. UP's statements indicate that it will prioritize single-line traffic over traffic where interchange is necessary, i.e., all short line traffic.[3]

[1] UP's proposal to acquire control of NS is referenced to herein as the "Application" or the "Transaction".
[2] Amended Railroad Control Application, STB Finance Docket No. 36873, Vol. 1, Pg 229, (filed Apr. 30, 2026 (cited to herein as App.Vol.).
[3] Ford VS at 8.

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 and especially for that traffic which CUOH currently competes for with NS.

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 CUOH customers and the market CUOH serves, CUOH seeks trackage rights to provide it with new alternative routings to western destinations.

## I. Background

### A. CUOH Is a Short Line Built to Support Utica Shale Traffic That Depends on Western Routing Options.

CUOH is a Class II railroad that operates approximately 243 miles of track in Ohio and moves over 100,000 cars per year.[4] CUOH interchanges with both CSX and NS in Columbus, Ohio, and with NS at Mingo Junction, Ohio.[5] CUOH operates approximately 243 miles of track in Ohio and moves over [redacted] cars per year.[6]. CUOH interchanges with both CSX and NS in Columbus, Ohio, and with NS at Mingo Junction, Ohio (Goulds).[7] CUOH also interchanges with the short lines Wheeling and Lake Erie Railway at Harmon, Ohio; Ohio Central Railroad at Morgan Run, Ohio; and Ohio Southern Railroad at Zanesville, Ohio.[8]

[4] *Id.* at 3.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

CUOH's business has been rebuilt several times over the past couple of decades. CUOH began operations in 1992 over approximately 260 miles of a former Conrail route from Mingo Junction to Columbus, Ohio, with about [redacted] carloads of traffic.[9] Its three largest customers in 1992 accounted for roughly [redacted]% of original carloads, and by 2015 none of those customer facilities still existed.[10] In 1998, CUOH and the Ohio Central Railroad converted short-haul coal traffic from truck to rail, a move that eventually grew to an incremental [redacted] annual carloads.[11]. That traffic was lost when the Conesville power plant closed in 2020, and roughly [redacted] additional carloads of coal moving to off-line power plants also vanished in the face of competition from natural gas.[12] Natural gas then created CUOH's next opportunity. As coal waned, development of the Utica Shale in eastern Ohio generated new frac sand, aggregate, and natural gas liquid traffic that eventually overcame the coal losses, and CUOH developed significant landfill traffic.[13] Today, CUOH moves over [redacted] cars per year over 243 miles.[14]

This reinvention has been made possible by concerted business development, creative and efficient service offerings, and large capital programs.[15] Ongoing capital investment has restored service to CUOH's entire mainline and funded new or expanded yards, connecting tracks, and industry spurs, along with tie, rail, bridge, and shop improvements and restored branch lines.[16]

[9] *Id*. at 2.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.* at 3.
[15] *Id*. at 2.
[16] *Id*. at 3.

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

*1. The Transaction Reduces CUOH Customers' Western Routing Options by 50%*

The Utica Shale formation within CUOH's market has resulted in large quantities of frac sand and aggregate being railed from western origins and interchanged to CUOH for final delivery to distribution facilities.[17] In the reverse direction, CUOH is increasingly an origin point for outbound condensate, a natural gas liquid, moving to western destinations, especially western Canada.[18] Sand supply is a highly competitive market, and the transportation component of delivered cost exceeds the cost of the sand itself, so rail optionality is a key differentiator for end users.[19] A buyer on CUOH can purchase sand from mines on any western carrier—UP, BNSF, CPKC, or CN—and all of those mines compete to supply it. Today, CUOH customers can rely on up to eight origination and overhead railroad combinations to deliver this input.[20] After the Transaction, that number falls to four.[21] CUOH also competes directly with NS-served frac sand distribution facilities in the Utica Shale. While some customers ship to destinations closest to a wellhead, much of the sand can go to transloads on either NS or CUOH.[22]

After the Transaction, the combined company will naturally prioritize frac sand unit trains originating on UP that can be shipped directly to NS-served destinations, putting CUOH's frac sand service at risk as its customers lose optionality.[23] That risk is significant: NS handled [redacted]% of the 2025 sand moving to CUOH from western carriers.[24] The same reduction, from

[17] *Id.*
[18] *Id.*
[19] *Id.* at 3.
[20] *Id.* at 4.
[21] *Id.*
[22] *Id.* at 5.
[23] *Id.* at 5-6.
[24] *Id.* at 6.

eight options to four, applies to natural gas liquids moving west from the Utica Shale, and a combined UP-NS will favor on-line NS terminals in the Utica Shale shipping to UP destinations.[25] Today, UP is an interchange partner for CUOH in moving traffic to and from western origins and destinations; once UP absorbs NS, it will no longer view CUOH as a competitive option.[26] CUOH therefore needs to preserve options for its customers' inbound frac sand from western carriers and for inbound Ohio aggregate, and to preserve options to move condensate to the western railroads so that it can compete effectively with NS originations.[27]

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

The Application does not specifically propose any conditions to resolve harms caused by the Transaction or to improve competition in the CUOH market. Rather, UP states broad commitments to service and rates through its proposed Committed Gateway Pricing.[28] However, CGP will not alleviate the harm caused by the combined UP/NS deprioritizing short-haul or the harm caused by the combined UP/NS diverting CUOH traffic to UP/NS.

*3. 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?"[29]

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[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*. .
[29] 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).

## 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.[30] 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.[31]

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

[30] *See* 49 U.S.C. § 11324(c).
[31] *Id*.
[32] *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."[33]

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.[34] 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.[35] The Board must also ensure than a transaction would promote a competitive, efficient, and reliable national rail system.[36] 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.[37]

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."[38] 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."[39]

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

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

the balancing test in determining public interest.[40] Applicants must explain "how they would preserve competitive options for shippers and for Class II and III rail carriers."[41] 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.[42]

Consistent with this approach, the Board places "greater emphasis to the role of Class II and Class II carriers and ports in the broader transportation infrastructure" in conducting its balancing test.[43] 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". [44]

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

[40] *Id*. at 27.
[41] 49 C.F.R. § 1180.6(b)(10)(i).
[42] *2001 Rule*, at 27.
[43] *Id*. at 15.
[44] *See id*. at 27.

> adverse impacts of this transaction, we will impose them as appropriate.[45]

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.[46] 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.[47] 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.[48]

## IV. Argument

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

If the Board approves the Transaction, CUOH seeks trackage rights to connect CUOH and Indiana & Ohio Railway Company (IORY) to preserve options for the movement of its customers' inbound frac sand, and other traffic, from western carriers and inbound Ohio aggregate production. It also seeks to preserve options to move condensate, and other traffic, to the western railroads to compete effectively with NS originations. These rights will ameliorate the harm the Transaction would cause and give CUOH an opportunity to generate nominal carload traffic that would

[45] *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).
[46] 49 C.F.R. § 1180.1(d).
[47] *Id.* § 1180.1(c)(i)-(iii).
[48] *See id.* § 1180.1(d).

otherwise be lost as a result of the Transaction. The Ford Verified Statement outlines the harms that CUOH will likely experience if the Transaction is approved.

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 "burden."[49] Because all CUOH traffic with UP is interchanged, UP is likely to de-market CUOH traffic in favor of its long-haul traffic if it views interchange as a burden.[50] 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.[51] Finally, it is evident that UP would concentrate on its transcontinental traffic because it has specifically stated that "joint alliances have built-in limits."[52] Given a choice between negotiated commercial agreements with CUOH requiring interchange and developing UP's transcontinental single line service, UP will clearly chose the more profitable of the two.

As the Ford Verified Statement explains, today, CUOH customers can rely on up to eight origination and overhead railroad combinations to help deliver this important input to the Utica Shale market. Post merger, this optionality is reduced to four.[53] Additionally, the Ford Verified Statement explains how the inverse is true in the opposite direction. Natural gas liquids produced in the Utica Shale moves to western destinations in increasing volumes. A combined UP-NS will

[49] App. Vol. 1, Page 244.
[50] Ford VS at 9.
[51] App. Vol. 1, Page 44-45.
[52] App. Vol 1, Page 338-339.
[53] Ford VS at 5.

favor those online NS terminals in the Utica Shale going to UP destinations and this dynamic is not limited to just sand and condensate.[54]

B. If The Board Grants CUOH's Trackage Rights, It Should Impose Conditions to Protect CUOH 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 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?"[55]

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

C. CUOH's Conditions are in the Public Interest

[54] *Id.*
[55] 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).

CUOH's trackage rights conditions are in the public interest because the trackage rights will allow CUOH to continue to provide competitive western options and alternative outlets to shippers even if UP de-prioritizes CUOH traffic and the trackage rights would allow CUOH to potentially replace revenue it will lose as a result of the transaction.

D. Description of CUOH Trackage Rights Requests

If the Board approves the Transaction, CUOH respectfully requests trackage rights to connect CUOH and IORY, which in combination with the IORY's requested trackage rights to connect to the CUOH, would provide an effective rail route option for CUOH and its customers to preserve options for those markets and beyond.

The trackage rights that CUOH is requesting extend between CP 138 (Columbus, OH) on CUOH and Springfield, OH on the IORY, including the right of CUOH to interchange with IORY at Springfield; and between CP 138 (Columbus, OH) on CUOH and Miami Crossing (Columbus, OH), including the right of CUOH to interchange with the short line Camp Chase Railroad at Miami Crossing.

## V. Conclusion

For the reasons stated above, CUOH respectfully requests that the Board grant CUOH'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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Dated: November 18, 2026

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# VERIFIED STATEMENT OF LEILA FORD ON BEHALF OF THE COLUMBUS AND OHIO RIVER RAIL ROAD COMPANY

## I. Introduction

My name is Leila Ford. I am Vice President of Sales & Marketing for Genesee & Wyoming Railroad Services, Inc. ("G&W") where I lead commercial development activities for 39 railroads, 7 switching operations, and 5 transload operations, serving approximately 1,300 customers in North America. I have 20 years in the freight railroad industry including time at G&W and CSX Transportation ("CSX"), where I started as a management trainee and held business planning and marketing roles.

The Columbus and Ohio River Rail Road Company ("CUOH", the "Line", "Railroad") has been part of my commercial responsibility since 2013, when I began my career at G&W as Manager of Sales and Marketing. Subsequent business development and commercial roles have supported business growth on CUOH and other G&W owned railroads. I expect to continue to oversee 18 railroads, including the CUOH, as the Vice President Commercial of Atlantic & Great Lakes Transportation, Inc., if and when the planned reorganization of the Genesee & Wyoming Inc. railroads is implemented.

Based on my long experience with both short line and Class I railroads, I am well positioned to consider the potential impacts of Union Pacific's acquisition of Norfolk Southern on those short lines whose commercial efforts I oversee as well as the CUOH in particular.

## II. CUOH – A Case Study in Railroad Reinvention and Redevelopment

The CUOH began in 1992 operating approximately 260 miles of a former Conrail route from Mingo Junction, OH to Columbus, OH. When operations started, the eastern 60 miles from Newcomerstown, OH east to Mingo Junction, OH were out of service with no active customers, and very little business opportunity. At that time, the railroad had approximately {{[redacted]}} carloads of traffic.

The CUOH on-line business has required wholesale replacement multiple times over the decades. The top 3 customers of the line in 1992 (Ohio Oil Gathering, Stone Container, Koch Asphalt) amounted to ~75% of the original carloads. Additional new and diverse business was secured, yet by 2015, all three of those initial customer facilities were no longer in existence

In 1998, CUOH and the contiguous short line Ohio Central Railroad converted local short-haul coal traffic from trucks to rail from the east end of the railroad to Conesville, OH, which eventually grew to an incremental {{[redacted]}} annual carloads. However, that power plant customer closed in 2020 and all that traffic was lost. Other coal traffic from that similar time period, tallying {{[redacted]}} to off-line power plants, also vanished due to fuel competition from natural gas.

Fortunately, during the waning years of coal, that same natural gas market force opened an opportunity with the Utica Shale formation development in Eastern Ohio. New frac sand, aggregate and natural gas liquid traffic eventually overcame the coal losses and CUOH has also developed significant landfill traffic.

As with other G&W railroads, the CUOH has been revitalized by concerted business development efforts, creative and efficient service offerings, and large capital programs. Committed, ongoing capital investment in the CUOH has restored service to the entire mainline. The CUOH has expanded or constructed new rail yards, new connecting tracks, industry spurs, improved tie condition, replaced rail, bridges, improved locomotive and railcar shop facilities and restored out of service branch lines.

Today the CUOH moves over {{ }} cars per year over 243 miles. It interchanges with CSX and Norfolk Southern Railroad ("NS") in Columbus, OH, NS in Mingo Jct., OH and the short lines the Wheeling and Lake Erie Railway in Harmon, OH, the Ohio Central Railroad in Morgan Run, OH and the Ohio Southern Railroad in Zanesville, OH.

## III. The Union Pacific's Proposed Acquisition of Norfolk Southern Will Cause Competitive Harm to CUOH

### A. CUOH and NS compete to serve frac sand distribution facilities with inbound traffic from western gateways.

The Union Pacific ("UP") acquisition of NS (the "Transaction") will create competitive harm in the Utica Shale market for CUOH and its customers. The Utica Shale formation located within the CUOH market requires large quantities of frac sand and aggregate for the extraction of natural gas. To meet this demand frac sand and aggregate are railed from western originations and then interchanged with the CUOH for final delivery to distribution facilities. In the reverse direction, CUOH is increasingly an origin point for important outbound condensate (a type of natural gas liquid) from the Utica Shale railed to western destinations across the continent, especially to western Canada, where it is often blended with thicker, heavier crude oils to lower their viscosity, making the mixture thin enough to flow smoothly through long-distance crude oil pipelines.

Frac sand is an important traffic source for CUOH. The exploration and production firms in the market rely on competitively priced and reliably transported frac sand for the economic and efficient extraction of natural gas liquids (propane, butane, condensate). Unlike a factory, utility, or processing plant, the frac sand supply chain is not located in a permanent position. It is essentially a transload which can migrate to locations on other railroads holding a transportation advantage within a geographic area.

Sand supply is a highly competitive market with meaningful optionality and the transportation component of its delivered cost is greater than the actual product itself, meaning rail optionality is a key differentiator for end use customers. A buyer of sand on the CUOH can purchase sand from mines located on any western carrier, including on UP, BNSF, CPKC or CN, with all of these mines competing to provide the product. Their cost includes the rail transportation from western mine through a western gateway (Chicago) and then via CSX or NS to destination on the CUOH. Recognizing that rail transportation is the most expensive component of the delivered sand, having a greater number of potential sources and railroads competing to provide a portion of the move is material to the customer.

Today, CUOH customers can rely on up to eight (8) origination and overhead railroad combinations to help deliver this important input to the Utica Shale market. Post merger, this optionality is reduced to four (4), as illustrated in the table below:

***Exhibit A. Reduction of Competitive Options***

| Current Options for Recievers | | |
|---|---|---|
| Originations | Interchange | Destination |
| UP | NS | CUOH |
| UP | CSX | CUOH |
| BNSF | NS | CUOH |
| BNSF | CSX | CUOH |
| CN | NS | CUOH |
| CN | CSX | CUOH |
| CPKC | NS | CUOH |
| CPKC | CSX | CUOH |

| Future Options for Recievers | | |
|---|---|---|
| Originations | Interchange | Destination |
| UP | NS | CUOH |
| | | CUOH |
| | | CUOH |
| BNSF | CSX | CUOH |
| | | CUOH |
| CN | CSX | CUOH |
| | | CUOH |
| CPKC | CSX | CUOH |




The need for competitive optionality for these customers is real. Using 2025 as the latest full year, sand was sourced from all four western carriers, with the majority coming via CPKC and CN originations, and then, once at the Chicago gateway, NS handled {{[redacted]}}% of the sand carloads to the CUOH and CSX, {{[redacted]}}%.

Compounding the competitive optionality landscape, the CUOH also competes directly with NS served frac sand distribution facilities in the Utica Shale. While some customers will ship to destinations that are closest to a wellhead, much of the sand can go to transloads on either NS or CUOH. Post a combined UP-NS, CUOH frac sand service is at risk as its customers lose optionality as the merged company will naturally prioritize frac sand unit trains originating on UP

that can be shipped directly to NS served destinations. Given that {{ }}% of 2025 sand to the CUOH came via NS from Western Carriers, we expect this to have a meaningful impact on competition.

This same reduction of competitive options from eight (8) to four (4) applies in the opposite direction of the example above. Natural gas liquids produced in the Utica Shale moves to western destinations in increasing volumes. A combined UP-NS will favor those online NS terminals in the Utica Shale going to UP destinations

The CUOH needs the ability to preserve options for the movement of its customers' inbound frac sand from western carriers and inbound Ohio aggregate production. It also needs to preserve options to move condensate to the western railroads to compete effectively with NS originations.

## IV. Union Pacific's Proposed Acquisition of Norfolk Southern Ignores Harms to Short Line Railroads and Specifically the CUOH

The Transaction is an unprecedented undertaking that, if approved, will meaningfully transform the transportation landscape of the United States. CUOH is not opposed to the Transaction, assuming there are appropriate protections for other industry participants like the CUOH. CUOH appreciates the potential advantages a combined Union Pacific and Norfolk Southern could create via the creation of single line, transcontinental service. However, CUOH is concerned for our specific customers and the market we serve, and whether, post Transaction, CUOH will be able to continue to provide the same level of competitive options and service levels as it does at present and that CUOH continues to remain in a position to sustainably invest and

grow. In evaluating the Application[1], CUOH believes that the Application fails to adequately address the potential impact on certain short lines, and the CUOH in particular.

UP has advocated in its filing that its proposed Transaction and the creation of a transcontinental network is necessary to offset what has otherwise been several years of flattish growth.[2] Yet, as widely recognized by the industry[3], the Board,[4] 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 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

[1] Docket No. FD 36873, *Union Pacific Corp., et al. - Control - Norfolk Southern Corp., et al*
[2] 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
[3] Oliver Wyman, "Unleash The Short Lines", 2024
[4] Surface Transportation Board, Hearing On Growth In The Freight Rail Industry Docket No. EP 775, Day 1(September 16, 2024), transcript pages 131, 267

cases any incremental traffic is simply added to the back of an existing train and hence each additional carload makes a difference.

## V. Intrinsic Harms Caused by the UP/NS Transactions that Impact all Short Line Rail Carriers and CUOH

The Union Pacific acquisition of NS creates multiple concerns to the short line industry generally and to CUOH 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 CUOH's requested conditions, CUOH respectfully requests that the Board consider the following harms that will impact CUOH.

### 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.[5] 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. CUOH 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.

[5] 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

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[6]. 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 CUOH, 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 great 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 CUOH 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. CUOH 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.

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

[6] 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

Gateway Pricing. CUOH does not believe that these proposed remedies properly address the role CUOH 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 shortlines. Under the new merger rules, 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.[7] However, 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. CUOH 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

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

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.

## VI. CUOH Proposes the Following Conditions to Remedy the Anti-Competitive Harm Caused to CUOH by the Transaction

As demonstrated above, the acquisition of NS by UP is likely to harm the customers and market served by the CUOH. UP is currently an interchange partner for the CUOH in moving traffic to and from Western destinations and originations. Once UP absorbs the NS network, UP will no longer view CUOH as a competitive option.

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

### A. Trackage Rights

CUOH seeks trackage rights to connect CUOH and Indiana & Ohio Railway Company (IORY), which in combination with the IORY's requested trackage rights to connect to the CUOH, would provide an effective rail route option for CUOH and its customers to preserve options for those markets.

Additionally, the CUOH has a track record for being an aggressive, service-intensive, short-haul railroad capable of converting truck captive shippers and markets moving within the state of Ohio. The IORY and CUOH need the ability to compete for CUOH's short-haul traffic moving within the state of Ohio, and between Ohio and Watershed markets respectively. This would give them a fair chance to generate nominal carload traffic for their requested trackage rights operations and offset further competitive harm.

Communities and local Ohio industry could benefit from having an interconnected short line service to enhance transportation competition and reduce truck traffic cost impacts on highway maintenance and the environment. In fact, {{ }}% of the scrap iron and pig iron IORY moves to Delta OH originates within Ohio. Having a CUOH to IORY connection could enable both carriers to capture more of such steel and scrap iron traffic.

The trackage rights that CUOH is requesting extend between CP 138 (Columbus, OH) on CUOH and Springfield, OH on the IORY, including the right of CUOH to interchange with IORY at Springfield; and between CP 138 (Columbus, OH) on CUOH and Miami Crossing (Columbus, OH), including the right of CUOH to interchange with the short line Camp Chase Railroad at Miami Crossing.

For further consideration is that the location of current NS frac sand terminals in the Utica play are more distant than CUOH's to the presently more active frac wells. The fall-out from a combined UPNS economically favored frac sand terminal will result in more and longer truck hauls on two-lane local roads in rural and undulating terrain increasing road safety hazards, road maintenance burden on the communities and pollution. Thus, the remedy sought by CUOH through trackage rights may provide some means for it to remain competitive with its frac sand

terminal customers by connecting to the IORY and then via potential trackage rights to the TPW for alternate western interchange partners who can originate frac sand.

B. Reasonable terms

CUOH respectfully requests that the Board impose the above-mentioned traffic rights under the reasonable terms proposed in the CUOH Responsive Application. CUOH is proposing it pays to Norfolk Southern the same trackage rights rate as Norfolk Southern pays to run over the CUOH as per the 7/3/2000 trackage rights agreement between NS and CUOH for NS trackage rights across CUOH from Gould, OH (Mingo Jct.) to Columbus, OH, currently {{ }} per car mile.

CUOH 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

CUOH respectfully requests that the Board impose an oversight period to last in perpetuity to provide CUOH with a remedy to ensure that the conditions requested above are enforceable now and into the future.

**VERIFICATION**

I, Leila Ford, Vice President of Sales & Marketing for Genesee & Wyoming Railroad Services, Inc., on behalf of The Columbus and Ohio River Rail Road Company, 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