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Office of Chief Counsel
November 19, 2026
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November 19, 2026

VIA ELECTRONIC FILING

Chief of Case Administration
Office of the Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *Union Pacific Corp. and Union Pacific Railroad Co. – Control – Norfolk Southern Corp. and Norfolk Southern Railway Co.*, STB Docket No. FD 36873

Dear Chief of Case Administration:

I am attaching for e-filing the comments of the Capital Metropolitan Transportation Authority and Petition for Leave to File in the above-captioned proceeding.

Please do not hesitate to contact me with any questions.

Sincerely,

Allison I. Fultz

Enclosure

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

PETITION OF
THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
FOR LEAVE TO FILE,
TIME FOR FILING HAVING OTHERWISE EXPIRED

Respectfully Submitted,

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Date: November 19, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

PETITION OF
THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
FOR LEAVE TO FILE,
TIME FOR FILING HAVING OTHERWISE EXPIRED

Pursuant to the Surface Transportation Board ("STB" or "Board") regulations at 49 C.F.R. 1117.1, the Capitol Metropolitan Transportation Authority ("CapMetro") hereby petitions the Board for leave to file the attached Comments, time for filing having otherwise expired. CapMetro respectfully submits that no party will be prejudiced by allowing it to file the attached comments and that the Board should accept the comments for the record.

CapMetro has been engaged in an assessment of fundamental changes in its organizational structure, and has as well been attempting to assess the potential impacts of the merger transaction proposed in this proceeding on its present and future planned operations, while at the same time preserving its focus on providing safe and reliable commuter rail service to its customers and the railroads that use its tracks in facilities in Austin. In view of those competing demands and of recent changes in staffing, CapMetro was unable to complete the attached Comments within the time set by this Board.

As a public entity providing essential public transportation options comprising commuter rail, bus rapid transit and fixed route bus, paratransit, vanpool, and bikeshare services, CapMetro's views will contribute to a complete record in this matter. In addition, this Comment is only one day late and will not delay the Applicants' ability to review the many comments and requests for

conditions filed already or the Board's ability to timely review the issues raised by the many participants in this proceeding. Because no party will be prejudiced or harmed by allowing this Comment to be submitted today, Cap Metro respectfully requests that the Board permit it to be filed today and accepted into the record.

CONCLUSION

For the reasons outlined above, CapMetro respectfully requests that the Board grant this motion for leave to file, time for filing have otherwise expired, and accept the attached Comments into the record of this proceeding.

Respectfully Submitted,

THE CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY

By Counsel



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Date: November 19, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November 2026, I caused the foregoing Petition for Leave to File, Time for Filing Having Otherwise Expired to be served electronically on all parties of record in this proceeding who have agreed to accept service electronically. Service to those parties who have requested service via U.S. Mail will occur on November 20, 2026.

Dated: November 19, 2026

By: */s/ Charles Spitulnik*
Charles Spitulnik

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD NO. 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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Counsel for the Capital Metropolitan Transportation Authority

November 19, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD NO. 36873

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

COMMENTS AND REQUEST FOR CONDITIONS OF THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Pursuant to 49 U.S.C. § 11325 and Decision No. 30 in the above-captioned proceeding, the Capital Metropolitan Transportation Authority ("CapMetro") hereby submits comments and requests for conditions on the proposed acquisition of control (the "Transaction") of Norfolk Southern Corporation and Norfolk Southern Company ("NS") by Union Pacific Corporation and Union Pacific Railroad Company ("UP"; collectively, the "Applicants"), as reflected in the Amended Railroad Control Application filed April 30, 2026, as supplemented July 7 and July 27, 2026 (collectively, the "Application").

The Applicants must demonstrate that the Transaction will advance the public interest. The unprecedented size and scope of this private railroad merger, which is projected to profoundly change the country's transportation network in many respects, necessitates safeguarding the public interest, which includes the "vital public service"[1] of commuter rail transportation provided by public regional operators to serve individual passengers. The nationwide reach of the Transaction

[1] *Union Pac. R.R. Co. v. Surface Transportation Board*, Case No. 25-2919, slip op. at 4 (8th Cir. 2026) (quoting *Commuter Rail Div. of the Regional Transp. Auth., d/b/a Metra – Terminal Trackage Rights – Union Pac. R.R. Co.*, STB FD No. 36844, slip op. at 27 (Service Date Sept. 3, 2025)).

demands an objective nationwide approach to the Applicants' engagement with public entities and project proponents across the U.S. CapMetro proposes conditions that will support the goals of the Transaction to improve freight rail service while protecting the interests of the residents, visitors, businesses, and institutions in the greater Austin region. This Board's general authority over rail transportation[2] and broad mandate to protect the public interest[3] demands that any approval of the Transaction reflect that the Applicants have demonstrated to this Board that the Transaction affirmatively meets that rigorous standard.

The largely privately-owned national rail network is an integral component of the multi-modal U.S. transportation ecosystem. UP and NS benefit from significant public investment in that network. Just in the past year, grant funding from the Federal Railroad Administration ("FRA"),[4] Federal Transit Administration ("FTA"),[5] and Federal Highway Administration ("FHWA")[6] for improvements to the nation's rail infrastructure totaled approximately $16 billion. By contrast, UP's FY 2026 capital expenditures ("cap ex") program is $3.5 billion[7] and NS' is $2.1 billion.[8]

INTRODUCTION

Established by voter referendum in 1985, CapMetro has since served as the regional public transportation provider for the greater Austin, Texas, region. Dedicated funding for the agency includes a 1 percent sales tax levied by members of its service area,[9] which comprises Austin and numerous suburbs in Travis and Williamson counties. CapMetro's service area encompasses almost

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[2] 49 U.S.C. § 10101.
[3] 49 U.S.C. § 11324(c).
[4] https://railroads.dot.gov/elibrary/fy25-26-crisi-recipients-project-summaries; https://railroads.dot.gov/partnership-program.
[5] https://www.transit.dot.gov/sites/fta.dot.gov/files/2025-11/FY26-Annual-Report-on-Funding-Recommendations.pdf.
[6] https://highways.dot.gov/safety/hsip/xings/railway-highway-crossing-program-overview.
https://investor.unionpacific.com/news-releases/news-release-details/union-pacific-reports-third-quarter-2026-results.
[8] https://fortune.com/company/norfolk-southern/earnings/q3-2026/.
[9] https://www.capmetro.org/facts.

550 square miles and a population of over 1.3 million residents.[10] CapMetro's services provide connectivity and transportation options, foster economic activity, and ensure safe, environmentally sustainable, and equitable access to opportunity. CapMetro Rail passenger commuter rail service runs between downtown Austin and Leander, providing ten stops;[11] CapMetro operates 10 trains in each direction on Monday through Saturday.[12] A map of CapMetro rail's line appears as **Figure 1**. CapMetro also operates 69 bus routes, including 14 high-frequency routes, and offers vanpool, paratransit, and bikeshare services.[13]

[10] *Id*.
[11] https://www.capmetro.org/docs/default-source/plan-your-trip-docs/schedules-and-maps-docs/capmetro-rail-map.pdf?sfvrsn=982d9d59_8.
[12] https://www.capmetro.org/rail.
[13] https://www.capmetro.org/facts.

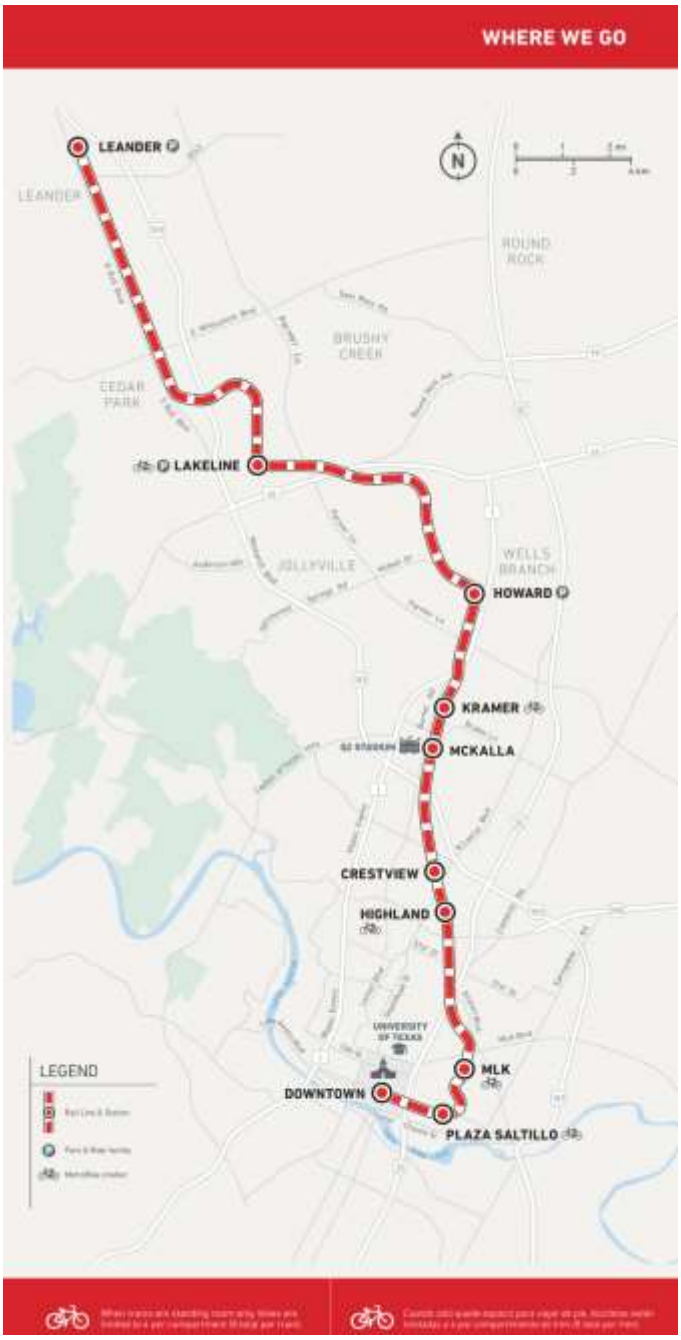

Figure 1: CapMetro Rail Map

CapMetro is unusual in that, in addition to CapMetro Rail's passenger commuter service, the Austin Western Railroad ("AWRR"), a Class III short line railroad, operates freight service between Gidding, TX, and Llano, TX, over approximately 186 miles of track and shares the corridor with passenger operations. AWRR interchanges with UP and BNSF at the northern end of the

corridor at McNeil, TX. CapMetro owns all of the rail corridor in which CapMetro Rail and AWRR operate. **Figure 2** is a map of AWRR's territory. CapMetro understands the dynamics governing shared use of a corridor by freight and passenger operations and is committed to the development and growth of both freight and passenger operations in the greater Austin region.

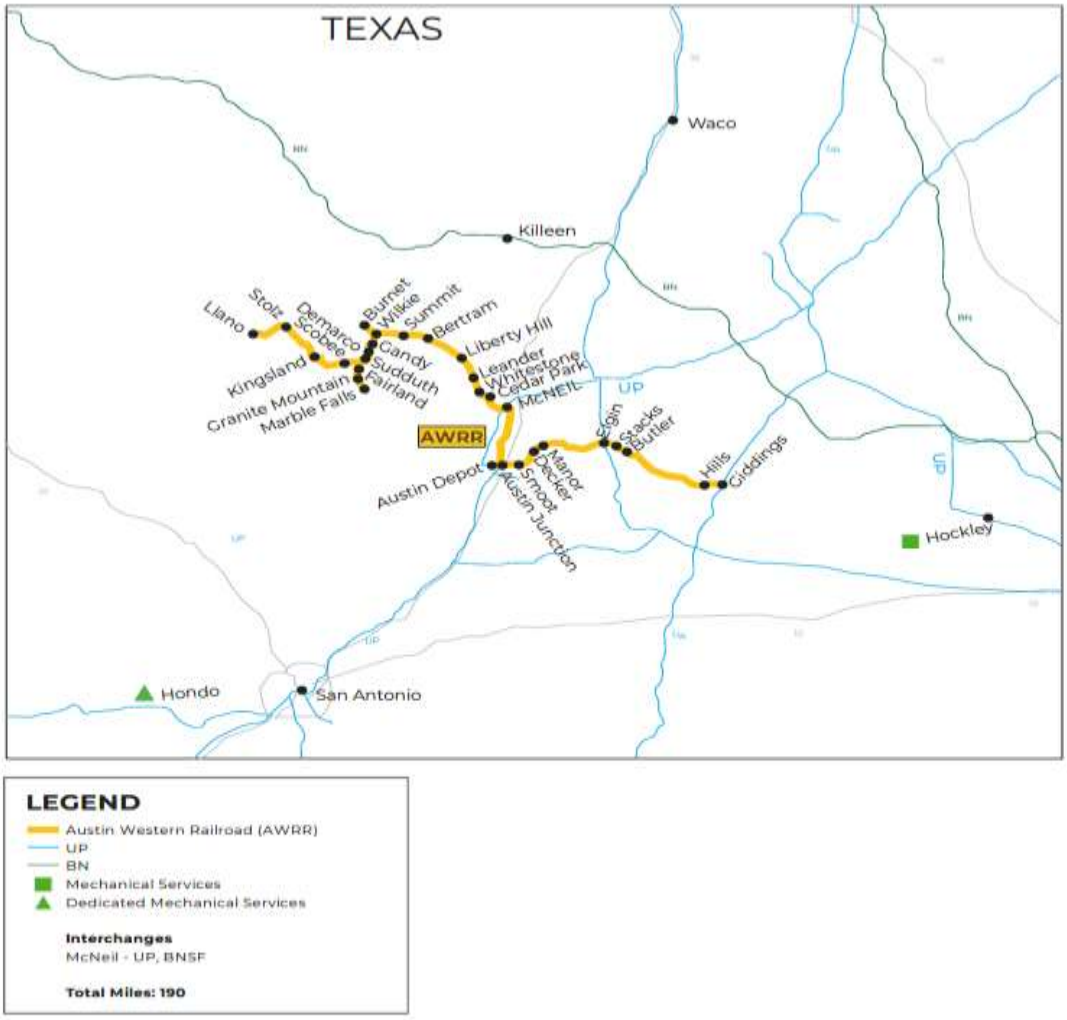

Figure 2: Austin Western Railroad Map

The following chart lists the assets to which CapMetro seeks access for its own or AWRR's anticipated expanded operations in the Austin region. As reflected in the 2024 Texas Rail Plan, the comprehensive rail planning document for the state, a new passenger rail corridor between Dallas-Fort Worth and San Antonio would pass through Austin,[14] and the facilities listed in the following chart as being located in or serving San Antonio would support those proposed operations. CapMetro's expansion proposal would facilitate the increased flow of freight through the region, while providing the potential benefit of diversion of freight traffic around the center city. This proposal anticipates increased opportunities for future passenger commuter service in a fast-growing region, including potential connection to the Austin Bergstrom International Airport.

Facilities / Location	**Location/Description**
Facilities to Support Passenger Operations	
Station Properties/ Depots/ Buildings/ Parking 2	• Austin • San Antonio • San Marcos • New Braunfels
Maintenance and Storage Yards/ Facilities to support CapMetro Rail commuter passenger operations	• Austin • Buda • Kyle • San Antonio • Giddings • San Marcos • New Braunfels • Granger
Yard and Non-Main Line Track	• Austin • Buda • Kyle • San Antonio • Giddings • San Marcos • New Braunfels • Granger

[14] 2024 Texas Rail Plan, February 2025, at 3-31, Fig. 3-6.

Facilities / Location	Location/Description
Subdivisions for Freight Operations	
	• North and South Leg of the Wye at Giddings, Texas • East Subdivision Branch-Giddings • Bergstrom Ind Lead Track 1 (from Austin Sub to Austin Bergstrom Airport) • Georgetown Industrial Lead • GRR MKT Interchange • Waco Subdivision and Granger North and South leg of the Wye • Waco Subdivision Track 1 • Old Katy Main from Austin Jct. to Georgetown
Subdivisions for Commuter Rail Operations	
	• Austin Subdivision - All Tracks 1& 2 • Del Rio Subdivision • Laredo Subdivision • Gidden Subdivision - All Tracks • Bergstrom Industrial Lead Track 1 (from Austin Sub to Austin Bergstrom Airport) • Georgetown Industrial Lead - All Tracks • Old Katy Main from Austin Jct. to Georgetown
Bridges	
	All bridges on all Subdivisions listed above, with particular emphasis on bridge on Austin Sub at the Colorado River

DISCUSSION

CapMetro offers its comments on the proposed Transaction to ensure that Transaction-related operational changes do not adversely affect CapMetro's existing passenger operations or AWRR's freight operations, or foreclose opportunities for expansion. The Application describes anticipated changes in freight rail traffic, train frequency and length, routing, operating patterns, dispatching, interchange activity, switching, terminal utilization, and use of existing rail infrastructure. These changes may directly and indirectly affect shared freight and passenger rail infrastructure, highway-rail grade crossings, and communities located along affected rail corridors.

Both for the purposes of (a) understanding and commenting on the potential effects of the Transaction, and (b) producing an accurate projection of future growth as reflected in Texas' State Rail Plan, CapMetro offers the following comments and proposed conditions to guide this Board in its understanding of the impacts of the Transaction and potential mitigation measures.

The STB's Role in Advancing the Public Interest

In reviewing a proposed merger of two Class I railroads, the Board is required by statute to determine whether the proposed merger is in the public interest. 49 U.S.C. § 11324(c). To determine whether such a merger is in the public interest, the Board is required by statute to consider "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1). This requirement for a broader consideration of the public interest in assessing mergers between at least two Class I railroads sets the standard for the Board's considerations apart from transactions involving smaller Class II and Class III railroads, which focus public interest considerations more squarely on competition for shippers. *See Commuter Rail Div. of the Reg'l Transp. Auth. v. STB*, 608 F.3d 24, 33 (D.C. Cir. 2010).

To determine whether the Application is in the public interest, the Board must perform a balancing test that weighs potential benefits to applicants and the public against the potential harm to the public. 49 C.F.R. § 1180.1(c). Potential harm to the public includes consideration of reduction of competition and harm to essential services. 49 C.F.R. § 1180.1(c)(2). The Board must ensure that essential passenger and commuter rail services are preserved wherever feasible. 49 CFR 1180.1(c)(2)(ii). An existing service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available. 49 CFR 1180.1(c)(2)(ii).

When the Board updated its major consolidation procedures in 2001, it explained that the current rules "substantially increase the burden on applicants to demonstrate that a proposed

transaction would be in the public interest, by requiring them, among other things, to demonstrate that the transaction would enhance competition where necessary to offset negative effects of the merger, such as competitive harm or service disruptions." STB, *Major Rail Consolidation Procedures*, Final Rules, 66 Fed. Reg. 32582 (Jun. 15, 2001).[15]

The Board is authorized by statute to impose conditions governing approval of railroad mergers and will condition the approval of Class I combinations to mitigate or offset harm to the public interest. 49 U.S.C. § 11324(c); 49 CFR 1180.1(d). The Board has "extraordinarily broad discretion in deciding whether to impose protective conditions in the context of railroad consolidations." *Commuter Rail Div. of the Reg'l Transp. Auth. v. STB*, 391 U.S. App. D.C. 102, 109, 608 F.3d 24, 31 (2010); see also *Village of Barrington v. STB*, 892 F.3d 252, 269 (7th Cir. 2018). The Board's selection of conditions is afforded "great deference" by reviewing courts, which will deny a petition for review of the Board's decision as long as that decision is supported by substantial evidence in the record and was reached by reasoned decision-making. *Village of Barrington*, 892 F.3d at 269. The principal harms for which conditions are appropriate include the loss of the ability to provide essential services. *Canadian Natl. Ry. Co. et al. – Control – Illinois Central Corp. et al.*, 4 S.T.B. 122, 141 (1999).

Commuter passenger rail service is integral to the public interest.

The Eighth Circuit Court of Appeals recently upheld a decision of this Board granting terminal trackage rights to the Commuter Rail Division of the Regional Transportation Authority ("Metra") in the Chicago area because granting such rights would "ensure the provision of

[15] The 2001 rules no longer expressly require that each condition be shown to remedy a particular impact of the consolidation. Instead, they authorize conditions designed to mitigate or offset merger-related public-interest harms and expressly contemplate competition-enhancing conditions, subject to operational feasibility, net public benefits, and the requirement that conditions not undermine or defeat an otherwise beneficial transaction. *Compare* 49 CFR 1180.1(d) (2026) *with* 49 CFR 1180.1(d) (2000).

adequate rail service to the public."[16] The Eighth Circuit framed individual commuters as analogous to the shipping public in the freight context since both commuter passengers and shippers require "service between desired points".[17] This clear and simple articulation of the public interest embodied in a region's rail passengers serves as a useful measure of the Applicants' statutory obligation to demonstrate that the Transaction is consistent with the public interest.

The service economy continues to expand, and with it so does the demand for transportation options for workers in that sector. This Board must ensure that the operations of a merged railroad do not preclude either improvements to existing passenger commuter rail service or expansion of passenger systems.

CapMetro requests that the STB attach the conditions contained in the following items to protect CapMetro's vital public interests in the event the Board approves the Transaction. We intend these conditions to be practical, enforceable, and commercially reasonable.

PROPOSED CONDITIONS

1. Shared-Corridor Capacity

The Application does not adequately address the effect of the merger on freight and passenger rail operations in the greater Austin region and between Austin and San Antonio. Applicants should be required to accommodate foreseeable passenger service expansion as reflected in the 2024 Texas Rail Plan.

The Applicants assert throughout the Application that the Transaction will not adversely impact existing passenger rail service, but do not support this assertion with any specificity or address anticipated passenger or short line freight service expansion. For instance, the Applicants

[1] *Id*.
[17] *Id*. at 7.

assert broadly that "[t]he UP/NS merger will not result in any adverse impact to passenger operations,"[18] and, as a discrete example, a discussion of impacts to Metra's service declares that "UP's route has sufficient capacity to support the projected freight increase while maintaining the current passenger service levels."[19] This brief and generalized characterization is typical throughout the Application, and does not address foreseeable freight or passenger rail service expansion as reflected in individual state rail plans, other medium-range planning documents, or among projects that have been awarded federal grants for planning, development, or construction.

With respect to impacts to passenger operations, the analysis Krystof Zetenyi offered in his Verified Statement dated July 20, 2026, employs generalized retrospective regression models to evaluate the relationship between passenger train delays and freight capacity utilization. Dr. Zetenyi's methodology is designed to analyze economic behavior and trends in a variety of contexts and does not provide particular insights applicable to the rail industry. Furthermore, the analysis is observational rather than predictive; it does not take into account forward-looking operational changes such as the longer freight trains the Applicants propose or expanded passenger service.

More robust modeling would yield a finer-grained analysis that would allow the Board and industry participants to understand the implications of the Transaction in a dynamic future. As one recent example, RTC modeling became a particular focus in this Board's proceeding to resolve issues relating to the re-establishment of Amtrak's Gulf Coast Service, now operating as the Mardi Gras, over NS' track. Neither NS, the host railroad, nor Amtrak, had performed modeling to evaluate the impact of re-established passenger service on the route, and the Board found this omission hindered its ability to build a record and render a well-supported decision. The Board

[18] Application, Vol. 2, p. 1044.
[19] Application Vol. 2, p. 758.

noted that it "expects that evidence on the service's potential effects on freight transportation, such as an RTC study or other study or studies, will be part of the record in this proceeding, as well as any competing studies or other competing evidence, together with all the inputs, assumptions, and methodologies underlying any study results, including all relevant traffic projections." *Application of the Nat'l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. & Norfolk S. Ry. Co.*, FD 36496, slip op. at 7 (STB served Aug. 6, 2021) ("*Gulf Coast*"). Moreover, the Board noted that those studies should take into account "the line's present and future traffic volumes and engineering design and conditions" to account for "the specific service" proposed. *Id.*

Analysis similar to the quality the Board demanded in *Gulf Coast,* that includes a sample of geographically-diverse passenger rail services, would go a long way to establishing credibility in the Applicants' approach to protecting the vital public interest of intercity passenger rail. The Applicants have offered generalized, backward-looking analysis to support broad assertions that the Transaction will not impede existing passenger rail service, an approach that does not support this Board's efforts, nor CapMetro's ability, to understand the actual impacts of the Transaction on existing intercity passenger rail service, let alone foreseeable future impacts of the Transaction.

CapMetro requests that this Board require the Applicants, as a supplement to the Application, to perform dynamic capacity simulation modeling (e.g., Rail Traffic Controller / RTC) for the complete Austin area rail network, rather than annual average daily traffic counts, to determine the effect of the merger on passenger and freight rail operations. The modeling should evaluate:

- Temporal distribution of transaction-related freight movements relative to scheduled CapMetro Rail service windows.
- Physical constraints at junctions, sidings, and terminal interlockings,.

- Concrete, enforceable passenger mitigation commitments and capital protections before operational authorizations are granted.

Proposed Condition

The Board should, as it indicated in *Gulf Coast*, require Applicants, as part of the Application, to perform modeling to gain a true understanding of the range of potential impacts of the Transaction on existing and reasonably anticipated freight and passenger operations. Such an effort will establish a baseline condition for existing service and provide initial indications as to options for future expansion of freight and commuter passenger rail service in the region. This Board should require modeling for significant operational changes or capital improvements above a certain threshold at least throughout the post-merger monitoring period. CapMetro requests that the Board require Applicants to (a) maintain familiarity with Texas' state rail plan as it is updated and (b) reach out proactively and affirmatively to CapMetro, other state regulatory agencies, and AWRR to coordinate on proposed operational changes or capital plans. The Applicants should be required to model the anticipated impacts of the Transaction against a range of actual and potential operating profiles for AWRR's short line movements. Having modeled a range of potential impacts, Applicants should be required to implement mitigating measures through operational refinements or infrastructure investments.

CapMetro requests the Board require the Applicants to maintain and preserve existing interchange access and service arrangements with AWRR. Where such changes adversely affect service reliability, interchange responsiveness, or access to markets, the Applicants should be required to identify and implement appropriate operational or infrastructure mitigation, at no cost to CapMetro or AWRR.

2. Methodological and Analytical Deficiencies

Timeline clarity is essential to understanding the proposed merger's effects. The source workpapers for the Base Plan and Growth Plan fail to define specific horizon years, obscuring the timeline over which projected operational growth will occur.

CapMetro requests this Board require the Applicants to supplement the Application to provide clear baseline, implementation, and future horizon years for the Transaction.

CapMetro urges this Board to ground any approval of the Transaction in empirical baselines that reflect the operational reality of the nation's rail network. The Application documents increased risk to passenger and short line freight rail operations without committed mitigation, and shifting freight densities. To safeguard the greater Austin area's transportation infrastructure and communities, the STB must mandate dynamic capacity modeling for passenger rail effects, transparent local train data, and binding mitigation conditions.

Proposed Condition

CapMetro requests this Board require the Applicants to perform predictive modeling of their own proposed expanded operations and existing and expanded passenger and freight operations in and around Austin and between Austin and San Antonio. Having established a baseline through this initial modeling process, Applicants should be required to propose specific mitigation measures, a schedule for implementing them, and, as applicable, a financial framework to identify sources of funding.

CONCLUSION

For the reasons outlined above, CapMetro respectfully requests that the Board only approve the Transaction if it imposes the requested conditions.

Respectfully Submitted,

THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By Counsel



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Date: November 19, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November 2026, I caused the foregoing Comment and Request for Conditions by the Capital Metropolitan Transportation Authority to be served electronically on all parties of record in this proceeding who have agreed to accept service electronically. Service to those parties who have requested service via U.S. Mail will occur on November 20, 2026.

Dated: November 19, 2026

By: */s/ Allison I. Fultz*
Allison I. Fultz
Partner
Kaplan Kirsch LLP

cc: All Parties of Record (via email or first class mail)