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STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

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SECRETARY

November 18, 2026

Chief of Case Administration, Office of Chief Counsel
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

RE: Finance Docket No. 36873, *Union Pacific Corporation and Union Pacific Railroad Company–Control–Norfolk Southern Corporation and Norfolk Southern Railway Company*

Dear Chairman Fuchs and Members of the Board,

Please find enclosed the Comments and Request for Conditions of the North Carolina Department of Transportation ("NCDOT") in the above-captioned docket.

NCDOT thanks the Board for the opportunity to participate in this process. NCDOT has reviewed the Amended Application closely and noted its potential impacts to key priorities for NCDOT, including the growth of passenger rail, support for a strong freight rail network, and promotion of safety across all transportation modes. NCDOT looks forward to working with the Applicants, other stakeholders in North Carolina, and the federal government to ensure that rail remains a growing and important part of the state's transportation system.

Sincerely,

Daniel H. Johnson
Secretary of Transportation
North Carolina Department of Transportation

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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 NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

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COMMENTS AND REQUEST FOR CONDITIONS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

The North Carolina Department of Transportation ("NCDOT") respectfully submits these comments in the above-captioned proceeding pursuant to the procedural schedule adopted by the Surface Transportation Board ("Board") in its decision served August 18, 2026 (Decision No. 30). This proceeding concerns the Revised Application accepted May 28, 2026 (the "Application"), and submitted by Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UP"), Norfolk Southern Corporation ("NSC"), and Norfolk Southern Railway Company ("NS"; collectively, "Applicants") seeking Board authority for the acquisition of control of NSC and NS by UPC and UP (the "Transaction").

DESCRIPTION OF NCDOT AND ITS INTERESTS

I. Role of NCDOT

NCDOT is an executive agency of the State of North Carolina charged with providing "for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law." N.C. Gen. Stat. § 143B-346. NCDOT "develop[s] and maintain[s] a statewide system of roads, highways, and other transportation systems commensurate with the needs of the State as

a whole." *Id.* § 136-44.1. One such "transportation system" is the state rail system. NCDOT is authorized to develop "a State railroad plan, and . . . to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State." *Id.* § 136-44.36(a).

North Carolina invests substantial funding in the rail system annually, and NCDOT oversees and manages those investments. For example, between Raleigh and Charlotte, North Carolina has invested over $1 billion in the North Carolina Railroad ("NCRR") since 1990 on modernization projects that increase safety, remove bottlenecks, and allow for additional freight and passenger service.

The need for that investment grows more pressing each year. Since Congress finished reforming the freight rail industry with the passage of the Staggers Rail Act in 1980, North Carolina has increased in population, almost doubling from 5,881,766 people to 11,197,968 people as of 2025.[1] With this change in local population has come a broadening of local concern and initiative to encourage railroad system development in the state to meet both passenger and freight demands. Accordingly, the State Rail Plan that NCDOT has adopted provides for several goals designed to bolster the state rail system and ensure that the rail network remains reliable and able to meet North Carolina's needs for passenger and freight transportation.

II. NCDOT's Interests in the Proceeding

This proceeding implicates key priorities and interests for NCDOT.

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[1] *Historical Population Change Data (1910-2020)*, U.S. Census Bureau (Apr. 26, 2021), https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html; *State Population Totals and Components of Change: 2020–2025*, U.S. Census Bureau (Jan. 2026), https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html.

A. Strong Passenger Rail Network

NCDOT promotes passenger rail by administering the state-sponsored intercity passenger rail program with the National Railroad Passenger Corporation ("Amtrak") for the *Piedmont* and *Carolinian* routes. Since NCDOT began state sponsorship of the *Carolinian* in 1990, NCDOT and Amtrak have gradually increased the frequency of service between Raleigh and Charlotte, which has led to increased ridership in both absolute terms and on a service-adjusted basis. For example, the *Piedmont*'s passenger miles per train mile, as reported by the Federal Railroad Administration ("FRA"), have increased from 67 for fiscal years 2009 and 2010 to 93 in the 2-year period between the third quarter of 2024 and the 2nd quarter of 2026, an increase of 39%.[2] NCDOT has partnered with Amtrak, NS, CSX Transportation ("CSX"), and NCRR to reduce trip times and increase trip frequency in the state since 1990. These efforts have made Amtrak service in North Carolina more appealing, attracted more riders, and thereby promoted state goals and the public interest. NCDOT is interested in ensuring this proceeding does not jeopardize those efforts.

B. Grade Crossing Safety

Pursuant to its statutory mandate, *see* N.C. Gen. Stat. § 136-20, NCDOT actively pursues grade crossing safety improvements, especially investment in elimination of hazardous crossings. NCDOT adopted a policy to eliminate crossings, where feasible, with an exposure index (vehicles per day times trains per day) over 35,000 in urban areas and over 17,500 in rural areas. Consistent

[2] These figures are based on aggregated data from FRA quarterly reports. *See, e.g.*, Fed. R.R. Admin., Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations Covering the Quarter Ended September 30, 2010, at 5 (2011), https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/1503/FY_2010_Q4_PRIIA_207_Report.pdf; Fed. R.R. Admin., FY26 Q2 Financial Metrics (July 21, 2026), https://railroads.dot.gov/elibrary/fy26-q2-financial-metrics.

effort since the 1990s has resulted in approximately 80 crossings closed along the corridor between Raleigh and Charlotte and over 300 crossing closures statewide.

As part of these demonstrated continuous efforts to close crossings, NCDOT partners with every railroad operator in the state to invest in engineering, design, and construction of grade crossing improvements. For specific project development efforts, NCDOT, in conformance with state and Federal rules, reimburses railroads for actual costs of engineering, design, and construction of crossing closures, grade separations, and crossing improvements. NCDOT seeks reciprocal collaboration from railroads, and routinely requests that they assist in developing construction projects and other interventions to improve rail-highway grade crossing safety.

C. Support for the State Ports Authority

NCDOT oversees the North Carolina State Ports Authority ("NC Ports"). NC Ports owns and operates the state ports at Wilmington, North Carolina, served by CSX, and Morehead City, North Carolina, served by NS. The Port of Morehead City focuses on growing its general cargo and breakbulk businesses significantly through carload service provided by NS and switching carrier handling by Carolina Coastal Railway ("CLNA"). North Carolina General Cargo volumes are set to nearly double by 2045, reaching 16.1M tons, driven by gravel, fertilizers, and forestry trade with the Americas and the European Union.[3]

D. Collaboration with the North Carolina Railroad Company

NCRR is a private corporation that owns and manages the 317-mile rail corridor stretching from Charlotte to the Morehead City Port Terminal. The Company's stock is owned by the State

[3] N.C. State Ports Authority, North Carolina Ports Strategy 2031: Strategy Document at 33 (2026), https://ncports.com/wp-content/uploads/2026/05/NC-Ports-Strategy-2031_Final-Report-1.pdf.

of North Carolina. The Board of Directors is selected pursuant to N.C. Gen. Stat. § 124-15, which provides the leadership and management of the organization. The NCRR is a Class III, non-operating railroad company. It has an exclusive trackage-rights agreement with NS.

NCDOT collaborates with NS and the NCRR in a unique partnership to benefit North Carolina. Certain aspects of the Application impact this partnership and will be addressed specifically. While NCDOT does not control the NCRR, the authorized policy interests of NCDOT and NCRR intersect on a daily basis, and investment by the state in the NCRR through NCDOT has resulted in ongoing operational ties among NCDOT, NS, and NCRR to advance each entity's freight, passenger, and safety initiatives.

E. Policy Goals of the Draft State Rail Plan

NCDOT seeks to advance passenger and freight rail service in the state to support the state's economy and welfare. In that respect, NCDOT has adopted a State Rail Plan that describes particular public interest goals towards which NCDOT works. NCDOT last adopted a State Rail Plan in 2015, and recently issued and solicited public comment on a new draft State Rail Plan that includes the following goals:

Goal 1. Provide Access for Freight and Passenger Rail Users

Goal 2. Continuously Improve Rail System Safety

Goal 3. Enhance the Resiliency of Rail Infrastructure

Goal 4. Contribute to the Health of the Overall Statewide Transportation Network

Goal 5. Realize Economic Opportunities by Supporting Existing and Potential Rail Service Markets, Industries, and Businesses[4]

[4] *See NC State Rail Plan*, NCDOT Engagement Hub, https://publicinput.com/nc-staterailplan (last visited Nov. 18, 2026); NCDOT, Draft Comprehensive State Rail Plan § 1.2 fig.

These state policies are fundamental components of the public interest that the Board must consider in evaluating the Application.

III. NCDOT's Position on the Transaction

NCDOT has serious concerns about the proposed Transaction, given the likelihood that increased consolidation will lead to higher prices for those who rely on rail transportation. Families across the United States are already struggling with the rising cost of basic necessities, and businesses nationwide are facing significant economic pressures. Any proposed transaction that will lead to greater concentration in an important industry threatens to exacerbate this affordability crisis.

If the Board is inclined to approve the Transaction notwithstanding these serious concerns, NCDOT encourages the Board to adopt the conditions detailed below to ensure that the Transaction would align more closely with the policy goals of North Carolina's rail planning process. In addition, if the Board approves the Transaction, it should deploy its ability to implement post-approval remedies, design metrics, and conditions that provide efficient processes for parties seeking Board assistance on post-approval issues.

ANALYSIS OF THE APPLICATION

Based on the Application, the Board's adopted rules at 49 C.F.R. Part 1180, and NCDOT's understanding of the state's transportation system, NCDOT comments on the Transaction are as follows:

1-2 (2025), https://publicinput.com/Customer/File/Full/566aad9c-6953-455a-a1be-2d426b114b88.

I. Passenger Rail

The Application does not meaningfully address the State's stewardship of the *Carolinian* and *Piedmont* routes over current NS-dispatched or controlled railroad territories, nor does it address NCDOT's State Rail Plan goals to enhance access to the passenger rail system through implementation of additional intercity passenger rail improvements. NCDOT's expected process for service changes that add any perceived line-haul capacity burden on a carrier's network is that the change will be subject to microsimulation through the railroad's chosen software provider, Rail Traffic Controller ("RTC"). In the Applicants' Second Response to Decision No. 21, the Applicants "addressed the projected merger impact to each hosted operation and confirmed based on segment-by-segment capacity analyses that lines expected to experience merger-related traffic growth would either have sufficient capacity to support projected freight increases while maintaining service levels or sufficient capacity investment would be made to accommodate merger-related growth." UP-80/NS-78, Applicants' Second Response to Decision No. 21, at 165. The analysis claimed by the Applicants in this statement:

1. does not reflect the rigor of microsimulation, especially the impact of train scheduling and the randomization used to evaluate the robustness of an asserted scenario, and
2. does not reflect NCDOT's ongoing discussions with any railroad regarding the line-haul capacity required to operate additional train services.

These omissions raise concerns under the public interest standard of 49 C.F.R. § 1180.1(c).

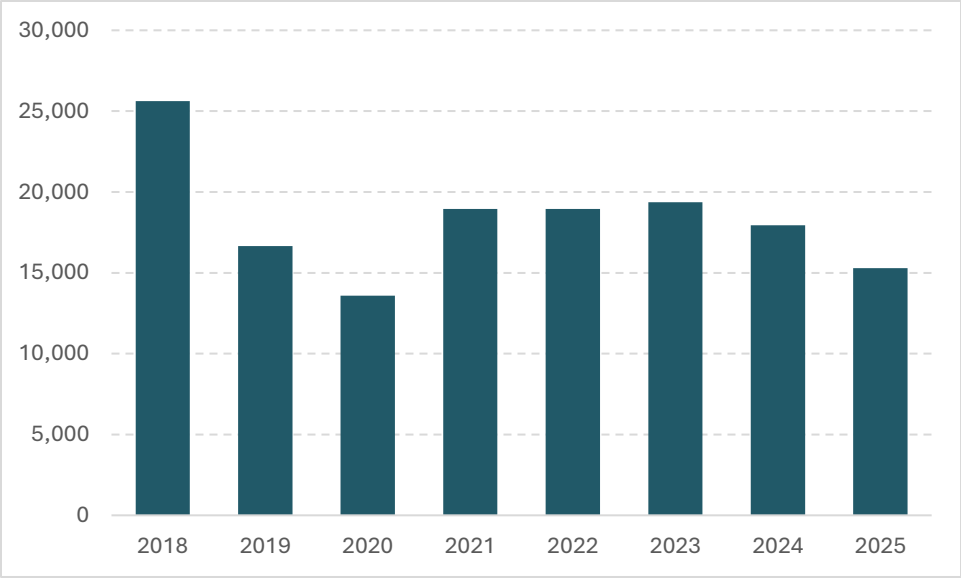
A. <u>Increased Freight-Caused Delays to State-Supported Amtrak Service</u>

The Applicants have made no showing of potential benefits to NCDOT's sponsored routes at their existing frequencies or any metrics associated with NS's host railroad relationship to the routes. The Applicants might have included measures bolstering passenger rail service in North

Carolina, such as capital investments or measures intended to bolster the reliability of freight trains that share corridors with NCDOT's sponsored routes, but no such measures are apparent in the Application or supporting documentation.

To the contrary, NCDOT has identified several potential concerns arising from the Transaction that should have led the Application to include mitigations or other improvements to the shared corridor used by NCDOT's state-supported services to satisfy the Board's public interest standard. These would begin with the transition of freight railroad schedules as the merged railroad implemented the Parties' proposed Optimized Plan. The *Piedmont* and *Carolinian* services have experienced significant service disruptions, including longer and more frequent delays, when changes are made to railroad operating plans. Delay minutes on NS were particularly high in 2018 when NS implemented significant operating changes.

Figure 1: Annual Delay Minutes per 10K Train Miles for NCDOT Services on NS[5]



[5] Data from Amtrak on-time performance information provided to NCDOT.

But, unlike that previous spike in delays, there is a risk that delay-minutes would remain elevated or increase further as the merged railroad grows traffic and implements the Growth Plan. The *Carolinian* and *Piedmont* already reflect relatively low customer on-time performance: The customer on-time performance (COTP) of each service in FFY 2025 was 61% and 77% for the *Carolinian* and *Piedmont*, respectively,[6] whereas 80% OTP is the federally established service benchmark.[7] The addition of 3 or 4 additional freight trains per day on portions of the *Carolinian* and *Piedmont* routes, and the likely lengthening of trains based on the proportionally greater increase in projected carloads, threaten to upset operations for which OTP is essential and cause additional delay – but the Application does not contain sufficient information to analyze actual impacts. The Applicants included an analysis by Kristof Zetenyi that purports to show that increasing the number of trains on a line past its fluid capacity would not impact the performance of passenger service on the line, but this analysis is implausible, does not take into account operating conditions or constraints, and, like the Application as a whole, does not address the importance of scheduling and dispatching in ensuring successful passenger service delivery.

B. Disruption of the Established NS-NCDOT Relationship

These problems could be aggravated by the disruption to NCDOT's established relationship with NS. NCDOT currently highly values a particularized approach to its close coordination with NS for sponsorship of the *Piedmont* and *Carolinian*. If the merged railroad centralizes key functions to Omaha, Nebraska, that coordination will be interrupted and will require reestablishment at administrative cost to NCDOT. NCDOT is likewise concerned that

[6] Fed. R.R. Admin., *FY 25 Customer OTP Metrics* (Jan. 7, 2026), https://railroads.dot.gov/elibrary/fy25-q4-customer-otp-metrics.

[7] The on-time performance standard is defined in 49 C.F.R. Part 273ff.

personnel dedicated to coordination with state sponsors of rail services will decrease and thus become less able to understand and incorporate differing local approaches to coordination of similarly situated state-sponsored intercity passenger rail services.

C. Omission of Consideration of Future Passenger Service Expansion

In NCDOT's State Rail Plans and in ongoing coordination with NS, there has been substantial discussion and planning for additional intercity passenger rail service to be implemented in the state. In particular, NCDOT believes that the following proposals are highly mature and are subject to immediate coordination with NS on next steps towards implementation:

Raleigh to Charlotte Sixth Frequency

NCDOT, NS, NCRR, and Amtrak have completed planning efforts to implement one additional round trip, the sixth such frequency, between Raleigh and Charlotte, for which efforts began in 2010. Recent Federal grant awards and technical analysis by NS have provided the line-haul capacity basis for implementation of this service. NCDOT requests in its conditions that NS support and complete remaining steps for Amtrak to operate the frequency.

Salisbury to Asheville New Service

NCDOT and NS have completed various planning studies for possible intercity service to Asheville, North Carolina over many years. NCDOT understands that NS has been prepared to analyze line-haul capacity and modernization needs for this service to be implemented for some time and was awaiting internal technical analysts to be available to conduct RTC modeling of the proposed route. NCDOT is concerned that its assumed schedule for this analysis and subsequent implementation may be affected by the Transaction.

Raleigh to Wilmington New Service

NCDOT has completed a preliminary study for implementation of a proposed new intercity passenger rail service linking Raleigh to Wilmington, North Carolina. NS would host the route over the NCRR between Raleigh and Goldsboro, North Carolina. NCDOT would like to ensure that development of this service towards implementation does not decelerate due to changes in personnel or priorities in the Applicants' decision-making systems or methods.

In order to address risks of deterioration or disruption to the experience of existing riders on NCDOT's sponsored services and to address the risk of public projects to implement new service being upset, a variety of monitoring, compliance, and other strategies are possible. NCDOT requests the conditions described in this document to implement these strategies.

II. Benefits to the Transportation System

A. Claimed Efficiencies and Benefits to Shippers

NCDOT has determined that it cannot fully evaluate whether the merger will generate the claimed efficiencies and whether North Carolina shippers, businesses, and consumers will receive the benefits of those efficiencies. NCDOT acknowledges that, for certain commodities, the merged railroad may very well provide efficiencies for shipments. However, the Application does not permit a conclusion as to whether those efficiencies will be realized. The Application should model or commit to "public benefits" that would be concretely "shared with shippers and consumers," 49 C.F.R. § 1180.1(c)(1), and NCDOT believes that that standard can only be ensured through Board-imposed conditions.

NCDOT is also concerned that the Applicants have not engaged in meaningful public engagement or fact-finding to discover public interest concerns or identify public interest harms, costs, or benefits to the Application. The Applicants appear to have solely focused on the limited

segment of railroad freight traffic that could be positively impacted by a best-case scenario in the merger, rather than providing a comprehensive view of important stakeholders' previously articulated information, goals, and objectives for railroads as part of a transportation system. Given that gap, the impact of the Transaction on the public interest must be informed by pre-existing public engagement completed by the State of North Carolina, especially as the public interest relates to Federally-accepted planning documents, such as the state rail plan.

NCDOT is concerned that the merged railroad will only generate efficiencies if infrastructure on the network is able to accommodate optimum train lengths for intermodal, unit, or merchandise trains. In order to assess whether or not North Carolina will realize the benefits of a merged network, the railroads should support and participate in a series of interchange studies to assess potential infrastructure needs at points where the merged railroad and short lines interact to clarify for NCDOT to what extent the Applicants' desired efficiencies in train length or reduced train handling would create an infrastructure cost burden on either NCDOT or the public due to blocked crossings or reduced economic competitiveness without interchange capacity increases. This will help ensure that North Carolina's past investments in short lines continue to move freight to and from market and provide public benefits.

B. Diversion of Traffic from Truck to Rail

NCDOT also recognizes that the public interest would be served by diverting traffic from truck to rail but remains unconvinced that those diversions will materialize for traffic originating and terminating in the state. The public interest justification of the Transaction with respect to competition and changes in traffic does not seem to be addressed to ordinary rail shippers or, especially, marginal rail shippers who are most likely to switch, perhaps even dynamically, between truck and rail. Traditional customer service market research indicates that shippers

weighing truck against rail value equipment availability and responsive key contacts at rail shipping partners.[8] The Application does not address these types of concerns in a meaningful way to indicate that the Applicants are interested in pursuing the marginal shipper's traffic.

C. Downstream Mergers

Finally, the Application does not address with any specificity the Board's requirement in 49 C.F.R. § 1180.6(b)(12) to discuss downstream merger applications. NCDOT and many of its stakeholders have been concerned that a follow-on merger involving one or more other Class I carriers would further strain the issues and challenges presented in these comments. The Applicants could engage with this requirement by modeling, scenario building, or many other types of analysis. NCDOT interprets the Applicants' lack of engagement with this requirement as a way to avoid conclusions on impacts that would strongly impact ordinary shippers and entities like NCDOT with substantial financial stewardship that depend on safe, reliable railroad operations and coordination activities.

III. Impacts to Ports

NCDOT is concerned that the Transaction will result in no direct or indirect benefits, as understood under 49 C.F.R. Part 1180, and potentially significant harms, to NC Ports, which would negate balancing an evaluation of the merger Application towards a positive finding towards the public interest.

The Application does not address efforts by the Applicants to improve the accessibility or connectivity of NC Ports to the greater rail network or the extent to which proposed operational

[8] James Miller & Michelle Bowling, *Bridging the Rail-Shipper Gap*, Oliver Wyman (Nov. 2025), https://www.oliverwyman.com/our-expertise/insights/2025/nov/shippers-demanding-better-rail-pricing-and-services.html.

changes may improve the ability of NC Ports or its customers to use rail shipping instead of trucks. The primary ways the Applicants could plausibly claim increased rail usage would be through proposals to reduce the operating costs of NC Ports or the railroad shipment rates for shipments that NC Ports markets with its customers. NCDOT believes that a potential outcome of the Application's proposed operational changes for legacy NS will result in challenges to business recruitment for NC Ports at the Port of Morehead City and a reduction in volumes shipped by rail instead of increases and/or lower shipping costs, as would be necessary to believe the Transaction has public interest benefits for this area of evaluation. Moreover, because the Port of Morehead City is solely served by NS, the Transaction may reduce competition over service lanes over portions of the North American rail network served by UP where any NS-interchangeable carrier provides a valid route.

A primary concern would be that the Transaction would result in a reduction in the service days provided to the Port of Morehead City by NS, which would have the effect of reducing the practical ability of NC Ports to ship imports and exports by rail. But as the worldwide trend toward increases in container ship size has shown, less frequent, larger shipments require substantial investments in terminal infrastructure to accommodate proposed size increases.[9] At the Port of Morehead City, the configuration of the terminal and integrated rail infrastructure does not easily lend itself to increasing the size of trains originating or terminating there. Substantial capital investment would be required to increase train lengths by any measurable amount. NC Ports operations at the Port of Morehead City provide essential breakbulk service to a variety of different

[9] Rachel Premack, *Giant Container Ships Are Ruining Everything*, FreightWaves (May 19, 2022), https://www.freightwaves.com/news/big-boats-are-ruining-everything.

shippers that support statewide and regional industrial needs, so the potential for diminished service is a significant concern.

Moreover, disruptions to service due to transitional service problems could pose issues for the Port of Morehead City. Again, the Port of Morehead City primarily serves customers with specific breakbulk cargo missions. As such, the utility of a particular cargo is temporally bound to a specific schedule defined in advance of any shipment. Delays in service in the middle of a cargo's supply chain journey may often propagate to other parts of the chain. Any disruption in its current service pattern with NS would result in cargo imbalances at the Port, especially given that the Port of Morehead City already uses rail heavily on its current scheduled service pattern.

To address the above risks, the Application could be improved by offering additional competition to the Port and its customers. Fluid interchange to short haul connections with other carriers or committed extensions of current pricing terms in the future would help mitigate potentially serious harms.

IV. Grade Crossings and Highway Network Interaction

Impacts to grade crossings in North Carolina implicate the public interest in two ways. First, blocked grade crossings cause disruption to surrounding communities, impede emergency response, and harm local economies, public health, and the environment. Second, grade crossing improvement projects require state resources that cannot be spent elsewhere, resulting in significant opportunity cost when grade crossing conditions deteriorate and additional state intervention is needed. NCDOT is concerned that the Transaction could result in both impacts. The Applicants have not addressed grade crossing safety project development in North Carolina. NCDOT projects that it is likely to incur additional cost, both monetary and temporal, to implement

new projects if the Applicants consolidate current safety relationships into one continuous organization.

A. Grade Crossing Safety Impacts of Longer Trains

In North Carolina, the Applicants project that the Transaction would simultaneously maintain or increase the number of through trains per week as pre-merger while also increasing NS system average train lengths for thru freight trains, consistent with R-1 annual report operating statistics as presented to the Board. UP-39/NS-37, Amended Application, at 2-801 ("Applicants plan that UP/NS will increase train lengths of legacy NS trains . . . .").[10] This operational proposal may impact NCDOT's grade crossing safety programs by requiring re-examination of existing analysis completed on grade crossings that determine adequate and prudent protections at each individual crossing. Since the analysis method requires data collection and professional judgment at each individual crossing, this proposal may result in substantial additional preliminary engineering expense to NCDOT.

[10] UP operates longer typical trains than NS does. UP-39/NS-37 at 2-801. However, it is unclear from the Application to what extent the Applicants project that they will be able to increase train length to the level of UP's current operations. The Operating Plan's assertion of planned train length growth assertion must be juxtaposed against the possible train length outcomes reflected in the Workpaper "Synergies Transportation – Operating", tab "Train Length," which {[redacted]}. In 2025, UP through trains were on average 96.6 cars and NS trains were 74.0 cars, or about 30% longer than NS trains. *See* Class I Railroad Annual Report, Norfolk Southern Combined, tab "755" (line 4-193 divided by row 2-03); Annual Report of Union Pac. R.R. Co. to the Surface Transp. Bd., tab "755" (line 4-193 divided by row 2-03) (both reports are available at https://www.stb.gov/reports-data/economic-data/annual-report-financial-data/). However, the Application asserts strategies to increase train length but does not commit to a specific figure or analyze any ceiling of train length based on, for example, NS siding lengths or crossing spacing near yard entry/exit points, despite this technical information being available for modeling.

B. Commitment to Grade Crossing Safety and Public Project Progress

The Application as submitted does not address future intentions regarding rail-highway grade crossing safety. In recent years, NCDOT has proposed to fund the construction of new rail-highway grade separations to improve the safety of the state transportation system and to direct increasing motor vehicle traffic away from exposure to railroad operations. As part of the standard process for funding grade separations that replace existing crossings, NCDOT, under N.C. Gen. Stat. § 136-20 and/or 23 C.F.R. § 646.210, allocates a small portion of the project cost to the railroad where the railroad experiences safety benefits and reduced operations and maintenance costs from removed crossing warning devices. NCDOT would ask that the Applicants commit to building on past successes in coordinating and resourcing grade crossing elimination projects.

In addition, the Application does not address the combined carriers' projected capacity to support public projects, including grade separations, despite projecting changes to management employment levels that could affect that capacity. NCDOT projects, including highway bridges and highway improvements, require the engagement of rail carriers in the state, as the owners or custodians of rights of way that the projects cross or encroach upon. The public interest would not be served if the combined carriers, post-Transaction, force public project sponsors to incur increased, unexpected costs and delays due to poor coordination, particularly when many public projects generate improved highway and rail-safety outcomes beyond those solely related to rail-highway safety.

V. Service Assurance Plans

The content of the required Service Assurance Plan (the "Plan") is inadequate to address service uncertainties and failures that have arisen in prior major railroad consolidations. The Plan provides a process for conventional integration of processes by each of the Applicants; however:

1. The Plan does not address in any detail anticipated impacts to the Plan by changes in staffing, relocations, and reductions: in the midst of integrating operations and customer service efforts at each company, the Applicants plan to reduce staff headcounts in the functional tasks designed to keep current and new shippers informed and connected to the railroad.[11] It would be reasonable for NCDOT to assume that shippers will experience transition challenges when the majority of their ongoing customer support and marketing/sales staff are either eliminated or relocated within 24 months or less.
2. The Plan omits and defers to post-Transaction the actual changes to operating crafts for which operating cost savings are included in the Application. Allocating local switching crew reductions to a high-level category and refusing to create the analysis to allocate crew reductions to individual local switching locations in the state is inadequate to address the public interest as it relates to NC Ports or any other shipper in the state.[12]

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[11] *See* Workpaper "Management_Workpapers_Employee Impact.xlsx", tab "Workpaper_Impact by Department." {[redacted]} The Applicants do not mention a possible disruptive period during relocation of many of these staff and functions from Atlanta to Omaha. Rather, across these critical functions, the Service Assurance Plan claims that "85%" of positions will be retained, UP-39/NS-37 at 2-986, but that figure ignores the disruption effect of the changes and relocations proposed.

[12] *See* UP-39/NS-37 at 1-120, 2-980. {[redacted]} *See* Workpapers "Yard-Local FTE Impacts by Yard.xlsx"; "Synergies Transportation – Operating" , tab "Yard and Local", cell E30. The Applicants' process for determining impacts from TEY positions affected by non-location specific initiatives also lacks any specificity, *see* UP-39/NS-37 at 2-979 to 2-981, and should be considered an additional disbenefit under 49 C.F.R. § 1180.1(c)(2)(ii) and (iii).

REQUESTS FOR CONDITIONS

As explained above, NCDOT has serious reservations about the effect of the Transaction on costs associated with rail transportation. If the Board is inclined to approve the Transaction nevertheless, NCDOT requests that the Board impose the following conditions under 49 U.S.C. § 11324(c), consistent with the Board's obligation to balance the public interest. Each of these conditions is linked to the impact of the merger and NCDOT's interest in maintaining the state transportation system. Each condition also reflects stakeholder engagement by NCDOT and NCDOT's prioritization of the most important conditions to mitigate potential harms.

I. Condition 1: Expedite Raleigh–Charlotte Sixth Round-Trip Frequency

NCDOT requests that the Board require the combined carriers to expedite implementation of NCDOT's sixth frequency round trip between Raleigh and Charlotte. NCDOT, NS, and NCRR have collaborated on all necessary prerequisites for construction of improvements. NCDOT anticipates constructed improvements will be available by 2028 and is awaiting NS to deliver terms and conditions to begin discussions with Amtrak to finalize an implementation schedule. The Applicants should commit to:

1. Delivery of agreement(s) finalizing access for Amtrak on behalf of NCDOT by September 30, 2027, consistent with the Piedmont Improvement Program agreements under which NCDOT partners with NS today,[13] and

[13] This would include the Definitive Service Outcomes Agreement ("DSOA") referenced by the Applicants in the Service Assurance Plan, UP-39/NS-37 at 1052, as well as implementing agreements for construction and maintenance of the capacity improvements determined by the DSOA modeling, namely the Master Project Construction and Maintenance Agreement and addenda thereto.

2. Commitment to fulfill NS's responsibilities for on-schedule delivery of preliminary engineering and construction of envisioned improvements funded by NCDOT, NCRR, and FRA.

II. Condition 2: Passenger Service Performance

NCDOT is concerned that changes to freight service will create a period of anticipated but unacceptably high delay minutes attributable to freight service degradation or congestion, as occurred in 2018, as documented above. The Board should create vigorous monitoring and expeditious systems to intervene in the case the Applicants' dispatching changes service performance for state-supported passenger trains. Some methods the Board could adopt would include:

A. Required Analysis and Reporting

- Requiring the Applicants to perform RTC modeling to objectively illustrate the impact of merged operations on (a) existing and (b) expanded passenger rail service.
- Reporting on Amtrak route-level performance in a trailing week or month by normalized delay minutes and COTP.
- Committing to ongoing participation in route-specific coordination meetings on a periodic basis during the integration period.

B. Remedies if Delay Thresholds Are Exceeded

- Ordering the Applicants to automatically implement dispatching methodology triggers to the extent that delay minutes exceed a known threshold, and to revert or otherwise promptly revise buffers around high-priority elements of train plans

(such as passenger trains) to reflect operational efforts to mitigate increases in delay minutes.

  - NCDOT's current delay minutes threshold ("Trigger Delay Minutes" from the Definitive Service Outcomes Agreement referenced in UP-39/NS-37 at 1052), which it negotiated with NS under the Piedmont Improvement Program, is a reasonable standard that the combined carriers should be committed to meet for the foreseeable future, potentially until the end of the final option extension contemplated by NS in its Trackage Rights Agreement with NCRR, near the end of 2044.

- Investigate any degradation in *Carolinian* and *Piedmont* service, and, to the extent Applicants are found responsible, impose automatic penalties under 49 U.S.C. § 24308. The Board should prepare a model interrogatory procedure and format for any quarter in which this threshold is not met by a route. The interrogatory format should include specific questions on the extent to which the combined carriers modeled and coordinated any relevant freight service changes with passenger service sponsors and/or Amtrak prior to implementing changes. The Board should clarify that the combined carrier will be presumed responsible for meeting the 80% COTP threshold in Federal regulation. The Board can consider simplifying the calculation of penalties by adopting a formula to determine Amtrak's costs to operate over the investigated segment to provide a baseline potential liability per train or per quarter under 49 U.S.C. § 24308(f)(4).

III. Condition 3: Commitment to Passenger Service In-Progress Improvements

The Board should require the Applicants to commit in writing to not prejudicing themselves or their assets against known passenger service development programs, as described herein, and to commit to specific project development steps for NCDOT's priority corridors.

The corridors where the Applicants could substantially inhibit corridor development and where NCDOT has been able to progress corridor development are: Asheville, NC to Salisbury, NC and Raleigh, NC to Wilmington, NC. Draft implementing agreements for each service should be drafted by mutual consent among the parties, consistent with the draft agreement under Condition 1, and completed no later than June 30, 2028. Each of these corridors is planned for three round trips per day. Details of the term sheet contents are described below.

Importantly, NCDOT believes the term sheet should allow for standard access by Amtrak as the planned passenger rail operator as if the Board granted access.

IV. Condition 4: Freight Service Performance

NCDOT requests that the Applicants collect and provide robust metrics to ensure that service to North Carolina shippers is not harmed or degraded. This would ensure that the Applicants' anticipated cost savings attributable to changing headcounts would not lead to deteriorated service.

A. Designated Personnel for Shipper Complaints

NCDOT believes current commitments for customer outreach under the proposed Service Assurance Plan are insufficient to address needed customer communication by the Applicants. Changes to the merged railroad may disrupt established relationships, and the national scale of the merger may discourage the merged railroad from responding to shipper requests. Before approving the Transaction, the Board should impose a condition requiring specific personnel to be available

to respond to customer inquiries, and requiring the Applicants not to modify this personnel assignment plan until the end of the Service Assurance Plan period.

B. Port of Morehead City Service Levels and Non-Discrimination

Particular metrics are needed at NC Ports. NCDOT is responsible for service-sensitive market improvements proposed by NC Ports at the Port of Morehead City. To effect these improvements, service levels in terms of local service that reaches the Port of Morehead City should not decline and should be available to increase as switching capacity in receiving facilities at Morehead City becomes saturated.

V. Condition 5: NCDOT Highway and Highway-Rail Project Development

A. Responsiveness to Public Project Submittals

NCDOT's grade crossing and highway improvement work often requires either an agreement with a railroad or supporting services from that railroad related to engineering, flagging, or a property encroachment. Because the merger threatens to impede existing lines of communication and to occupy the Applicants' attention, it is likely that railroad coordination on major highway improvement projects in the state will result in longer preconstruction or construction schedules than are currently envisioned by NCDOT.

To mitigate additional schedule risk and resulting cost to public budgets, the Board should impose a condition to measure the successor railroads' responsiveness to public project progress items. In addition, the Board should require regular reporting from the Parties on their responsible personnel for public projects.

B. Grade Crossing Safety Improvements

As stated above, NCDOT has proposed to grade separate crossings, and in accordance with 23 CFR Part 646 (for Federal-Aid Highway projects funded under Title 23) and N.C. Gen. Stat.

§ 136-20 (for projects solely using state funds), the railroad benefiting from the crossing and hazard removal has an obligation to contribute to the capital cost of the project. The Board should encourage the Applicants to, in addition to providing resources and funding as required by federal and state laws, proactively support NCDOT's grade crossing safety and grade separation efforts.

CONCLUSION

The proposed merger between UP and NS will lead to unprecedented consolidation in the rail industry. Consolidation of this magnitude necessarily presents a significant risk to consumers and industries throughout North Carolina.

NCDOT commends the Board for soliciting a robust discussion and comment period in response to this unprecedented application. The rail sector can provide substantial added value to the North Carolina economy through freight and passenger mobility with increased efficiency and safety and reduced cost to the end user compared to other modes. To ensure that the North Carolina state rail system achieves that promise, the Board should demand implementable assurances from the Applicants that the Transaction would in fact reduce costs across the carriers' combined networks.

NCDOT has invested billions of dollars in new or modernized infrastructure across the state rail system to improve the safety, efficiency, and capacity of the greater transportation system to benefit the state. If the Board opts to allow the proposed Transaction to proceed, NCDOT believes that its requested conditions would help make the most of those investments, ensure the strength of North Carolina's freight and passenger rail networks, limit costs to state taxpayers and end users, and be consistent with the public interest standard of 49 U.S.C. § 11324(c).

RESPECTFULLY SUBMITTED,

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Counsel for North Carolina Department of Transportation

Dated: November 18, 2026

CERTIFICATE OF SERVICE

I certify that I have this day served copies of the foregoing Comments and Request for Conditions upon all parties of record in this proceeding, by electronic mail or first-class mail this 18th day of November, 2026.

Dated: November 18, 2026

By: */s/ Allison Ishihara Fultz*