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November 20, 2026

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

Re: *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*
STB Docket No. FD 36873
Joint Comment and Request for Conditions of Texas Northeastern Railroad and Kiamichi Railroad Company L.L.C.

Errata

Dear Chief of Case Administration:

Enclosed for filing on behalf of Kiamichi Railroad Company L.L.C. ("KRR") and Texas Northeastern Railroad ("TNER") are corrections to the joint comments and request for conditions filed in Docket No. FD 36873. The document has been updated with the following corrections:

- A blank page on page 18 has been deleted.
- Pagination of the signature page has been corrected to page 18 and my signature has been added.
- Verified Statement slip sheet pagination has been removed.

If you have any questions related to this filing, please let me know.

Sincerely,

Justin J. Marks
Counsel to Kiamichi Railroad Company L.L.C.
and Texas Northeastern Railroad

Enclosures

TNER-3
Public Version

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

JOINT COMMENTS AND REQUESTS FOR CONDITIONS OF TEXAS NORTHEASTERN RAILROAD AND KIAMICHI RAILROAD COMPANY L.L.C.

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November 18, 2026

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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

JOINT COMMENTS AND REQUESTS FOR CONDITIONS OF
TEXAS NORTHEASTERN RAILROAD AND
KIAMICHI RAILROAD COMPANY L.L.C.

In accordance with the Board's Decision No. 30 served in this proceeding on August 18, 2026, Texas Northeastern Railroad ("TNER") and Kiamichi Railroad Company L.L.C. ("KRR") submit these comments and requests for conditions. The Comments and Requests for Conditions is supported by the Verified Statement of Marty Pohlod ("Pohlod VS"). In a separate filing, TNER and KRR are simultaneously submitting their Responsive Application for trackage rights.

HOG and GSWR neither support nor oppose the Union Pacific Corporation ("UP" or "Union Pacific") Application to acquire control of Norfolk Southern Corporation ("NS" or "Norfolk Southern").[1] However, TNER and KRR respectfully request that the Board impose their requested conditions to ameliorate the competitive harm that the Transaction will cause to TNER and KRR.

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

[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.).

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]

Further, given its discussion of the Watershed in the Application, UP makes it clear that short haul rail moves, in this case defined as less than 250-miles, are historically unappealing to Class Is and hence why they have been uninterested in participating in the short haul end of a Watershed move. If the Transaction is approved, UP is unlikely to provide competitive options for similar shorter haul rail traffic, regardless of where it is, including that coming from a lighter density short line, and especially not for traffic which TNER and KRR would seek to interchange between each other..

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 TNER and KRR customers and the markets they serve, TNER and KRR seek trackage rights over UP..

I. Background

A. About TNER

TNER is a Class III short line that operates two disconnected segments: a 21-mile branch from Texarkana to New Boston, Texas, which primarily serves the Red River Army Depot, and a 46-mile segment, the Sherman Branch, running from Bonham to Sherman, Texas (the Sherman Branch), with a branch from Bells to Trenton, Texas.[4] The Sherman Branch then operates via trackage rights over BNSF Railway ("BNSF") from Sherman to Denison, Texas.[5] TNER connects with BNSF at Sherman, with UP at Denison, and with its affiliated short line, the Dallas, Garland

[3] *Id.*
[4] **Pohlod VS at 2-3.**
[5] *Id.* at 3.

and Northeastern Railroad ("DGNO"), at Trenton.[6] The portion of TNER between Sherman, Bells, and the DGNO interchange at Trenton is the focus of TNER's participation here.[7]

TNER hauls just over [redacted] carloads annually of agricultural products, chemicals and plastics, metals, and lumber and forest products, and it has recently begun transporting mineral and stone products, with significant growth predicted in the near future.[8] Approximately [redacted]% of TNER's traffic moves to and from UP and then through a western gateway; of that gateway traffic, [redacted] flows to CSX and [redacted]% to NS.[9]

Of key importance here is TNER's connection to the DGNO, the larger affiliated short line that is contiguous to TNER and operates directly in the fast-growing Dallas market.[10] The DGNO hauls approximately [redacted] cars annually of building products, paper goods, food, agriculture, and chemicals.[11]

B. About KRR

KRR is a Class III, 234-mile short line with a mainline between Hope, Arkansas, and Madill, Oklahoma, and a branch line from Antlers, Oklahoma, to Paris, Texas.[12] It hauls approximately [redacted] carloads annually for agricultural, food, construction materials, paper, metals, and other general merchandise customers.[13] Like other G&W railroads, KRR has focused on safe, efficient, customer-focused service, business development, and reinvestment to steadily upgrade its line with new continuously welded rail, ties, ballast, and bridges.[14]

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[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.* at 2.
[13] *Id.*
[14] *Id.*

KRR is a short line growth story that provides a critical service to a primarily rural area, including the Choctaw Nation Reservation, the second largest reservation in the United States, through which KRR's entire Ashdown subdivision runs.[15] Over the last ten years, KRR has nearly entirely rebuilt its century-old infrastructure, which can now handle industry-standard 286,000-pound traffic, and operating speeds have increased from 10 mph to 25 mph on many segments.[16] As a result, KRR has attracted significant new business, including a Tyson Foods mega feed mill and a new Commercial Metals rebar facility, and its traffic has grown by more than [redacted]% over the last five years.[17]

KRR and TNER benefit from their connectivity to Class I railroads, including UP (Durant, Oklahoma, and Hope, Arkansas), BNSF (Madill, Oklahoma), and CPKC (Ashdown, Arkansas), as well as to short lines, including the De Queen & Eastern and the WFEC Railroad Company (both at Valliant, Oklahoma).[18] For the De Queen & Eastern, KRR is the onward connection to BNSF.[19]

C. The UP Application

UP's proposed acquisition of NS is an unprecedented undertaking that, if approved, will meaningfully transform the transportation landscape of the United States.[20] KRR and TNER do not oppose the Transaction, assuming appropriate protections for industry participants like them, and they appreciate the advantages of single-line, transcontinental service.[21] But they are concerned for their customers and markets, and whether, after the Transaction, they can continue

[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at 7.
[21] *Id.*

to offer the same competitive options and service levels and remain positioned to invest and grow.[22] The Application does not adequately address the potential impact on short lines generally, or on KRR and TNER in particular.[23]

1. The UP/NS Transaction Would Competitively Harm KRR and TNER by Reducing Competitive Rail Options for Customers Seeking to Reach the Dallas-Fort Worth Market.

KRR is proximate to the Dallas-Fort Worth metroplex ("DFW"), the fastest growing metropolitan statistical area of the top five in the United States since 2020.[24] Yet much of KRR's customers' construction materials, metals, and paper production moves to DFW by highway, either for consumption or for transfer into international containers for export through the West Coast.[25] KRR has not been able to compete consistently with motor carriers for this traffic on price and service in combination with its Class I connections, which are not interested in handling these short and medium distances and instead prioritize longer-haul, single-line rail traffic into the metroplex.[26]

Based on the Application and UP's public comments, UP will be even more focused on growing its long-haul, single-line customers after the Transaction and will have even less desire to handle moves of under 200 miles to DFW from KRR originations.[27] Compounding that loss of interest is the expected increase in UP traffic in and around DFW on an already congested rail network.[28]

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[22] *Id.*
[23] *Id.*
[24] *Id.* at 3-4.
[25] *Id.* at 4.
[26] *Id.*
[27] *Id.*
[28] *Id.* at 5.

TNER, which is affiliated with KRR, connects to the DGNO, which is also affiliated and operates directly in the Dallas market. TNER and the DGNO serve the DFW area, including many warehouses and bulk commodity terminals that KRR customers would like to reach via a competitive rail option.[29] A KRR-TNER-DGNO route avoids the congested central Dallas Class I rail lines, and the DGNO is concerned that this congestion will be exacerbated by the intermodal and carload growth that UP/NS will capture moving through Dallas on its transcontinental route from the West Coast to the Southeast over NS lines.[30] The route would convert truck traffic from Oklahoma and Arkansas to rail moving in from the north, avoiding the heavily trafficked east-west UP transcontinental mainline through DFW, and would provide an alternate route for existing DGNO and TNER carload freight that typically moves with UP via central Dallas.[31]

2. The Application Ignores Harms to Short Line Railroads and Will Specifically Harm KRR and TNER.

UP argues that the only meaningful avenue for volume growth is the creation of a transcontinental railroad.[32] Yet the industry, the Board, and UP itself recognize that short lines have grown consistently, often at double the growth rates of Class Is.[33] Unlike Class I railroads, short lines are not bound to a sophisticated, national pricing model that often limits a carrier's ability to offer a differentiated rate or to haul traffic over shorter distances, and they do not share the pressure to generate a sub-60% operating ratio to satisfy investors.[34] A short line can instead focus purely on incremental business, moving an additional car whether it travels 2 miles, 20 miles,

[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] 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.
[33] **Pohlod VS at 7.**
[34] *Id.* at 7-8.

or 200 miles, or is part of a 2,000-mile move across the country.[35] And because short lines do not benefit from a Class I railroad's density, incremental traffic is simply added to the back of an existing train, so each additional carload makes a difference.[36]

3. The Transaction Would Cause Intrinsic Harms to Short Line Rail Carriers, Including KRR and TNER.

The Transaction creates multiple concerns for the short line industry generally and for KRR and TNER specifically.[37] The Applicants have not acknowledged these harms or proposed remedies to offset them.[38]

a) Union Pacific Will Prioritize Its Own Single-Line Traffic Over Traffic That Is Interchanged With Short Line Railroads.

The Application states that the catalyst for the Transaction is the ability to offer single-line service on a transcontinental scale and that any rail traffic interchanged between carriers is less efficient, higher-cost, and, by definition, less desirable.[39] Short lines are almost entirely dependent on interchanging traffic with Class Is, and all traffic that UP shares with short lines is interchanged.[40] KRR and TNER are concerned that, after the Transaction, UP will prioritize its limited network capacity for its own single-line traffic to the detriment of existing interchange traffic.[41]

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[35] *Id.* at 8.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] 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.
[40] **Pohlod VS** at 9.
[41] *Id.*

b) Union Pacific Is Not Interested in Traffic It Hauls Fewer Than 250 Miles.

UP defines the "Watershed Area" as 250 miles east and west of the Mississippi River and states that the area lacks competitive rail service because the shorter-haul portion of the move is not of interest to the Class I carrier.[42] Consistent with their concern about prioritization of single-line traffic, KRR and TNER expect UP to be even less interested in cooperating with a short line where UP moves the traffic fewer than 250 miles, especially when its focus is on allocating network capacity to even greater volumes of longer-haul, single-line service.[43]

c) Union Pacific Will Act in Its Own Interest, and That Self-Interest Will Harm the Customer Base KRR and TNER Have 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. After the Transaction, the combined UP/NS will have different priorities and will no longer have the same incentive to offer KRR and TNER the competitive access and service UP offered before the Transaction.[44] KRR and TNER therefore request that the Board adopt conditions to ensure that competitive access is not lost for customers that are not directly located on the new UP/NS system.[45]

d) The Application Proposes No Conditions to Ameliorate the Harm to KRR and TNER or to Improve Competition in the Markets They Serve.

UP seeks to meet its regulatory obligation to preserve and enhance competition through broad commitments on service and rates, via its proposed Committed Gateway Pricing.[46] KRR and

[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 12
[43] ***Id.***
[44] ***Id.* at 9-10.**
[45] ***Id.* at 10.**
[46] ***Id.***

TNER do not believe these proposed remedies properly address, and believe they fundamentally misunderstand, the role that KRR, TNER, and certain other short lines play in the more regional and local transportation landscape.[47] The Application pays little attention to short lines aside from claiming benefits that may accrue to UP and NS feeder lines, and where it acknowledges harm to a specific short line, UP provided limited analysis and only after prodding by the Board.[48]

e) Any Traffic Loss Harms Short Line Rail Carriers.

The Application fails to address the negative effect that lost revenue has on short line rail carriers.[49] For a short line, any loss of traffic, even 10% or less, can have an outsized impact on service and viability, and with a relatively fixed operating and capital cost base, short lines cannot cut costs aggressively when traffic falls.[50] A forced reduction in service might mean eliminating days of service to a customer or branch line or reducing speeds from 25 mph to 10 mph.[51] Poor service causes customers to switch from rail to truck, which forces the short line to cut more service and investment, limits the cash flow it needs to maintain its infrastructure and provide flexible service, and leads to even more lost business as the downward spiral continues.[52]

f) Union Pacific's Public Statements Raise Questions About Its Intention to Negotiate Trackage Rights Agreements in Good Faith.

UP's Chief Executive Officer, Mr. James Vena, has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith if the Board imposes them as a condition.[53] 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

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[47] ***Id.***
[48] ***Id.* at 10-11.**
[49] ***Id.* at 11.**
[50] ***Id.***
[51] ***Id.***
[52] ***Id.***
[53] ***Id.* at 12.**

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?"[54]

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.[55] 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.[56]

[54] ***Id.***
[55] *See* 49 U.S.C. § 11324(c).
[56] *Id.*

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").[57] The 2001 Rule requires an applicant "to provide a plan for enhancing competition" so that the Board may "remedy every competitive harm that would stem from any proposal that [it] decide[s] to approve."[58]

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.[59] 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.[60] The Board must also ensure than a transaction would promote a competitive, efficient, and reliable national rail system.[61] 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.[62]

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."[63] If a

[57] *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 9 (served June 11, 2001) [hereinafter *2001 Rule*].
[58] *Id*. at 20.
[59] *Id*. at 16; 49 C.F.R. § 1180.1(b)-(c); 49 U.S.C. §§ 10101, 11324(b).
[60] *Id*. at 14; 49 C.F.R. § 1180.1(b)
[61] *Id*.
[62] *Id*. § 1180.1(c).
[63] *Id*. § 1180.1(d).

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."[64]

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 the balancing test in determining public interest.[65] Applicants must explain "how they would preserve competitive options for shippers and for Class II and III rail carriers."[66] 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.[67]

Consistent with this approach, the Board places "greater emphasis to the role of Class II and Class III carriers and ports in the broader transportation infrastructure" in conducting its balancing test.[68] 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". [69]

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.

[64] *2001 Rule*, at 13.
[65] *Id*. at 27.
[66] 49 C.F.R. § 1180.6(b)(10)(i).
[67] *2001 Rule*, at 27.
[68] *Id*. at 15.
[69] *See id*. at 27.

> 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 adverse impacts of this transaction, we will impose them as appropriate.[70]

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.[71] 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.[72] 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.[73]

A. Criteria for Determining Service Problems

In evaluating a proposed major rail consolidation, the Board considers whether the transaction is likely to result in transitional service disruptions or other service problems.[74] Where

[70] *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).
[71] 49 C.F.R. § 1180.1(d).
[72] *Id.* § 1180.1(c)(i)-(iii).
[73] *See id.* § 1180.1(d).
[74] 49 C.F.R. § 1180.1(c)(2)(iii).

such service problems are likely to result from the transaction, the Board may impose appropriate conditions to protect the public interest and ensure that the transaction promotes adequate and reliable rail service.[75]

In determining whether conditions are warranted, the Board should consider whether the proposed transaction is likely to impair the quality, reliability, or adequacy of rail service and whether appropriate conditions would prevent or ameliorate those transaction-related service harms without unduly diminishing the transaction's public benefits.[76]

IV. Argument

A. The Board Should Grant KRR's and TNER's Requested Trackage Rights to Ameliorate the Harm Caused if the Board Approves the Application.

If the Board approves the Transaction, KRR and TNER seek trackage rights over UP between Durant, Oklahoma, on KRR and Denison, Texas, on TNER so that the two affiliated short lines can interchange and, through the DGNO, give KRR's customers a competitive rail route into the Dallas-Fort Worth market.[77] These rights will ameliorate the harm the Transaction would cause by giving KRR's customers a rail option for the short- and medium-haul DFW traffic that moves by truck today because Class I carriers have not been interested in handling it.[78] The Pohlod VS outlines the harms that KRR and TNER will likely experience if the Transaction is approved.

The Application's own statements show that UP will focus on profitable long-haul traffic and deprioritize shorter-haul traffic that requires interchange. The stated purpose of the Transaction is single-line service on a transcontinental scale, because interchanged traffic is less

[75] *See id.* §§ 1180.1(c)(2)(iii), (d); 49 U.S.C. § 11324(c).
[76] *See* 49 C.F.R. § 1180.1(c)(2)(iii), (d).
[77] ***Id.* at 5, 13.**
[78] ***Id.* at 4-5.**

efficient, higher-cost, and less desirable.[79] Because all traffic UP shares with KRR and TNER is interchanged, UP is likely to prioritize its limited network capacity for its own single-line traffic.[80] Further, UP has stated that the Watershed Area lacks competitive rail service because the shorter-haul portion of the move is not of interest to a Class I carrier. Each of the example KRR-to-DFW lanes is under 200 miles, and UP will have even less desire to handle those moves after the Transaction.[81] Given a choice between interchanging shorter-haul traffic with KRR and TNER and developing its transcontinental single-line service, UP will pursue the more profitable of the two.[82]

As the Pohlod VS explains, connectivity to multiple Class Is and reinvestment in the line have spurred much of KRR's recent growth, yet those Class I connections have not allowed KRR to compete consistently with motor carriers for traffic moving to DFW.[83] After the Transaction, the already congested DFW rail network is expected to carry even more traffic.[84] The KRR-TNER-DGNO route avoids the congested central Dallas Class I lines, would convert truck traffic from Oklahoma and Arkansas to rail, and would provide an alternate route for existing DGNO and TNER carload freight if UP were to experience capacity issues on its east-west transcontinental route.[85]

The harm is not abstract. For a short line, any loss of traffic, even 10% or less, can have an outsized impact on service and viability, and the Board should give considerable weight to evidence showing that a transaction could cause a short line to lose revenue as a reason for

[79] ***Id.* at 8-9.**
[80] ***Id.* at 9.**
[81] ***Id.* at 4.**
[82] ***Id.* at 9-10.**
[83] ***Id.* at 3-4.**
[84] ***Id.* at 5.**
[85] ***Id.***

imposing a condition.[86] Reduced service can start a downward spiral in which customers switch from rail to truck and the short line loses the cash flow needed to invest in its infrastructure.[87]

1. If the Board Grants KRR's and TNER's Trackage Rights, It Should Impose Conditions to Protect Them From Bad Faith Negotiating Tactics.

UP does not propose any conditions to remedy the adverse impacts of the Transaction on short line railroads.[88] The conditions it does propose, including Committed Gateway Pricing, fail to provide the certainty and security needed to support long-term investment and optionality and do not address the harms raised by KRR and TNER.[89]

As discussed in Section I.3.C.F., UP's CEO has made public comments indicating that UP may be unwilling to negotiate trackage rights in good faith.

As such, KRR and TNER respectfully request that the Board impose, as part of the requested trackage rights, conditions ensuring pro-competitive rates, equal dispatch, and equal access to railroad facilities such as sidings. Those conditions must also be enforceable by a short line without lengthy litigation. If the Board allows the Transaction, UP will be one of the largest companies in the United States, with resources to delay the imposition of the Board's conditions through litigation that can easily outlast any short line, and the Board should not allow UP to thwart its conditions. KRR and TNER therefore also request an oversight period lasting in perpetuity to ensure that the requested conditions are enforceable now and into the future.

2. KRR's and TNER's Conditions Are in the Public Interest.

KRR's and TNER's trackage rights conditions are in the public interest because they will allow KRR and TNER to continue to offer shippers competitive options, including a competitive

[86] ***Id.* at 11.**
[87] ***Id.***
[88] ***Id.* at 10.**
[89] ***Id.* at 13.**

rail route to DFW, even if UP deprioritizes shorter-haul interchange traffic. They also protect the revenue base that supports KRR's and TNER's ability to sustainably invest and grow.

KRR and TNER also believe that the requested conditions help satisfy the Board's 2001 rules for mergers, which require enhanced competition to offset merger harms, by providing shippers more choice and diverting traffic from highway transport to freight rail. A KRR-TNER-DGNO rail move (and vice versa) allows for more effective competition for highway freight, improves highway safety, and reduces truck exhaust emissions in the DFW area.

3. Description of KRR's and TNER's Trackage Rights Requests.

If the Board approves the Transaction, KRR and TNER respectfully request reciprocal trackage rights over UP. KRR seeks trackage rights over UP between Durant, Oklahoma, on KRR and Denison, Texas, on TNER to allow interchange with TNER. TNER seeks trackage rights over UP between Denison, Texas, on TNER and Durant, Oklahoma, on KRR to allow interchange with KRR. Together, these rights cover 21 miles of UP track and would connect KRR to its affiliated TNER, which in turn connects to the affiliated DGNO.

KRR and TNER request that the Board impose these rights under the reasonable terms proposed in their Responsive Application. They propose to pay UP the same trackage rights rate that UP pays to run over the Illinois & Midland Railroad from Barr, Illinois, to Springfield, Illinois (9.7 miles), under its August 27, 1997 trackage rights agreement, currently [redacted] per car mile. KRR and TNER also request that the Board require UP to provide equal dispatch and equal access to railroad facilities on the trackage rights lines, together with indefinite oversight.

V. Conclusion

For the reasons stated above, KRR and TNER respectfully request that the Board grant KRR's and TNER's requested trackage rights in their Responsive Application and impose the conditions described above if the Board approves the Transaction.

Respectfully submitted,



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Dated: November 18, 2026

VERIFIED STATEMENT

Before the

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NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF MARTY POHLOD ON BEHALF OF KIAMICHI RAILROAD COMPANY, L.L.C. ("KRR") AND TEXAS NORTHEASTERN RAILROAD COMPANY ("TNER")

I. Introduction

My name is Marty Pohlod, I am Vice President ("VP") of National Accounts and Industrial Development for Genesee & Wyoming Railroad Services, Inc. (G&W). I have 36 years in the railroad industry including time at Wheeling & Lake Erie, Southern Pacific, Ohio Central and have been supporting Genesee & Wyoming railroads since 2008. My roles have been primarily in the commercial side of the business, including Marketing & Sales, Customer Service, Revenue Accounting, Industrial Development and Real Estate. I also have operations experience and served 3 years as Region Senior VP for G&W's Midwest Region from 2017-2020 where I had full profit & loss responsibility for all departments and functions of the railroads in that region (from Wyoming east to central Ohio). My department continues to support business growth and development on the Kiamichi Railroad Company, L.L.C. (KRR), the Texas Northeastern Railroad, a division of Mid-Michigan Railroad, Inc. (TNER) and all G&W railroads.

II. Kiamichi Railroad

KRR is a Class III, 234-mile short line railroad with a mainline between Hope, AR and Madill, OK and a branch line from Antlers, OK to Paris, TX. Hauling approximately [redacted] carloads annually, it serves a variety of industries: agricultural, food, construction materials, paper, metals and other general merchandise customers. Like many other G&W railroads, it has focused on safe, efficient, customer-focused service, business development efforts and reinvestment to steadily upgrade the rail line with new continuously welded rail, ties, ballast and bridges.

KRR is a true short line growth story and one that provides a critical service to the primarily rural area through which it operates, including to the Choctaw Nation Reservation, the second largest reservation in the United States which the KRR's entire Ashdown subdivision runs through. Over the last ten years the Railroad has nearly entirely rebuilt its century old infrastructure, from one of aging rail and ties, to one now capable of handling industry standard 286,000 traffic with operating speeds increasing from 10 mph to 25 mph on most segments. As a result of these efforts, it has been able to attract significant new business which has resulted in traffic growth of more than [redacted]% over the last five years, including a Tyson Foods mega feed mill and a new Commercial Metals rebar facility.

KRR and TNER benefit from their connectivity to the Class Is, including Union Pacific (Durant, TX and Hope, AR), BNSF (Madill, OK) and CPKC (Ashdown, AR) as well as to short lines, including the De Queen & Eastern (Valliant, OK) and the WFEC Railroad Company (Valliant, OK). For the De Queen & Eastern, the KRR is its onward connection to BNSF.

III. Texas Northeastern Railroad

Located just south of the KRR, the TNER is a Class III short line operating two disconnected segments, including a 21-mile branch from Texarkana to New Boston, TX, which

primarily serves the Red River Army Depot, and a 46-mile segment, the Sherman Branch, running from Bonham, TX to Sherman, TX, with a branch from Bells, TX to Trenton, TX. The Sherman Branch then operates via trackage rights over BNSF from Sherman to Denison, TX. The TNER connects with the BNSF at Sherman, the Union Pacific (UP) at Denison and the TNER's affiliated short line, the Dallas, Garland and Northeastern Railroad at Trenton. It is the portion of the TNER that runs between Sherman, Bells, and the interchange with the Dallas, Garland and Northeastern Railroad ("DGNO") in Trenton that is the focus of the TNER's participation in this Verified Statement.

The TNER hauls just over [redacted] carloads annually, transporting agricultural products, chemicals and plastics, metals, and lumber and forest products. More recently, however, the railroad has started to transport mineral and stone products, with significant growth in this market predicted in the near future. Traffic moving to and from the TNER to the UP and then through a western gateway makes up approximately [redacted]% of total traffic, with then [redacted]% of the UP gateway traffic flowing to CSX and 30% to Norfolk Southern ("NS").

Of key importance for this comment is not only the region served by the TNER but its connection to the DGNO, the larger, affiliated short line which is contiguous to the TNER and operates directly in the fast growing Dallas market. The DGNO hauls approximately [redacted] cars annually of building products, paper goods, food, agriculture and chemicals.

A. The Union Pacific's Proposed Acquisition of Norfolk Southern Will Cause Competitive Harm to KRR and the TNER.

As discussed, for the KRR's and TNER's roles as independent short lines, competitive connections have provided customers with increased access via multiple Class Is competing for their business. This connectivity alongside the rebuilding of the rail line and increased service, have spurred much of KRR's recent growth. However, although the KRR location is proximate to

the Dallas-Ft. Worth metroplex ("DFW"), the fastest growing metropolitan statistical area of the top five in the United States since 2020[1], much of KRR's customers' construction materials, metals and paper production is moving via highway to the Dallas/Fort Worth, TX metro area for consumption or to be transferred into international containers available in DFW for export through the West Coast. KRR's ability to consistently compete with motor carriers for this traffic on both price and service has not been possible in combination with its Class I connections who have not been interested in handing this traffic for these short and medium distances, instead they prioritize longer haul, single service rail traffic into this busy metro-plex. Examples of these lanes from the KRR to DFW currently dominated by motor carrier include:

Origin	**Destination**	**Miles**
Durant, OK	Garland, TX	87
Ashdown, AR	Dallas, TX	188
Valliant, OK	Dallas, TX	158
Hugo, OK	Greenville, TX	81
Foreman, AR	Celeste, TX	137

Our concerns and proposed remedy are simple.

Post-acquisition of NS, if approved, based on UP's application ("Application") and public comments, UP will be even more focused on growing its long-haul, single served customers and have even less desire to handle moves of under 200 miles to DFW from KRR originations.

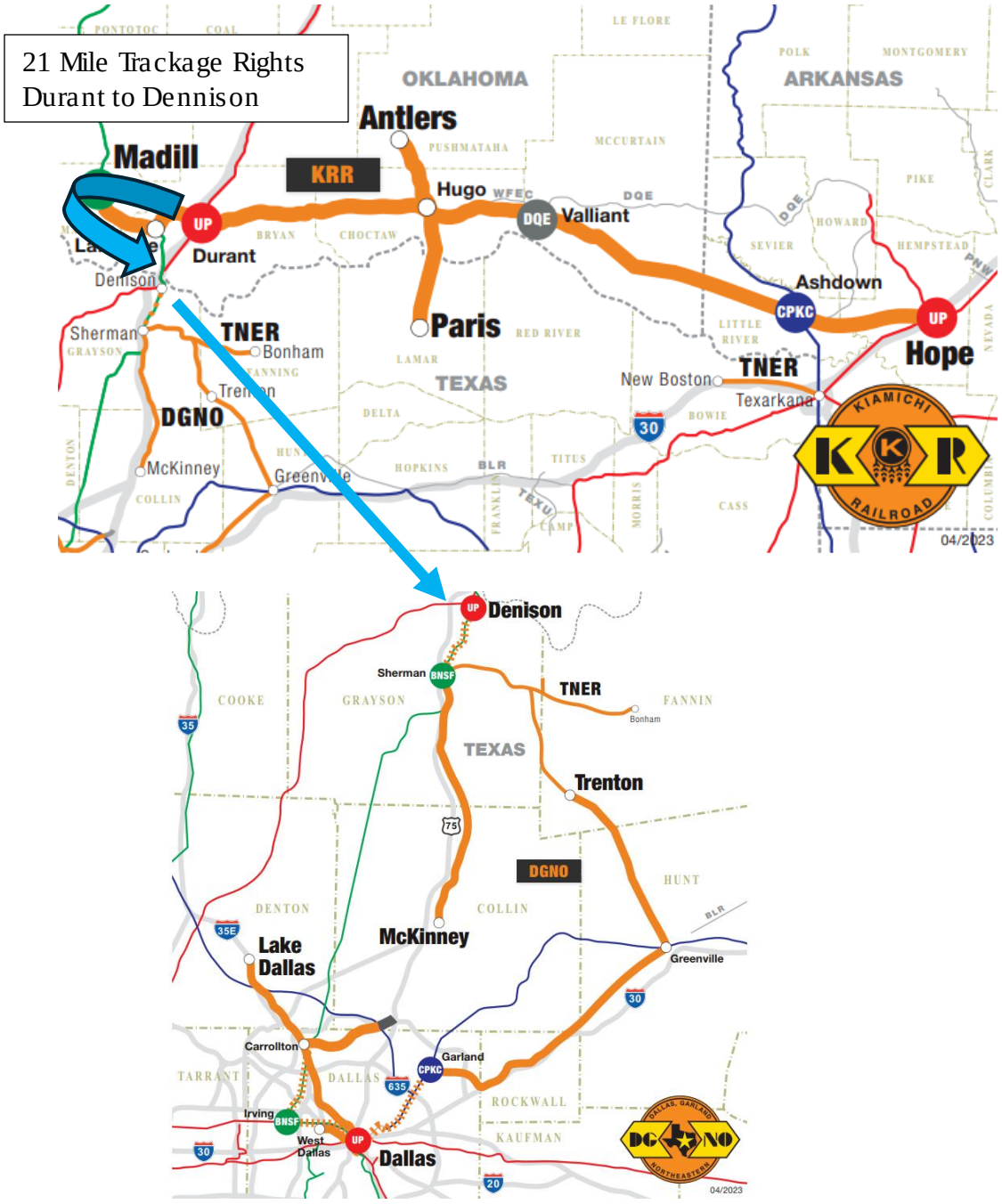
[1] Fort Worth Economic Development Partnership, *Dallas-Fort Worth Growth continues to Reshape the Nation's Largest Metros;* April 7, 2026

Compounding this increased loss of interest by UP to provide competitive rates to handle shorter haul, interchanged traffic coming off a short line is the expected increase in traffic in and around DFW on an already congested rail network.

Our proposed remedy for these concerns and to support the ability of KRR's customers to competitively and effectively use the national rail network to reach DFW, the KRR proposes, if the STB approves UP's proposed acquisition of NS, to condition it on the grant of 21 miles of trackage rights over UP from Durant, OK to Dennison, TX, for the KRR to reach its affiliated TNER, which then connects to affiliate DGNO. The TNER and DGNO serve the DFW area, including many warehouses and bulk commodity terminals that customers on the KRR would like to reach via a competitive rail option.

As part of this consideration, we believe it is important to underscore for the Board that the KRR-TNER-DGNO route avoids the congested central Dallas Class I rail lines. The DGNO is concerned about this congestion becoming exacerbated by the anticipated intermodal and carload growth which UP/NS will capture moving through Dallas on its transcontinental route from the West Coast to the Southeast on NS lines. In this way, a KRR-TNER-DGNO routing could provide a desirable service to its customers and to a part of the DFW freight market by converting truck traffic from Oklahoma and Arkansas to rail movement coming in from the north and avoiding the heavily trafficked east-west UP transcontinental mainline through DFW. This would also provide an alternate route for existing DGNO and TNER carload freight with UP that typically moves via central Dallas and could be challenged if UP were to experience capacity issues on its east-west transcontinental route (which is the normal route of movement for some freight interchanging with UP to and from the DGNO and TNER).

We also believe such a remedy helps satisfy the 2001 STB rules for mergers which require enhanced competition to offset merger harms by providing shippers more choice and diverting traffic from highway transport to freight rail. A KRR-TNER-DGNO rail move (and vice versa) allows for more effective competition for highway freight, improves highway safety and reduces truck exhaust emissions in the DFW area.



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

Union Pacific's proposed acquisition of Norfolk Southern (the "Transaction") is an unprecedented undertaking that, if approved, will meaningfully transform the transportation landscape of the United States. Neither the KRR nor the TNER are opposed to the Transaction, assuming there are appropriate protections for other industry participants like KKK and TNER. The railroads appreciate the potential advantages a combined Union Pacific and Norfolk Southern could create via the creation of single line, transcontinental service. However, both KRR and TNER are concerned for the specific customers and market they serve, including as an independent overhead route, and whether, post transaction, these railroads will be able to continue to provide the same level of competitive options and service levels as it does at present and that they continue to remain in a position to sustainably invest and grow. In evaluating the Application both the KRR and TNER believe that the Application fails to adequately address the potential impact on certain short lines and the KRR and TNER in particular.

UP has advocated in its filing that the only meaningful avenue for volume growth is through the creation of a transcontinental railroad.[2] Yet, as widely recognized by the industry[3], the Board,[4] and UP itself in the Application, short lines have been able to grow consistently, often at double the growth rates of Class Is. Many reasons explain this, for example, unlike Class I railroads, short lines benefit from not having to price traffic to meet the requirements of a sophisticated, national

[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] OliverWyman, "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

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

A. Intrinsic Harms Caused by the UP/NS Transactions that Impact all Short Line Rail Carriers.

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

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. KRR and TNER are concerned that post transaction UP will prioritize its limited network capacity to its own single line traffic to the detriment of existing interchange traffic.

2. *Union Pacific is not interested in traffic that they haul less than 250 miles.*

UP defines the Watershed Area as 250 miles to the east and west of the Mississippi River[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, have been able to grow because they continually focus on moving shorter haul, regional and local traffic. Similar to our concern about the prioritization of non-interchanging traffic, our concern is that UP will be even less interested in cooperating with a short line where UP is moving the traffic less than 250 miles, especially when the focus is on allocating network capacity to even greater volumes of longer-haul, single line service.

3. *Union Pacific will act in its own interest and post-Acquisition, if approved, this self-interest will harm the customer base that KRR and TNER have built in partnership with UP.*

UP's stated self-interest in acquiring NS is to establish a transcontinental railroad focused on the profitable long-haul. Post-acquisition the new UP/NS entity will no longer have the same incentive to offer the competitive access and service as UP did to the KRR and TNER pre-

[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

[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

Transaction. The combined UP/NS will have different priorities. KRR and TNER request 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 Gateway Pricing. KRR and TNER do not believe that these proposed remedies properly address and fundamentally misunderstand the role KRR and TNER and certain short lines play in the more regional and local transportation landscape.

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

Under our new rule, applicants must address the anticipated effects of a proposed merger on regional and shortline railroads, identify any benefits that those smaller railroads and their customers would realize as a result of the proposed transaction, and develop suggested remedies for any anticipated harms to the public interest by virtue of a merger's adverse impacts on regional and shortline railroads and ports.[7]

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

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

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

A forced reduction in service might mean eliminating days of service to a particular customer or branch line or reducing speeds from 25 mph to 10 mph. Eliminating service or lowering speed can cause a downward spiral to a short line rail carrier. Poor service can cause customers to switch from rail to truck, this in turn means that the short line must cut more service and investment. This limits the short line rail carrier's ability to generate the required cashflow to invest in its infrastructure, meet maintenance costs, and provide the flexible service. As service levels deteriorates, the short line carrier can lose even more business and the downward spiral continues.

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.

V. KRR and TNER Propose the Following Conditions to Remedy the Anti-Competitive Harm Caused to KRR and TNER by the Transaction.

As demonstrated above, the acquisition of NS by UP is likely to harm the customers and market served by the KRR and TNER.

The conditions proposed by UP, including Committed Gateway Pricing, fail to provide the certainty and security needed to support long-term investment and optionality and do not address the harms raised by the KRR and TNER. In order to remedy harm and to protect the KRR, TNER and their customers from the negative competitive impacts of the UP/NS transaction, KRR and TNER respectfully request that the Board adopt the following conditions.

A. Trackage Rights

i. KRR seeks trackage rights over Union Pacific between Durant, OK on the Kiamichi Railroad and Denison, TX on the Texas Northeastern Railway to allow interchange with the TNER

ii. TNER seeks trackage rights over Union Pacific between Denison, TX on the Texas Northeastern Railway and Durant, OK on the Kiamichi Railroad to allow interchange with the KRR

B. Reasonable terms

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

KRR and TNER also request 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.

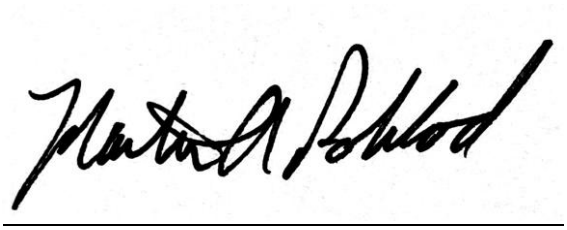
C. Indefinite Oversight

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

VERIFICATION

I, Marty Pohlod, Vice President of National Accounts and Industrial Development for Genesee & Wyoming Railroad Services, Inc., on behalf of Kiamichi Railroad Company L.L.C. and Texas Northeastern Railroad, a division of Mid-Michigan Railroad, Inc., declare under penalty of perjury that the forgoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 18th day of November 2026



CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2026, the foregoing document was served by first-class mail or email upon all parties of record on counsel for Union Pacific Railroad Corporation, Norfolk Southern Railroad Corporation, the Department of Justice, the U.S. Department of Transportation and the administrative law judge assigned in this proceeding.



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Justin J. Marks

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 2026, the foregoing document was served by first-class mail or email upon all parties of record, on counsel for Union Pacific Railroad Corporation, Norfolk Southern Railroad Corporation, the Department of Justice, the U.S. Department of Transportation and the administrative law judge assigned in this proceeding.



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Justin J. Marks