
BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

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

**COMMENTS OF THE RAIL PASSENGERS' ASSOCIATION
AND RESPONSE IN SUPPORT OF THE JOINT SHIPPER ASSOCIATIONS' MOTION
FOR SUMMARY DENIAL**

The Rail Passengers Association (“Rail Passengers” or “RPA”) submits these comments on the passenger-rail portions of the Amended Railroad Control Application filed April 30, 2026, as supplemented July 7 and July 27, 2026 (collectively, the “Application”). RPA also supports the Joint Shipper Associations’ August 6, 2026, Motion for Summary Denial.

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PRELIMINARY STATEMENT

This proposed combination would place an extraordinary share of the Nation’s present and planned passenger-rail network under the control of a single Class I carrier. RPA’s route-level review identifies more than two dozen existing Amtrak services that use UP or NS infrastructure. Applicants’ own plans project additional freight traffic on dozens of passenger-service and route-segment pairings, commonly adding two to ten freight trains per day. At the same time, 43 of the 69 projects selected for the Federal Railroad Administration’s Corridor Identification and Development Program potentially use UP or NS infrastructure. Twenty-two of those 43 projects overlap at least one segment on which Applicants project additional freight traffic.¹

Applicants nevertheless frame their passenger obligation principally as the ability to “maintain current passenger service levels” and fulfill existing performance agreements. That standard is too narrow, and the evidence offered to satisfy even that minimal standard is insufficient. Current passenger service on both Applicants’ territories already experiences substantial host-responsible delay. Statutory preference and operating agreements allocate existing capacity, but they do not add physical capacity, nor, in practice, have they guaranteed acceptable access. Applicants have supplied no timetable-based model or passenger-specific dispatching plan showing how their new freight trains will coexist with existing passenger schedules. Their statistical analysis asks whether historical variation in utilization on one selected segment predicts delay across an entire passenger service, then treats statistically inconclusive results as affirmative proof of no harm. It does not carry the evidentiary burden applicable to the first major-merger proposal reviewed under the Board’s 2001 Merger Rules.²

¹ RPA Ex. 2; RPA Ex. 3; RPA Workpaper 1, tabs “RPA_2_AMTK Rtes” and “RPA_3_CID Rtes.” The project count treats each of FRA’s 69 selected Corridor ID projects once. Segment-level rows do not sum as unique trains because one freight train may traverse multiple listed segments, and one segment may be used by multiple passenger services.

² Applicants’ Final Supplemental Response (UP-80/NS-78), SUPP. PAGES 159–60, 164–81 (filed July 27, 2026) (“July 27 Supplemental Response”).

RPA concurs with the Joint Shipper Associations’ Motion for Summary Denial. That motion demonstrates that a major-merger application must contain sufficient facts for the Board rationally to apply each public-interest criterion in 49 U.S.C. § 11324(b), and that the 2001 Merger Rules impose a heavier, evidence-based burden on Applicants. After the April 30 Amended Application and two supplemental submissions, the record still does not meet that threshold. The Board should summarily deny the Application under 49 C.F.R. § 1180.4(c)(8). Independently of the freight-competition deficiencies identified by the Joint Shipper Associations, Applicants’ passenger-rail presentation omits the transparent, transaction-specific evidence needed to find that existing passenger service will be protected or that reasonably foreseeable passenger development will remain viable.³ Applicants’ August 26 response to the pending *prima facie* challenges does not address—much less cure—the independent passenger deficiencies presented here.

If the Board does not summarily deny the Application, the passenger record warrants denial on the merits. At the absolute minimum, any approval must include enforceable capacity commitments, passenger-performance standards, public reporting, objective intervention triggers, and remedies that protect both existing service and reasonably foreseeable passenger development.

STATEMENT OF INTEREST

RPA is the Nation’s largest nonprofit organization representing the interests of current and future rail passengers. With 127,000 members nationwide, it advocates for the preservation, improvement, and expansion of intercity and commuter passenger rail, transit, and public-transportation connections. Its members use services hosted by UP and NS, and its policy and research work includes host-railroad performance, corridor development, capacity planning, and the federal passenger-rail programs implicated by this transaction. RPA therefore has a direct

³ Joint Shipper Associations’ Motion for Summary Denial (ACC-6/ACD-6/AFPM-6/NITL-3/TFI-6) 13–19, 47–58 (filed Aug. 6, 2026) (“Joint Shipper Motion”).

interest in whether the merger preserves adequate and reliable passenger transportation and leaves the national rail network capable of supporting the passenger investments Congress, FRA, states, and regional authorities are advancing.

SUMMARY OF ARGUMENT

I. The governing public-interest inquiry is broader than Applicants’ proposed benchmark of maintaining existing service and agreements. Section 1180.10(b) establishes required content for coordinating current passenger operations; it does not displace the need to examine the “effect of the proposed transaction on the adequacy of transportation to the public” in 49 U.S.C. § 11324(b)(1), nor the statutory definition of “transportation” as including “the movement of passengers” in 49 U.S.C. § 10102(9), nor the rail transportation policy or the Board’s duties under 49 C.F.R. §§ 1180.1, 1180.7, and 1180.8. Those authorities require the Board to evaluate the adequacy of passenger transportation, preserve essential passenger and commuter services, examine anticipated delay from increased traffic, and consider whether the network can continue to support essential services and national growth.

II. Applicants have not demonstrated that existing passenger service will be protected. The status quo is already inadequate. RPA’s analysis of Applicants’ route-level projections shows 42 of 53 quantified Amtrak passenger-service and route-segment pairings receiving additional freight traffic; Applicants label capacity “sufficient” for 31 of those affected pairings without an operating demonstration. Applicants rely on preference, contracts, confidential capacity inputs, internal management procedures, and historical monthly averages. Those items do not show when the new freight trains will run, where they will meet or pass passenger trains, whether yards and terminals can receive the traffic, or what enforceable action follows when performance deteriorates.

III. Dr. Kristof Zetenyi's analysis does not cure the operational gap. He relied on Applicants' inputs without independent verification and paired each passenger service's total host-responsible delay with utilization on a single selected segment. Several service-specific comparisons have no or very few historical observations at the projected post-merger utilization. His pooled regression coefficients remain positive but are estimated too imprecisely to distinguish from zero. That result is inconclusive. It does not establish that the true effect is zero, validate Applicants' capacity model, or show how post-merger trains will operate.

IV. Applicants have not evaluated reasonably foreseeable passenger development. FRA selected 69 Corridor ID projects under a program Congress created and funded to develop a national pipeline of new and improved intercity services. RPA's project-level analysis shows that 43, or 62.3 percent, potentially use UP or NS infrastructure. Applicants' preservation-of-the-status-quo analysis excludes those services, additional frequencies on existing routes, and other planned development. A merger of this scale cannot be evaluated on the fiction that the passenger timetable will remain frozen for decades.

ARGUMENT

I. THE BOARD'S PUBLIC-INTEREST INQUIRY MUST ENCOMPASS ADEQUATE EXISTING SERVICE AND REASONABLY FORESEEABLE PASSENGER DEVELOPMENT

A. The 2001 Merger Rules require a transaction-specific passenger showing.

A major-merger applicant must present a *prima facie* case. The Application must disclose facts sufficient, when construed favorably to Applicants, to support *every* finding needed for a public-interest determination; summary denial is required if the disclosed facts instead affirmatively show that the proposal is inconsistent with the public interest. 49 C.F.R. §

1180.4(c)(8). The Board adopted that threshold to avoid unnecessary and wasteful proceedings where an application does not enable the agency to exercise its statutory duties and rationally apply the criteria in 49 U.S.C. § 11324(b).⁴

The 2001 Merger Rules deliberately made the burden heavier. The Board recognized that the excess capacity that had once supported consolidation had largely disappeared, that integration failures in a further Class I combination could create nationwide disruptions, and that projected benefits might be difficult to obtain or harms difficult to remedy. It therefore adopted a skeptical “show me” approach and required well-documented, reasonable evidence rather than optimistic projections. That skepticism holds special force where Applicants propose to add substantial freight traffic to lines and terminals carrying scheduled passenger trains.⁵

The rules impose passenger-specific duties. A major-transaction operating plan must “detail any impacts anticipated” on commuter and other passenger services, including delay that may result when a line is scheduled to handle increased traffic. 49 C.F.R. § 1180.8(b)(2). A Service Assurance Plan must identify precise steps to ensure attainable service, describe potential degradation and mitigation, and explain definitively how Applicants will continue to facilitate Amtrak and commuter operations. 49 C.F.R. §§ 1180.1(h), 1180.10(a)–(b). The plan must also address yard and terminal fluidity, infrastructure impediments, future growth, contingencies, benchmarks, and a timetable for major changes. *Id.* § 1180.10(c)–(k).

The Board specifically found Applicants’ original showing insufficient because it failed to explain “how passenger trains will actually be affected.” Decision No. 21 invited a dispatching plan for post-merger traffic, train-modeling evidence, and analysis of anticipated freight schedules

⁴ 49 C.F.R. § 1180.4(c)(8); *Railroad Consolidation Procedures*, 363 I.C.C. 767, 768–70 (1980); *Union Pac. R.R.—Control—Chicago & N.W. Holdings Corp.*, 9 I.C.C.2d 939, 950 (1993).

⁵ *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 545–46, 549, 558–60 (2001); 49 C.F.R. § 1180.1(c).

and their effect on passenger service. Applicants responded with general processes and historical associations. They still have not shown how the trains will actually operate together.⁶

B. The Service Assurance Plan provision is not the outer boundary of the statutory inquiry.

Applicants rely heavily on 49 C.F.R. § 1180.10(b), which speaks to fulfilling existing performance agreements and establishing operating protocols. That provision is a required component of the Application. It does not, however, confine the Board’s public-interest responsibility to today’s routes, frequencies, and agreements.⁷

Congress requires the Board to consider “the effect of the proposed transaction on the adequacy of transportation to the public.” 49 U.S.C. § 11324(b)(1). Congress defines “transportation” to include the movement and handling of passengers. *Id.* § 10102(9). The governing rail transportation policy calls for a sound rail transportation system that meets the needs of the public and promotes safe and efficient service. *Id.* § 10101. The Board’s own policy requires preservation of essential passenger and commuter services wherever feasible and focuses on the ability of the Nation’s transportation infrastructure to continue supporting those services. 49 C.F.R. § 1180.1(c)(2)(ii). The Board further states that mergers should strengthen, rather than undermine, the rail network’s ability to advance national growth and competitiveness. *Id.*

The rule’s required full-system impact analysis confirms the breadth of the required inquiry. Applicants must demonstrate the transaction’s adverse and beneficial effects on essential freight, passenger, and commuter service on the applicants’ lines and across other network links. 49 C.F.R. § 1180.7(b). Their analysis must state its assumptions, demonstrate the validity of its methodology, and provide supporting data. *Id.* § 1180.7(a), (b)(7). A mere narrow assurance that current agreements will remain in place does not satisfy those duties.

⁶ *Union Pac. Corp.—Control—Norfolk S. Corp.* (Decision No. 21), FD 36873, slip op. at 31–32 (STB served May 28, 2026) (“Decision No. 21”); July 27 Supplemental Response, SUPP. PAGE 164.

⁷ July 27 Supplemental Response, SUPP. PAGES 165–70, 178–79.

The proposed transaction therefore presents two related passenger inquiries. First, Applicants must demonstrate that the merger will preserve adequate and reliable existing service. Second, the Board must consider whether the transaction would impair the rail network’s ability to accommodate reasonably foreseeable passenger development. The record fails both tests.

C. The passenger deficiencies independently fail the *prima facie* threshold.

The Joint Shipper Associations correctly explain that an application can fail the *prima facie* requirement in two ways: by omitting facts necessary for the required findings, or by presenting facts that affirmatively demonstrate public-interest harm. The passenger presentation does both.⁸

Applicants read Decision No. 30 too broadly. The Board observed that many pending submissions “focus on merits-related issues,” but expressly stated that its decision reflected no view on any matter raised in those motions and comments and that it would address them separately. The Board therefore has not converted every claimed evidentiary omission into a merits dispute or determined that Applicants have presented the facts necessary to apply each statutory criterion.⁹

Applicants’ August 26 response does not cure the passenger-specific *prima facie* deficiency. Applicants characterize the pending challenges as disputes over the weight of evidence already supplied and therefore as matters for the merits. RPA’s objection is different. Applicants failed to supply the passenger-specific operating evidence necessary for the Board rationally to apply 49 U.S.C. § 11324(b)(1) and the passenger requirements of 49 C.F.R. §§ 1180.8(b)(2) and 1180.10(b). Although their Response claims that the Transaction satisfies “every element of the relevant statutes and regulations,” it does not mention passenger service, Amtrak, commuter rail,

⁸ Joint Shipper Motion 13–16; 49 C.F.R. § 1180.4(c)(8)(i)–(ii).

⁹ *Union Pac. Corp.—Control—Norfolk S. Corp.* (Decision No. 30), FD 36873 et al., slip op. at 4 (STB served Aug. 18, 2026) (“Decision No. 30”).

§ 1180.10(b), or the Board’s passenger-specific supplementation questions. The Response therefore leaves RPA’s independent passenger challenge unanswered.¹⁰

Applicants omit a timetable-based operating model, a passenger-specific dispatching plan, transparent capacity workpapers available for meaningful public testing, and any serious assessment of the federally selected passenger projects that could depend on the combined carrier. Their own evidence reveals near-capacity segments, many passenger routes receiving additional freight traffic, reliance on third-party investments, and an existing passenger-performance baseline that regularly misses Amtrak’s target. The Board cannot rationally find that the proposed transaction will preserve adequate passenger transportation on that record.

The Application also creates an unavoidable evidentiary dilemma. If the traffic growth projected to support Applicants’ public-benefit claims is credible, Applicants must demonstrate how the resulting freight trains will be scheduled and dispatched without harming passenger operations. If the projections are exaggerated, then the claimed public benefits that depend on that traffic are overstated. Applicants cannot claim billions of dollars in benefits from new traffic while treating the trains that produce those benefits as operationally inconsequential.¹¹

II. APPLICANTS HAVE NOT DEMONSTRATED THAT EXISTING PASSENGER SERVICE WILL BE PROTECTED

A. ‘Maintaining current service’ preserves an already inadequate baseline.

Applicants’ promise begins from a demonstrably inadequate baseline. Amtrak’s July 2026 Host Railroad Report cites the target of fewer than 900 host-responsible delay minutes per 10,000 train-miles. In July, NS produced 1,136 such minutes and UP produced 1,173; both exceeded the

¹⁰ *Applicants’ Response Regarding Their Prima Facie Case* (UP-94/NS-93) 1–3, 9–14, 38 (filed Aug. 26, 2026) (“Applicants’ Prima Facie Response”); *id.* at 2 (asserting that the proposed transaction “meets every element of the relevant statutes and regulations”).

¹¹ *See* Joint Shipper Motion 48–53 (challenging Applicants’ traffic-diversion and public-benefit estimates); July 27 Supplemental Response, SUPP. PAGES 182–85 (relying on projected diversions and traffic to support public-interest claims).

regulatory target. UP's rolling twelve-month result also exceeded the target at 1,044 minutes, while NS's was 896. Across the six major host railroads, host railroads were responsible for 65.8 percent of all delay minutes during the twelve-month reporting period, compared with 22.7 percent attributed to Amtrak and 11.6 percent to third parties.¹²

The route-level results show the practical risk. On UP, the *Sunset Limited* recorded 1,357 host-responsible delay minutes per 10,000 train-miles in July and 1,167 over the preceding twelve months. Freight-train interference, at 876 minutes, was its largest July delay category. On NS, the *Blue Water*, *Floridian*, *Lake Shore Limited*, *Pere Marquette*, and *Wolverine* exceeded the 900-minute target both in July and across the preceding twelve months. Freight-train interference was the largest July delay category for each service. Freight-train interference alone on the *Blue Water*, as just one example, reached 1,526 delay minutes per 10,000 train miles, and overall NS-responsible delay minutes on that route in July came to 2,587 per 10,000 train miles. Those services are among the routes on which Applicants project additional traffic in the Chicago-Porter corridor and elsewhere.¹³

Applicants thus ask the Board to infer no adverse passenger effect from evidence that the post-merger railroad may perform no worse than UP and NS perform today. The governing question is adequacy, not mere statistical continuity. A failure to demonstrate measurable worsening does not establish acceptable service, compliance with passenger preference in dispatching, or protection against the merger's added operating risk.

B. RPA's route-level analysis exposes the weakness of Applicants' capacity assurances.

RPA reviewed Applicants' passenger-impact tables route by route and segment by segment. Exhibit RPA-2 and RPA Workpaper 1 examine 55 Amtrak passenger-service and route-

¹² RPA Ex. 4, Amtrak, *Host Railroad Report* 2, 8 (July 2026) ("July Host Railroad Report"). Percentages do not sum to 100.0 due to rounding.

¹³ RPA Ex. 4, July Host Railroad Report 4, 6, 11.

segment pairings covering 26 listed services. After excluding two pairings for which Applicants' traffic change is not quantified, 42 of 53 quantified pairings receive additional freight traffic, generally two to ten trains per day. Applicants nevertheless label existing capacity "sufficient" for 31 of those 42 affected pairings. Eleven affected pairings require investment. Six depend on investments attributed to the Virginia Passenger Rail Authority, North Carolina Department of Transportation, or Pennsylvania Department of Transportation; only two identify Applicants as the source of the needed improvements; and three do not identify the funding source.¹⁴

Representative examples show why a label cannot substitute for an operating demonstration:

1. Chicago-Porter: five additional freight trains, affecting multiple Amtrak services, labeled "sufficient."
2. Porter-Toledo and Toledo-Cleveland: seven additional freight trains on each pairing, labeled "sufficient."
3. New Orleans Back Belt: eight additional freight trains on a terminal corridor used by every New Orleans Amtrak service, labeled "sufficient."
4. Meridian-Atlanta: ten additional freight trains, with Applicant-funded improvements identified.
5. Pittsburgh-Harrisburg: seven additional freight trains, with capacity investment attributed to PennDOT.
6. Multiple *Sunset Limited* segments: two to eight additional freight trains, with a mixture of sufficient-capacity conclusions and either identified or unspecified investments.¹⁵

¹⁴ RPA Ex. 2; RPA Workpaper 1, tab "Existing Service." The exhibit omits unsourced route-segment delay calculations contained in an earlier internal version of the analysis and uses RPA Ex. 5, Amtrak's June Host Railroad Report, separately for baseline performance.

¹⁵ RPA Ex. 2; RPA Workpaper 1, tab "Existing Service."

The Pittsburgh-Harrisburg example is particularly revealing. Pennsylvania and NS agreed that more than \$200 million in infrastructure and safety improvements were needed to support one additional daily *Pennsylvanian* round trip. The Application now projects seven additional daily freight trains on the same passenger corridor and relies on the PennDOT investment in its capacity presentation. *Rail Passengers* is not suggesting that one passenger round trip and seven freight trains impose identical operating demands; however, the asymmetry does require an explanation based on actual schedules, train characteristics, meets, passes, and terminal constraints. Applicants supply none.¹⁶

The RPA tables do not purport to prove that every additional freight train will delay a passenger train. But they do show why Applicants' burden cannot be satisfied by repeatedly writing "sufficient" next to increases of this size. The same traffic projections support Applicants' claimed merger benefits. Their operating consequences must receive equally rigorous treatment.

C. Preference and operating agreements allocate capacity; they do not create it.

Applicants contend that their capacity analysis "implicitly" accounts for passenger trains because Amtrak possesses statutory preference and passenger carriers have operating agreements with UP and NS. That reasoning avoids the capacity question. Preference and contracts determine how capacity should be allocated when passenger and freight trains compete. They do not add a siding, crossover, receiving track, terminal slot, crew, or dispatching window.¹⁷

Nor does the existence of those obligations demonstrate that Applicants will fulfill them after adding the Growth Plan traffic. The July Host Railroad Report shows that statutory and contractual duties currently coexist with substantial host-responsible delay. The Board asked how passenger trains will actually be affected. Reciting the obligations which already govern UP and

¹⁶ Pennsylvania Department of Transportation, *Shapiro Administration Finalizes Agreement to Expand Passenger Rail Service in Western Pennsylvania* (Sept. 22, 2023) (stating that the Commonwealth will invest more than \$200 million to support a second daily *Pennsylvanian* round trip); Amended Application, Vol. 2, at 771–72.

¹⁷ July 27 Supplemental Response, SUPP. PAGES 165–66, 178–79 (citing 49 U.S.C. § 24308 and existing passenger agreements).

NS does not demonstrate sufficient physical and operational capacity to perform them, especially in light of the real-world performance problems that prompted separate enforcement proceedings involving these Applicants before this Board¹⁸ and the U.S. District Court for the District of Columbia.¹⁹

D. Applicants' internal change-management process is not the dispatching plan the Board requested.

Applicants state that they cannot realistically design schedules for anticipated new freight trains before the merger is authorized. They instead describe UP's internal process: planners consider network assets and passenger operations, internal stakeholders approve changes, weekly meetings monitor implementation, and UP/NS can revert to a pre-merger train plan if problems arise.²⁰

That may be a sensible management procedure. It is not a passenger-specific operating plan. It identifies no expected freight operating windows, directional flows, train length or mix, meets and passes, yard-receiving constraints, peak-period conflicts, objective intervention triggers, or enforceable corrective measures. Moreover, a commitment to consider passenger operations internally also leaves the Board and affected passenger operators without a testable record.

The mismatch is especially sharp because Applicants quantify the new trains and rely on those quantities to claim both sufficient capacity and substantial public benefits. They cannot use projected trains to establish the value and feasibility of the merger while disclaiming even a representative schedule showing how those trains fit alongside passenger timetables. A promise

¹⁸ Complaint & Petition of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak's Sunset Limited Trains 1 & 2, NOR 42175, slip op. at 1 (STB served Aug. 6, 2025) (noting Amtrak's settlement with Union Pacific Railroad Company and granting Amtrak's motion to dismiss its complaint with prejudice and terminate the Board's investigation). *See also* Surface Transportation Board, *STB Grants Amtrak Request to Dismiss Sunset Limited On-Time Performance Proceeding Following Settlement*, No. 25-30 (Aug. 6, 2025) (noting that the Board's investigation developed a record addressing more than 1,000 individual delay events).

¹⁹ *United States v. Norfolk Southern Corp.*, No. 1:24-cv-02226-ABJ, Compl. ¶¶ 25–33 (D.D.C. filed July 30, 2024); *see also* U.S. Dep't of Justice, *Norfolk Southern Agrees to Give Amtrak Trains Highest Priority Over Freight Trains and Make its Delay Records for Amtrak Trains Available to the Department of Justice* (Sept. 9, 2025) (announcing settlement with Norfolk Southern Corporation and Norfolk Southern Railway Company and the United States' motion to dismiss the action pursuant to that settlement).

²⁰ July 27 Supplemental Response, SUPP. PAGES 167–69.

that an internal committee may reverse a train-plan change after service deteriorates does not show that deterioration will be avoided. Indeed, history strongly suggests otherwise.

Applicants' dispatching, monitoring, and communication provisions are similarly general. Dispatcher training, legacy passenger teams, recurring meetings, and a future unified point of contact may help administer existing duties. They supply no enforceable passenger benchmarks, reporting rules, trigger points, or remedies. They also cannot govern dispatching by third parties such as Conrail. The provisions therefore do not fill the operating-evidence gap identified in Decision No. 21.²¹

E. Historical monthly averages cannot substitute for operational modeling.

Applicants expressly declined to perform Rail Traffic Controller or comparable dispatch modeling, stating that an RTC analysis for 25 passenger services would require many months. They substituted historical comparisons of monthly utilization and passenger performance.²²

Those comparisons answer a narrower retrospective question. The fact that a line segment carried an equal or greater monthly average number of trains at some point in the past does not reproduce the post-merger train plan. Monthly utilization obscures time of day, direction, length, speed, train mix, maintenance windows, crew and locomotive availability, meets and passes, junction conflicts, and whether yards and terminals can receive the traffic. Those factors determine whether the added freight trains will conflict with scheduled passenger movements.

The Board's 2001 rules demand route-level operational evidence because integration risk cannot be resolved through aggregate assurances. Where the Applicants' public-benefit case rests on a three-year Growth Plan, the time required to model representative high-risk passenger

²¹ July 27 Supplemental Response, SUPP. PAGES 169–70.

²² July 27 Supplemental Response, SUPP. PAGE 170 n.317.

corridors is part of the burden of proposing the merger, not a reason to decide the case without the evidence.

F. The Zetenyi analysis is too narrow and inconclusive to establish no passenger harm.

1. The analysis accepts Applicants' essential inputs without verification.

Dr. Zetenyi expressly states that he relied on data supplied by Applicants and did not independently verify segment selection, capacity calculations, train volumes, or Operating Plan projections. His analysis tests the relationship within Applicants' chosen inputs. It does not validate the capacity model, determine whether Applicants selected the right segments, or establish that the projected post-merger traffic is operationally correct.²³

2. One selected segment cannot represent an entire passenger service or network.

For each passenger service, Applicants selected the growth-affected segment with the highest projected utilization and paired that segment's monthly utilization with the service's monthly host-responsible delay. A passenger train can incur host-caused delay at a terminal, yard, junction, or another line segment far from the selected segment; delay then propagates through the trip and into connections, equipment turns, and later departures. A relationship between route-level delay and utilization on one selected segment cannot demonstrate that the rest of the passenger route or operating network is protected.²⁴

Dr. Zetenyi acknowledges that infrastructure, topography, train density, traffic composition, weather, maintenance, operating practice, and other conditions may affect both utilization and passenger delay. He also states that the detailed information needed to control those factors directly was unavailable. Service fixed effects and common month and year effects address

²³ Verified Statement of Kristof Zetenyi, Ph.D. ¶¶ 7–10, July 27 Supplemental Response, SUPP. PAGES 372–75 (“Zetenyi V.S.”).

²⁴ Zetenyi V.S. ¶¶ 7, 9, 16, SUPP. PAGES 372–74, 377–78.

some persistent or common variation. They do not capture time-varying, route-specific operating conditions central to the merger's actual train plan.²⁵

3. Several service-specific comparisons have little, no, or irrelevant experience at the projected level.

Nine of the 25 Relevant Passenger Services have no historical month at or above the projected post-merger utilization level. For services that could be compared, the *Capitol Corridor* and *Pennsylvanian* each have one qualifying month, the Richmond/Newport News/Norfolk service has two, and the *Texas Eagle* has four. Moreover, one third of all qualifying months are on the *Missouri River Runner*, where Applicants' Operating Plan would decrease their utilization of the line, a situation which is not an appropriate comparison for the rest of the network. Dr. Zetenyi appropriately cautions that he does not rely on those service-specific comparisons alone, while also cautioning against over-interpreting data where an omitted-variables problem may mask a statistically significant relationship ("Accordingly, a reliable analysis should distinguish the true relationship between passenger service performance and [capacity utilization] from the effects of these other factors that may influence passenger delay.")²⁶ Applicants nevertheless present the results as confirmation that projected freight growth can be absorbed without affecting passenger service.²⁷

In samples this thin and selective, a finding that a difference is not statistically significant is not affirmative evidence that the operational effect is zero. It can also reflect low statistical power, a failure to assess confounding variables, or even measuring inapplicable conditions.

²⁵ *Id.* ¶¶ 16–18, SUPP. PAGES 377–79.

²⁶ *Id.* ¶ 17, SUPP. PAGES 378–79.

²⁷ *Id.* ¶¶ 31–34 & Fig. 4 n.4, SUPP. PAGES 390–94. The services with no historical month at or above projected utilization are the *California Zephyr*, *Cardinal*, *Carolinian*, Christiansburg service, *Crescent*, *Mardi Gras*, *Piedmont*, Roanoke service, and VRE.

4. The pooled coefficients are positive and imprecise, not proof of no effect.

The raw data show a positive correlation of 0.278 between utilization and passenger delay. After accounting for common month and year patterns, the reported correlation increases to 0.339. In the pooled fixed-effects models, both principal utilization coefficients remain positive: 2.317 additional host-responsible delay minutes per 10,000 train-miles for each percentage-point increase in utilization in the linear model, and approximately 0.371 percent additional delay in the log model. Both models use 1,186 observations.^{28 29}

Neither coefficient is estimated precisely enough to distinguish it from zero at conventional significance levels. That is a legitimate statistical finding. It means the analysis fails to detect the estimated positive relationship reliably under the selected data and specification. It does not, however, prove that the true effect equals zero. Applicants repeatedly convert an inconclusive result into affirmative evidence of no passenger harm. The inference does not follow.

5. The *Sunset Limited* illustrates both the baseline and inference errors.

Applicants feature the *Sunset Limited* as an example. They report projected utilization of 94.2 percent on the Wellton-Picacho segment. Across 88 historical months, mean host-responsible delay was 1,633 minutes; in the 19 months at or above the projected utilization, the mean was 1,452 minutes. That simple comparison does not show that added merger traffic will improve or preserve the service. Wellton-Picacho is one portion of a nearly 2,000-mile route, while the delay measure covers UP's host portion of the service. After seasonal adjustment, Dr. Zetenyi's estimated difference is positive, though imprecise.^{30 31}

²⁸ *Id.* ¶¶ 35–37 & Fig. 6, SUPP. PAGES 395–97. The linear specification reports a coefficient of 2.317 with a standard error of 5.913; the log specification reports 0.371 with a standard error of 0.463.

²⁹ *Id.* ¶¶ 26–29 & Figs. 1–2, SUPP. PAGES 385–88.

³⁰ Zetenyi V.S. ¶ 32, Fig. 4 & Ex. 1, SUPP. PAGES 390–92, 401. The seasonally adjusted point estimate is positive, and the confidence interval includes zero.

³¹ July 27 Supplemental Response, Table PR-1, SUPP. PAGES 173–75.

Even the limited proposition that delay might not become measurably worse fails to answer the public-interest question. The July Host Railroad Report records 1,357 UP host-responsible delay minutes per 10,000 train-miles for the *Sunset Limited* and 1,167 over twelve months, both above Amtrak’s 900-minute target. Preserving that treatment is not adequate performance.³²

The capacity premise also depends on a project. Applicants state that the segment’s present fluid capacity is 35 trains per day and project Growth Plan traffic of 35.8 trains by Year 3. Their 38-train threshold assumes completion of the Mohawk-Stoval double-track project by the end of Year 2, subject to timely environmental review. They separately identify a 4.9-mile Wellton-Noah double-track connection that would raise capacity to 45 trains “when an increase becomes necessary,” without a definite passenger-protective trigger. The Board should not treat 38 trains per day as present capacity or accept a calculated margin of 2.2 trains without an enforceable completion deadline, contingency plan, reporting, intervention trigger, and remedy. “No worse than bad” cannot satisfy the public-interest standard.³³

G. Applicants’ near-capacity and third-party-dependent examples reinforce the need for enforceable proof.

1. New Orleans-Oliver Junction.

Applicants project 20.0 trains per day against a fluid-capacity threshold of 20.1 between New Orleans and Oliver Junction, a 99.7 percent utilization and a calculated margin of one-tenth of a train per day. The selected historical comparison contains no month at or above that projected level for either the *Crescent* or the *Mardi Gras*.³⁴

Applicants respond that the most constrained single-track portion is not traversed by Amtrak and that crossover projects at St. John, Terminal Junction, and Elysian Fields will improve

³² July Host Railroad Report 12.

³³ July 27 Supplemental Response, SUPP. PAGES 95–97, 179–80.

³⁴ *Id.*, Table PR-1, SUPP. PAGE 174; Zetenyi V.S. ¶ 31 n.23, SUPP. PAGE 390.

the Back Belt. Those facts call for a segment-specific operating demonstration. If the single-track bottleneck does not govern Amtrak's movement, Applicants should show the actual capacity, conflicts, and timetable on the track Amtrak uses. If the crossovers cure the constraint, their scope, completion dates, capacity effects, and passenger protections should be enforceable. The public filing provides no timetable-based demonstration of how eight additional freight movements, passenger trains, and terminal operations will interact.³⁵

2. Conrail Lehigh Line.

Applicants calculate fluid capacity of 116 trains per day on the Conrail Lehigh Line and conclude that four to five additional freight trains can be added while preserving the current Raritan Valley Line schedule. The supporting capacity workpaper is highly confidential. The public response does not identify the operating times of the additional trains, peak-period conflicts, junction and terminal effects, or how Conrail's dispatching will be governed. It examines approximately six shared miles and protects only today's 52-weekday and 36-weekend passenger schedule. Because UP/NS neither owns nor dispatches the line, its internal change-management process cannot guarantee Conrail's performance. The 116-train headline is not the transparent passenger operating analysis the Board requested.³⁶

3. Reliance on independent public investments.

RPA's workpaper identifies six affected pairings where Applicants' capacity conclusion depends on projects attributed to VPRA, NCDOT, or PennDOT. Those state and federally supported investments are neither created by the merger nor guaranteed by Applicants. Under the 2001 rules, benefits that can be achieved independently of the merger cannot be credited as merger-generated public benefits. Nor may Applicants treat public passenger investments as free freight

³⁵ July 27 Supplemental Response, SUPP. PAGES 180–81.

³⁶ *Id.*, SUPP. PAGES 161–64; Workpaper "Conrail Lehigh Line - Highly Confidential.xlsx."

capacity without committing to provide equivalent capacity if a third-party project is delayed, modified, or canceled.³⁷

H. Terminal and network effects remain largely unexamined.

Chicago illustrates the inadequacy of isolated segment assurances. Applicants project five additional daily freight trains on the Chicago-Porter corridor used by five Amtrak services. On Metra's UP-West corridor, Applicants project two additional trains between Chicago and Kedzie, fourteen between Kedzie and Proviso, and five between Proviso and Elburn, while separately assuring the Board that Metra operates over UP's high-capacity Chicago-area lines. Applicants also identify an additional movement in the NS Southwest/Markham area. These changes reach multiple Amtrak services and Metra lines and converge in a terminal where delay propagates across carriers and missed connections. Applicants provide no terminal-wide passenger simulation or reconciled post-merger plan showing how these movements will coexist with peak-period commuter and intercity schedules.³⁸

Applicants also claim a reduction in "rubber tire interchanges" i.e. drayage trucking of freight shipments between UP & NS yards in the Chicago area, and that this will reduce congestion overall.^{39 40} It is important not to conflate transportation modes, however: while a decrease in drayage trucking could potentially decrease road traffic congestion, it explicitly requires moving those trucks onto new trains shuttling between yards. Applicants note that this shift will add two daily trains to a "small portion of UP's Geneva Subdivision,"⁴¹ but do not clarify if those trains are included in the total of 5-14 additional freight trains on the Geneva Subdivision described elsewhere.⁴² Here Applicants also claim "that recently improved triple-track segment has provided

³⁷ 49 C.F.R. §§ 1180.1(c), 1180.6(b)(11); *Major Rail Consolidation Procedures*, 5 S.T.B. at 559; Joint Shipper Motion 47–48.

³⁸ RPA Ex. 2; RPA Workpaper 1, tab "Existing Service"; Amended Application, Vol. 2, at 709, 764, 769–70, 772, 775–77.

³⁹ Amended Application, Vol. 2, at 695–96, Gehringer/Orr V.S. ¶ 188.

⁴⁰ *Id.* at 710, Gehringer/Orr V.S. ¶ 206.

⁴¹ *Id.* at 710, Gehringer/Orr V.S. ¶ 204.

⁴² *Id.* at 776–77, Gehringer/Orr V.S. ¶ 351.

a minimum of 25 trains per day of slack capacity,” a clear, precise, and quantitative statement about a line’s capacity that is entirely omitted from Applicants’ claims in Chapter 8, “Impacts on Passenger Operations.”

Applicants also failed to comprehensively note all planned changes affecting Chicago-area services in the Passenger Rail Impacts section. In addition to the above-noted two daily trains on the Geneva Subdivision, Applicants also claim that interchange operations with CN in Markham, IL will add one daily freight train to the NS SouthWest Sub⁴³, while elsewhere claiming they will not add any trains affecting Amtrak’s *Cardinal*⁴⁴ or Metra SouthWest Service.⁴⁵

New Orleans presents the same network problem in a different form. Every Amtrak service using New Orleans traverses some portion of the Back Belt, where Applicants project eight additional freight trains. The 99.7 percent selected-segment utilization, crossover projects, interchange changes, and passenger schedules must be evaluated together. Applicants instead divide the problem among a line-capacity calculation, general terminal assurances, and a historical regression incapable of modeling the proposed movements.

The freight Service Assurance Plan adds another layer of passenger risk. The Joint Shipper Associations show that Applicants’ freight remedy excludes much contract and exempt traffic and repeats prior merger assurances that transitional disruption will be avoided. RPA does not contend that the freight claims program creates passenger rights. We identify, however, the passenger consequence: a weak freight service-assurance regime leaves a larger risk of network congestion and spillover delay. Internal reviews and reversibility promises fail to contain that systemwide risk.⁴⁶

⁴³ *Id.* at 710, Gehringer/Orr V.S. ¶ 204.

⁴⁴ *Id.* at 765, Gehringer/Orr V.S. ¶ 324.

⁴⁵ *Id.* at 779, Gehringer/Orr V.S. ¶ 360.

⁴⁶ Joint Shipper Motion 53–56; 49 C.F.R. §§ 1180.1(h)(5), 1180.10(i).

III. APPLICANTS FAILED TO EVALUATE REASONABLY FORESEEABLE PASSENGER DEVELOPMENT

A. The Corridor ID portfolio is a concrete federal development pipeline.

Congress created the Corridor Identification and Development Program to facilitate the development of intercity passenger rail corridors. 49 U.S.C. § 25101. FRA selected 69 corridors in December 2023 across 44 states and awarded more than \$34 million in initial development funding. The selected portfolio includes restored routes, new corridors, additional daily frequencies, and improvements to existing services. This is not speculative interest untethered from public action or political support. It is a congressionally authorized and funded development pipeline.⁴⁷

Applicants' supplemental passenger analysis tests none of it. Every part of their showing is organized around current routes, current frequencies, current schedules, existing agreements, and segments selected from today's operating footprint. Even a complete demonstration that the Growth Plan could coexist with today's timetable would not establish that the combined carrier can accommodate passenger development already moving through federal and state planning.

B. Nearly two-thirds of the selected projects potentially depend on the combined carrier.

RPA reviewed the 69 distinct Corridor ID projects and their potential overlap with UP and NS infrastructure. Forty-three projects, or 62.3 percent, potentially use infrastructure of one Applicant and could therefore require cooperation from the combined carrier. Twenty-two of those 43 overlap at least one segment where Applicants project added freight traffic. Exhibit RPA-3 and

⁴⁷ 49 U.S.C. § 25101; Federal Railroad Administration, *FY22 Corridor Identification and Development Program Project Summaries* (Dec. 2023); Federal Railroad Administration, *Corridor Identification and Development Program* (last updated Dec. 18, 2025).

the “Corridor ID” tab of RPA Workpaper 1 identify the projects, relevant segments, projected train-count changes, and potential infrastructure owner.⁴⁸

That concentration dramatically changes the public-interest stakes. By combining two freight networks, the merger could give one single private entity a decisive role in a majority of the Nation’s federally selected passenger-development portfolio. Applicants offer no full-system analysis of how their Growth Plan, terminal changes, capital plan, and dispatching practices would affect that portfolio and, by extension, clearly expressed congressional intent in creating that portfolio.

C. Applicants’ present-service benchmark cannot answer the future-capacity question.

Applicants may argue that schedules and alignments for Corridor ID projects remain under development. Precision is not the same as foreseeability. The Board need not predict a final timetable for every selected corridor to require Applicants to identify likely overlaps, preserve reasonable capacity, explain which Growth Plan projects consume that capacity, and establish a process for accommodating additional frequencies and new services. Applicants themselves project three years of freight growth and longer-term capacity needs under uncertain future conditions. They cannot then demand certainty only when the foreseeable development is passenger service.

The Board’s policy reinforces the prospective inquiry. Mergers should strengthen the rail network’s ability to sustain essential services and advance national growth. 49 C.F.R. § 1180.1(c)(2)(ii). The Service Assurance Plan must address infrastructure improvements related to future growth and their relationship to service delivery. *Id.* § 1180.10(d). The statutory inquiry

⁴⁸ RPA Ex. 3; RPA Workpaper 1, tab “Corridor ID.” Potential ownership reflects the alignments identified in the workpaper and may be refined as project sponsors complete service-development planning.

asks whether transportation to the public will remain adequate, not whether the merged carrier can freeze the present timetable in place.

D. Public passenger investments cannot be converted into merger benefits or excuses.

Applicants repeatedly rely on improvements funded or advanced by states, Amtrak, and federal programs. Those projects may create capacity and public benefits, but the merger did not cause them. The Board's rules require Applicants to distinguish benefits obtainable only through the merger from benefits achievable by other means. 49 C.F.R. § 1180.6(b)(11).⁴⁹

The same discipline must apply to passenger infrastructure. An independent public project cannot offset merger harm as a merger-generated benefit. Nor should it become a reason to allow Applicants' freight Growth Plan to consume capacity intended to support the public passenger investment. If Applicants' adequacy finding depends on a third-party project, any approval should require the combined carrier to protect the passenger capacity and provide equivalent capacity if the project does not materialize as assumed.

**IV. IF THE BOARD DOES NOT DENY THE APPLICATION, IT SHOULD IMPOSE
SPECIFIC AND ENFORCEABLE PASSENGER CONDITIONS**

The Board has broad authority to condition a Class I consolidation to mitigate or offset public-interest harm. 49 U.S.C. § 11324(c); 49 C.F.R. § 1180.1(d). General promises to comply with existing law, communicate with passenger operators, and revisit problems after deterioration are inadequate here. Any approval should, at minimum, require the following:

1. **Preservation of Existing Passenger-Service Rights and Remedies.** As a condition of approval, the Board should require that consummation of the transaction not extinguish, impair, supersede, or otherwise diminish any existing passenger-service right, remedy,

⁴⁹ 49 C.F.R. §§ 1180.1(c), 1180.6(b)(11); *Major Rail Consolidation Procedures*, 5 S.T.B. at 559; Joint Shipper Motion 47–48.

settlement obligation, contractual commitment, or other protection applicable to either Applicant. Those protections should remain enforceable against the appropriate successor entity according to their terms, subject to subsequent modification by the parties or lawful action by an agency or court with jurisdiction. This condition would preserve, rather than expand, existing rights and remedies.

2. **Transparent good-faith modeling consistent with statutory intent.** Any freight-passenger interaction analysis used to support any action or decision executing the transaction or future route decisions made as a result of the transaction must include a modeling approach based on the “unreasonable impairment” standard in 49 U.S.C. § 24308(e), rather than “zero impact.”
3. **Passenger operating demonstrations.** Before implementing each material merger-related train-plan change on a passenger-used corridor, UP/NS must provide a route- and terminal-specific operating analysis showing anticipated freight windows, passenger conflicts, meets and passes, yard and terminal capacity, maintenance windows, and contingency operations.
4. **Existing-service performance floors.** UP/NS must meet enforceable route-level standards for host-responsible delay and endpoint on-time performance, with no route permitted to use an already deficient pre-merger result as its compliance floor.
5. **Public reporting.** UP/NS must publish monthly route- and host-segment passenger-performance reports, merger-related train-count changes, capacity utilization, infrastructure status, and identified passenger conflicts in a consistent format suitable for comparison with pre-merger benchmarks.
6. **Objective intervention triggers.** The conditions must define delay, utilization, terminal-dwell, missed-connection, and project-schedule thresholds that automatically require corrective action, rather than leaving intervention to internal discretion.

7. **Expedited passenger dispute resolution.** Amtrak, commuter authorities, states, and corridor sponsors must have access to an expedited Board-supervised procedure for disputes over dispatching, access, performance, capacity studies, and infrastructure requirements.
8. **Capacity investment commitments.** UP/NS must fund all infrastructure required to prevent merger-related degradation of passenger service. If Applicants rely on a third-party project to support their Growth Plan, they must provide equivalent capacity if that project is delayed, altered, or canceled.
9. **Project-specific commitments.** Mohawk-Stoval, the New Orleans Back Belt crossovers, and any other project used to establish post-merger fluid capacity must have enforceable completion dates, transparent milestones, contingency measures, and passenger-protective remedies.
10. **Corridor ID capacity preservation.** UP/NS must identify and preserve reasonable capacity for Corridor ID projects and additional frequencies that reach defined development milestones and must participate promptly and in good faith in planning and operating studies.
11. **Independent validation.** Capacity models, material assumptions, and post-merger passenger-impact analyses must be available to affected passenger operators and qualified reviewers under appropriate protective arrangements, with independent validation where the Board relies on them. All parties must have access to any modeling, data inputs, results, scenarios, and assumptions, subject to those parties executing appropriate undertakings to safeguard confidential material. This would permit all parties to participate equally in the modeling and resulting analysis and would ensure good-faith public-interest principles are maintained.

- 12. Continuing oversight and supplemental relief.** Passenger conditions should remain subject to the Board's minimum five-year oversight, with authority to extend oversight, modify conditions, require capital work, or impose operational remedies if expected passenger protections do not materialize.

CONCLUSION

RPA supports the Joint Shipper Associations' Motion for Summary Denial. The passenger record supplies an additional and independent reason that the Application fails to present a *prima facie* case. Applicants have not produced the transparent, transaction-specific evidence required to determine how existing passenger trains will be affected, whether the combined railroad can provide adequate passenger transportation, or whether reasonably foreseeable passenger development will remain viable.

The Board should summarily deny the Application under 49 C.F.R. § 1180.4(c)(8). If it proceeds to the merits, it should deny the Application because Applicants have not carried the heightened public-interest burden imposed by 49 U.S.C. § 11324 and the 2001 Merger Rules. At the absolute minimum, the Board should impose the enforceable passenger conditions described above and any additional relief necessary to protect existing service, future development, and the public investment already committed to the Nation's passenger-rail network.

Respectfully submitted,

/s/ Jim Mathews

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Dated: Sept. 9, 2026

VERIFICATION

I, Jim Mathews, declare under penalty of perjury that I am President and Chief Executive Officer of the Rail Passengers Association; that I am authorized to submit this filing on its behalf; that I have read the foregoing; and that, to the best of my knowledge, information, and belief, the factual statements made on behalf of the Association are true and correct. The analyses identified as RPA Workpaper 1 were prepared from the sources identified therein under the supervision of RPA's research and policy staff.

Executed on: September 9, 2026

/s/ Jim Mathews

Jim Mathews

CERTIFICATE OF SERVICE

I certify that on September 9, 2026, the foregoing document and its public exhibits and workpaper were served by email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias, consistent with 49 C.F.R. § 1104.12 and the Board's service directives in this docket.

/s/ Jim Mathews

Jim Mathews

LIST OF EXHIBITS AND WORKPAPER

Exhibit RPA-2: Applicants' Projected Freight-Traffic Changes on Segments Used by Existing Passenger Services

Exhibit RPA-3: Corridor ID Projects Potentially Dependent on UP or NS Infrastructure

Exhibit RPA-4: Amtrak, Host Railroad Report, July 2026

Exhibit RPA-5: Amtrak, Host Railroad Report, June 2026

RPA Workpaper 1: UP-NS Passenger Route and Corridor ID Analysis (native Microsoft Excel format)