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VIA EFILING

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

Re: STB Docket No. 32760 (Sub-No. 52), BNSF Railway Company—Petition for Review—UP/SP Merger Conditions

Dear Chief of Case Administration:

The National Industrial Transportation League (“NITL”) respectfully submits this Reply in support of BNSF Railway Company’s (“BNSF”) Petition for Review, Enforcement, and Modification of the UP/SP Merger Conditions (“Petition”) filed on November 28, 2025, in the above referenced proceeding.¹ BNSF’s petition is based on the STB’s authority under 49 U.S.C. § 11327 to revisit and enforce merger conditions in a supplemental order when cause exists.

NITL is the Voice of the Shipper on freight transportation policy matters involving all modes, including rail. NITL members require efficient, competitive, and safe transportation within the United States and beyond to meet their supply chain requirements. NITL members move a variety of commodities via the U.S. rail network, including consumer goods, agriculture, chemicals, steel, forest products, fuel, food, and more. Moreover, NITL actively participated in the STB’s review of the merger between Union Pacific Railroad Company (“UP”) and Southern Pacific Rail Corporation (“SP”) (“UP/SP merger”), and advocated for conditions to preserve competition via conditions for rail customers that were located at or near “2-to-1” points, and suffered a reduction in competition as a result of the merger. Thus, NITL has a direct and compelling interest in the BNSF petition.

Based on adverse impacts on competition resulting from the UP/SP merger, the STB conditioned its approval of the merger to preserve access to two rail carriers for those shipper facilities whose access was reduced to one carrier post-merger.² Without these conditions, the UP/SP merger would not have satisfied the public interest standard. Indeed, a prerequisite for merger

¹ In its decision dated December 10, 2025, the STB extended the time for replies until January 7, 2026.

² See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp* (Decision No. 44), 1 S.T.B. 233, 418-420 (1996).

conditions is that the merger would be harmful to the public interest.³ When a condition is not fulfilled, therefore, the public interest standard is no longer satisfied.

As a result of the UP/SP merger conditions, BNSF obtained significant rights to compete directly with UP to serve rail customers and preserve competition that was eliminated from the merger. BNSF's Petition alleges that UP has engaged in a pattern of "delay and deny" tactics to prevent many of the conditions imposed in the UP/SP merger from being fulfilled, especially at former 2-to-1 locations.⁴ BNSF contends that these tactics have impeded shipper choice, and degraded service reliability, customer elections, trackage rights, siting, capital access, and dispatching—all resulting in fewer options, higher costs, and uncertainty for shippers. More importantly, BNSF asserts that UP's tactics appear designed to undermine the effectiveness of the conditions that the STB imposed to preserve competition to the detriment of rail customers and BNSF.

NITL echoes BNSF's position that the "ad hoc" approach to resolving UP/SP merger-related disputes is costly and ineffective.⁵ But this is especially true for shippers who are intended beneficiaries of the merger conditions⁶ but may be reluctant to litigate their enforcement due to the costs and fear of retaliation simply for pursuing their right to experience competitive rail access.

Given the substantial reduction in rail competition as a result of the UP/SP merger (and the mergers subsequent to that transaction that have resulted in even further consolidation of the freight rail industry), it is critical that UP adhere to its obligations arising under, and cease from obstructing, the UP/SP merger conditions designed to preserve competition. The serious concerns and allegations raised by BNSF warrant investigation and, if necessary, action by the STB to ensure that the competition intended to be preserved by the merger conditions are in fact fulfilled to the maximum extent possible.

Accordingly, NITL and its members encourage the Board to grant the BNSF petition to review whether UP has fulfilled its promises and, if necessary, enforce and modify the UP/SP merger conditions to preserve competition to the fullest extent intended in its UP/SP merger decision.

Sincerely,

A handwritten signature in black ink that reads "E. Nancy O'Liddy". The signature is written in a cursive, slightly slanted style.

E. Nancy O'Liddy
Executive Director

cc: Parties of Record

³ *Id.* at 418 ("Conditions will not be imposed unless the merger produces effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate.").

⁴ *Petition*, at 8.

⁵ *Id.* at 12.

⁶ *See id.* at 2 n.1.