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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

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NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY CORPORATION

COMMENTS ON COMPLETENESS OF AMENDED APPLICATION

The National Grain and Feed Association (“NGFA”) hereby provides its comments in response to the Decision served in this proceeding on May 5, 2026, which established May 8, 2026 as the deadline for parties to comment on whether the Amended Application filed by Union Pacific Corporation, Union Pacific Railroad Company, Norfolk Southern Corporation, and Norfolk Southern Railway Company (“Applicants”) contains the information required in 49 C.F.R. part 1180. Based on NGFA’s review to date, the Applicants have not submitted a major transaction application that contains all the information required by 49 C.F.R. part 1180. The Amended Application lacks critical information required by several aspects of the applicable regulations, and the Board should accordingly reject the Amended Application.

I. Identity and Interest of NGFA

The NGFA, established in 1896, consists of grain, feed, processing, exporting and other grain-related companies that operate facilities handling U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that operate over 8000 facilities providing goods and services to the nation's grain, feed and processing industry. NGFA's membership includes cooperatives and private companies employing 175,000 Americans and supporting over 1.16 million associated jobs nationwide with an annual economic impact of \$401.7 billion.

II. Comments on Completeness of Application

The *Major Rail Consolidation Procedures* promulgated by the Board in 2001 in Ex Parte No. 582 (Sub-No. 1) ("*2001 Rules*") codified several new merger policies that the Board would require future merger applicants to specifically address in their merger application to avoid further reductions to intermodal and intramodal competition, and to prevent the re-occurrence of the significant, if not catastrophic, railroad service failures that had occurred in the major railroad mergers that immediately preceded the *2001 Rules*. The Amended Application falls short of the letter and spirit of the *2001 Rules* on these two critical subjects.

A. The Amended Application's Provisions Concerning Enhanced Competition are Deficient

The *2001 Rules* are clear that a major merger application must contain specific and detailed information about how the merger applicants will not only preserve existing competition but also enhance it. Specifically, under 49 C.F.R. §1180.1(c):

Although further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation

in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately. Additional consolidations could also result in service disruptions during the system integration period. Accordingly, to assure a balance in favor of the public interest, merger applications should include provisions for enhanced competition . . .

While the Board specifically declined the invitations of stakeholders to define the term “enhanced competition,” it nevertheless took pains to set out in the *2001 Rules* its expectations of the measures it expected applicants to consider and address when meeting this aspect of the rules. For example, the Board advised that:

[c]ompetition can be enhanced in many ways. The focus of such a plan could be placed on enhancing intramodal (rail-to-rail) competition, for example, by the granting of trackage rights, the establishment of shared or joint access areas, the removal of “paper” and “steel” barriers, and other techniques that would enhance railroad-to-railroad competition.

2001 Rules at 17. The Board further advised that:

[o]ur new rules reflect an intention on our part to offset, through conditions for competitive enhancements, those merger-related harms that cannot be directly or effectively mitigated. Such competitive enhancements could include, but would not be limited to, reciprocal switching arrangements, trackage rights, or elimination of ‘paper barriers’ on interchange by shortline carriers.

Id.

Finally, while the Board stated above that the emphasis should be on enhancing rail-to-rail competition, it also stated “In short, in any future consolidation cases, we will strive to remedy *every competitive harm that would stem from any proposal that we decide to approve*. We anticipate, however, that, to gain our approval, it likely would be necessary for applicants to offer to offset a difficult-to-remedy loss of competition with competitive enhancements.” *Id.* at 20 (emphasis supplied). This statement is a recognition that a major rail consolidation after 2001 could cause competitive harm beyond just the loss of rail-to-rail competition and could also include

harm to rail shippers, and indeed entire sectors of the United States' economy, through the elimination of markets and destinations for products and services.

The *2001 Rules* accordingly require merger applicants to include a robust and detailed plan for how they expect to enhance competition to address every competitive harm that could result from the merger, not just the loss of rail-to-rail competition. *See also* 49 C.F.R. § 1180.1(c)(2)(i) (“Applicants shall propose remedies to mitigate and offset competitive harms”) and (iv) (“To offset harms that would not otherwise be mitigated, applicants should explain how the transaction and conditions they propose would enhance competition.”). Moreover, NGFA asserts that the *2001 Rules* require applicants to include in their application a detailed discussion of whether they considered the other means to enhance competition specifically referenced by the Board (trackage rights, reciprocal switching, elimination of paper and steel barriers, construction of transload facilities, establishment of shared or joint access areas, etc.), and if not, why not. And if these measures were considered by the applicants, why did they reject them.

In their Amended Application, UP and NS have not proposed a plan that would enhance railroad and other competition, but rather “a set of practical, targeted commitments designed to preserve and reinforce competition: protections for shipper facilities currently served by UP and NS that would have no access to another Class I railroad in an unconditioned merger (“2-to-1” shipper facilities); continued access to interline service with other railroads through existing gateways; and a Committed Gateway Pricing program to extend the merger’s benefits to more customers.” Amended Application, Vol. 1, page 13. NGFA’s review of the Amended Application to date has not revealed any mention of any other proposed means to enhance competition, or of the other specific measures to enhance competition discussed in the *2001 Rules*.¹

¹ The Amended Application states in several places that the merger in and of itself will enhance competition, *see, e.g.*, Vol. 1, page 13, 22. However, such representations should not be

As to the foregoing three “commitments,” only the CGP is presented as a new proposal to enhance competition (*see* Vol. 1, page 22), since protecting 2-to-1 shipper facilities and preserving existing gateways fall into the category of preserving competition, not enhancing it. Whether the significantly restricted, qualified, and time limited CGP proposal enhances competition in compliance with the *2001 Rules* and the public interest remains to be seen. But the Amended Application overall falls short of complying with the requirement in the *2001 Rules* to explain how the proposed merger will not only preserve existing railroad and other competition but enhance it moving forward should the merger be approved. The Board should not interpret the *2001 Rules* to allow merger applicants to include only a minimal discussion of these issues and then require affected parties and the Board to identify and develop them further.

B. The Amended Application Service Assurance Plan is Deficient

The Amended Application’s proposed Service Assurance Plan is also deficient. The *2001 Rules* state “[t]o ensure that applicants have no incentive to exaggerate [the] projected benefits to the public, the Board expects applicants to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner.” Accordingly, Applicants must submit a precise, detailed Service Assurance Plan that provides the Board and industry stakeholders in advance with a written plan to which the Applicants can be held to account when any post-merger service disruptions occur. Specifically, the Service Assurance Plan must identify “precise steps [applicants] would take to ensure adequate service, and to provide for improved service.” Section 1180.1(h)(1). The *2001 Rules* also require the Applicants to provide a detailed description of where the potential service disruptions might be. Further, in order to establish a baseline to which post-merger service can be compared “applicants will be required to provide

considered a “plan” to enhance competition set forth in the Application as the *2001 Rules* require.

service benchmarks, describe the extent to which they have entered into any arrangements with shippers and shipper groups to compensate for service failures, and establish contingency plans that would be able to mitigate any unanticipated service disruptions.” Section 1180.1(h)(1).

The intent and policy purpose of the Service Assurance Plan provisions of the *2001 Rules* is clear: the Board expected service disruptions from the next major merger and it was not going to be satisfied with promises from applicants about the benefits of a merger to the public without pre-established service benchmarks and concrete consequences for the failure of such promises to come true.

1. The Application does not contain a Commitment to Arbitration of Service Claims that Complies with the *2001 Rules*

The Amended Application contains no description of any arrangements the Applicants have made with any shipper or shipper group to compensate for service failures. Instead, the Amended Application includes an arbitration proposal that does not comply with the *2001 Rules*. Specifically, The *2001 Rules* “strongly encourage[.]” applicants to make a commitment to submit all claims of service-related service failures to arbitration. *2001 Rules* at 41. As envisioned by the Board, an arbitration system that complies with the *2001 Rules* should “identify in advance levels of service failure that would be construed as a failure to provide common carrier service and ... stipulate a system for compensating shippers that are harmed by such failures.” *Id.* at 41-42. Further, “[w]ith those service levels in place, these disputes could be readily handled by an arbitrator if an affected shipper wishes to utilize such arbitration procedures.” *Id.* Thus, the *2001 Rules* contemplate an objective, “readily handled” dispute resolution process that enables compensation to shippers for service failures to be easily calculated or stipulated.

The Amended Application does not include such a dispute resolution system. It instead offers a very limited proposal for submitting service claims to arbitration that could not be “readily

handled” or compensation to shippers to be determined by measuring post-merger service against pre-established service levels. More specifically, the Amended Application would limit arbitration to questions of “whether the Carrier failed to provide reasonable service due to merger implementation problems during the statute of limitations period.” Vol. 2, page 1141. The deterioration of post-merger rail service to a customer would be considered “reasonable” until it reached the level of “substantial deterioration,” which the customer would then bear the heavy evidentiary burden to demonstrate. *Id.* Additionally, the Applicants’ proposal would eliminate any compensation to a shipper for damages it incurs from “substantially deteriorated” rail service post-merger if the merged railroad merely “cures” the service issue within the 30-day period after notice of arbitration is provided. What level of deteriorated service would be considered a “cure” is not explained, but in any event, it would be “absolute defense” to liability for damages previously incurred which triggered the arbitration in the first instance.

Finally, among other limitations and restrictions, the Applicants’ proposed arbitration process would be time-limited, expiring three years after the effective date of the merger’s approval. Vol. 2, page 1143.

In summary, the Applicants’ arbitration proposal does not comply with the *2001 Rules*, rendering the Amended Application materially deficient as to a critical component of the *2001 Rules*.

2. **The Application is Devoid of Specifics on How Applicants Would Utilize Other Railroads During Post-Merger Disruptions**

The *2001 Rules* contain numerous provisions addressing the Board’s desire that the Service Assurance Plan must include a detailed explanation of how the Applicants “would cooperate with other carriers in overcoming serious service disruptions on their lines during the transitional period and afterwards.” §1180.1(c)(2)(iii). However, the Amended Application

devotes only two paragraphs to this critical issue that set forth only generic statements that the Applicants will “work with other carriers,” and to “continue to seek cooperation when the combined company needs assistance . . .” to overcome serious service disruptions. Vol. 2. Page 1041. While the Amended Application contains the term “precise steps” in several places, there is no explanation of precisely *how* the Applicants will utilize other railroads to help them overcome serious service disruptions post-merger. Such additional details are necessary because the *2001 Rules* require them, but also because the process of how the cooperation of other railroads would be sought and executed is not one-size-fits-all. It will vary according to where such disruptions occur on the combined system.

The Amended Application’s generic promises that the Applicants will work with other railroads should service disruptions occur do not fulfill the requirements of the *2001 Rules* and constitute another material deficiency in the Amended Application.

III. Conclusion

In summary, the NGFA submits that the Amended Application is incomplete in at least the several areas discussed in these Comments. As stated above, the Board should not interpret the *2001 Rules* to allow merger applicants to include only a minimal discussion of these issues and put the onus on affected parties and the Board to identify and develop them further. Accordingly, the Board should not accept the Amended Application as complete until additional information on the areas discussed in these comments is submitted in compliance with the *2001 Rules*.

Respectfully submitted,

/s/ Thomas W. Wilcox

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2026 a copy of the foregoing Comments were served on all parties of record on the service list for this proceeding by electronic mail.

s/ Thomas W. Wilcox

THOMAS W. WILCOX