

BEFORE THE
SURFACE TRANSPORTATION BOARD

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UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

**GRAND TRUNK CORPORATION'S COMMENTS ON COMPLETENESS OF
UNION PACIFIC AND NORFOLK SOUTHERN'S AMENDED APPLICATION**

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INTRODUCTION AND EXECUTIVE SUMMARY

Pursuant to Decision No. 17,¹ Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries² (collectively, “CN”), respectfully submits its comments on the completeness of the amended application³ filed by Union Pacific Corporation (“UPC”) and Union Pacific Railroad Company (“UP”) (collectively, “Union Pacific”) and Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NS”) (collectively, “Norfolk Southern,” together with Union Pacific, “Applicants”) for UPC to acquire control of NSC, and

¹ See Decision No. 17, FD 36873 et al. (STB served Apr. 30, 2026).

² Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

³ UP-39/NS-37, FD 36873 (filed Apr. 30, 2026) [hereinafter the “Amended Application” or “Am. Appl.”].

through NSC of NS and NS’s rail carrier subsidiaries. Because the Amended Application still fails to meet the requirements of 49 C.F.R. part 1180, the Board should reject the Amended Application as incomplete and require Applicants to resolve its many deficiencies. In the alternative, should the Board deem the Amended Application complete, it should pause the merger proceeding until the missing information can be submitted and inconsistencies addressed.⁴

Applicants filed their first attempt at a completed application on December 19, 2025.⁵ The Surface Transportation Board (the “Board”) rejected Applicants’ Initial Application⁶ and ordered Applicants to correct three deficiencies:

- (i) correct the Impact Analyses required under 49 C.F.R. § 1180.7(b) by providing **projected** market shares;
- (ii) submit the full Merger Agreement,⁷ including the missing schedules, as required under 49 C.F.R. § 1180.6(a)(7)(ii); and
- (iii) submit a “significant” transaction application for Applicants’ control over the Terminal Railroad Association of St. Louis (“TRRA”) instead of the “minor” transaction application that Applicants submitted with the Initial Application.

⁴ See, e.g., Decision No. 16, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 et al., slip op. 3-4 (STB served Mar. 16, 2022) (suspending procedural schedule and ordering applicants to explain traffic inconsistencies within merger application); Decision No. 17, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 et al., slip op. 5-7 (STB served Apr. 27, 2022) (continuing suspension of procedural schedule and ordering applicants to resolve noted deficiencies relating to their operating plan).

⁵ UP-13/NS-11, FD 36873 (filed Dec. 19, 2025) [hereinafter the “Initial Application” or “Init. Appl.”].

⁶ See Decision No. 9, FD 36873 et al. (STB served Jan. 16, 2026) [hereinafter “Initial Application Rejection” or “Decision No. 9”].

⁷ “Merger Agreement” means that certain Agreement and Plan of Merger, dated as of July 28, 2025, by and among UPC, Ruby Merger Sub 1 Corporation, Ruby Merger Sub 2 LLC, and NSC, and any amendments or supplements thereto. See Initial Appl. Vol. 4 at 5.

The Amended Application resolves only **one** of these, by providing a complete Merger Agreement, and raises new issues and inconsistencies. The Amended Application still fails to provide complete Impact Analyses that comply with the requirements of § 1180.7(b) to project future market shares of a merged UP-NS and still fails to address the requirements imposed by the Board with respect to the TRRA. That Applicants meaningfully addressed only **one** of the three independent reasons for rejecting the Initial Application flies in the face of the Board’s very clear decision and order. These failings are not just technical in nature. Rather, by omitting or hiding the effects of the proposed merger, Applicants deprive stakeholders of the data and information (that Applicants alone possess) needed to meaningfully comment on the proposed merger. Their new vague commitment over the TRRA, in addition, does not avoid a change in control over TRRA (or Norfolk Southern)—they dismissively ignore the complexity (if not infeasibility) of implementing their proposed commitments in the future to avoid a change in control over the TRRA.

CN also identified several other deficiencies with the Initial Application that the Board’s Initial Application Rejection did not specifically address, although the Board welcomed Applicants to make further changes to improve their Application.⁸ CN’s Initial Comment included arguments that (i) the market analyses failed to adequately identify all 2-to-1 and 3-to-2 shippers; (ii) traffic tape data from multiple Class I carriers was omitted; (iii) the map included in Exhibit 1 omitted Applicants’ overlapping trackage rights segments over lines in relation to one another (thus concealing various points of overlap); and (iv) the Application failed to propose any

⁸ “[N]othing prevents Applicants from making additional changes to improve their Application now that they have received comments from other stakeholders.” Initial Application Rejection at 12.

competitive enhancements.⁹ The Amended Application resolves only **two** of these, by incorporating traffic tapes and corrected maps, but remains incomplete as to the impacted customers and competitive enhancements.

The Amended Application’s failure to make any material improvements is **inconsistent** with Applicants’ public statements that they would “respond to the pretty clear instructions [from the Board] on the three key areas.”¹⁰ Moreover, Applicants have not addressed the core underlying issues and competitive harms from the proposed merger. Applicants continue to rely on the false narrative that the proposed merger presents only “tiny overlap” that will not have negative impacts on competition.¹¹ But these claims cannot resolve the fact that the Board has already recognized the “fair degree of overlap” between eastern and western Class I railroads, rejecting arguments that competition will not be harmed by this alleged “end-to-end” transaction.¹²

Nor can they hide the Amended Application’s deficiencies that yet again render the Application incomplete. A major merger application has three critical components: the competition analyses (referred to as market analyses in 49 C.F.R. § 1180.7); the diversion study to

⁹ CN-6, FD 36873 (filed Dec. 29, 2025) [hereinafter “CN’s Initial Comment”].

¹⁰ See Jim Vena, JPMorgan Industrials Conference: Strategic Merger Insights (Mar. 18, 2026), <https://m.investing.com/news/transcripts/union-pacific-atjpmorgan-industrials-conference-strategic-merger-insights-93CH-4568688?ampMode=1> (“They wrote us 15 pages with some pretty clear instructions on the three key areas that they wanted to see more information on, and that’s what we’re gonna answer.”); Jim Vena, UP Q4 2025 Earnings Call (Jan. 27, 2026) (“[W]e’re going in to answer the questions that [the Board] asked us when they gave us the [decision on incompleteness]. . . . [w]e’ll answer the key questions.”).

¹¹ Am. Appl. Vol. 1 at 347; see also *id.* at 12 (claiming the merger is end-to-end); *id.* at 50, 60, and 221 (same).

¹² See *Major Rail Consol. Proc.*, 5 S.T.B. 539, 556 (2001) (“A quick glance at a rail map confirms that the eastern and western railroads do not simply meet end-to-end . . . there is a fair degree of overlap.”); see also Initial Application Rejection at 4 (“[A]ny railroad combination, including an end-to-end combination, entails a risk that the merged carrier would acquire and exploit increased market power.”) (quoting 49 C.F.R. § 1180.1(c)(2)(i)).

determine how much traffic the merged railroad will win in the future after integration from other railroads and from trucks; and the operating plan that explains how the merged railroad will serve its customers with the additional projected traffic. Unfortunately, the Amended Application is missing information required by the regulations and contains inconsistent information. Four components are missing from the Amended Application:

- **Failure again to provide complete market analyses as required by 49 C.F.R. § 1180.7(b).**
 - Dr. Bailey refuses to provide projected market shares reflecting post-merger growth as part of her market impact analysis, ignoring 49 C.F.R. § 1180.7(b) and the Board’s clear directive that her analysis was the appropriate place for these projections.
 - The only post-merger market shares that Applicants do provide are still inconsistent with Applicants’ projected post-merger growth reflected in the diversion analysis and traffic modeled in the operating plan. Worse still, Applicants do not address the market share inconsistencies between Applicants’ diversion analysis and operating plan that CN previously identified in its March 23, 2026 letter to Applicants.¹³ Instead, Applicants hit the “delete” key and removed certain information showing the inconsistencies in market share figures from the operating plan workpapers and summary tables in the Amended Application.
 - Applicants also still fail to identify all 2-to-1 and 3-to-2 points as required by 49 C.F.R. § 1180.7(b)(2). As the attached Verified Statement of Dr. Mary Coleman confirms, there are many more 2-to-1 and 3-to-2 points that Applicants ignore.¹⁴
- **Failure to address downstream competitive impacts as required by 49 C.F.R. § 1180.6(b)(12)(i).** Despite producing (in response to the Board’s Decision No. 13) documents that analyze this very issue, Applicants continue to claim they cannot predict the impacts of this merger on future mergers.
- **Failure to offer enhancements to competition required by 49 C.F.R. § 1180.1(c).** The Committed Gateway Pricing (“CGP”) program does not satisfy the requirement to propose conditions to enhance competition and indeed will ultimately harm shippers. As the attached Verified Statement of Dr. Henry Kahwaty confirms, more shippers will

¹³ See CN-12, FD 36873 (filed Mar. 23, 2026).

¹⁴ See generally Verified Statement of Dr. Mary Coleman (May 8, 2026) [hereinafter “Coleman Statement”] attached hereto as Exhibit 1.

be negatively impacted by CGP (because they will pay more in rail shipping costs) than will benefit from it.¹⁵

- **Failure to file a significant transaction application for the TRRA as required by 49 C.F.R. § 1180.2(b)(2).** Applicants flout the Board’s instruction that they submit a significant transaction application and ignore the issues they would face with divesting control in the TRRA (not the least of which is the likely infeasibility of transferring their shares).

The omissions render the Amended Application incomplete, and the inconsistent market shares must be reconciled for this case to proceed. Under the statute, the Board “shall reject” any incomplete applications.¹⁶

ARGUMENT

I. Applicants’ Market Impact Analyses Are Still Incomplete.

Applicants continue to tout that the Amended Application is “fundamentally about growth” and purely “end-to-end” such that it “will significantly enhance competition.”¹⁷ In this case, Applicants plan for a three-year integration that would begin after Board approval, meaning UP and NS would be integrated in 2030 (at the earliest).¹⁸ But rather than be forthcoming with projected market analyses in support of their claims, Applicants expressly refuse to include market share projections in the impact analyses (contrary to the Board’s regulations and its explicit instruction). Instead, the Amended Application includes post-merger market shares elsewhere (not in Dr. Bailey’s competition analyses) that are internally inconsistent without adequate justification. Finally, the Amended Application still does not identify all 2-to-1 and 3-to-2 points (despite CN having identified many missing points in CN’s Initial Comment).

¹⁵ See generally Verified Statement of Dr. Henry J. Kahwaty, Ph.D. (May 8, 2026) [hereinafter “Kahwaty Statement”] attached hereto as Exhibit 2.

¹⁶ 49 U.S.C. § 11325(a) (“if the application is incomplete, the Board shall reject it”).

¹⁷ Am. Appl. Vol. 1 at 12-13.

¹⁸ See *id.* at 34.

A. Dr. Bailey Did Not Provide Market Share Projections, as Required by 49 C.F.R. § 1180.7(b) and Decision No. 9.

In finding the Initial Application incomplete, the Board specifically rejected Dr. Bailey’s market share “projections” as insufficient. The Board found that “[b]ecause Bailey’s analyses do not even attempt to project the market-share increases that Applicants are plainly expecting, they are not the ‘projected market shares’ that the impact-analysis regulation requires.”¹⁹ The Board also specifically rejected Applicants’ arguments that this analysis was addressed elsewhere in the Application, noting that “[t]o the extent that the Transaction is likely to affect ‘projected market shares of revenues and traffic volumes’ on such routes, § 1180.7(b)(2) and (b)(3) require that those effects be reflected in the market impact analyses.”²⁰ The regulations cited by the Board require Applicants to project market shares, volumes, and revenues in the future in light of “the consolidated company’s marketing plan and existing and potential competitive alternatives (inter- as well as intramodal).”²¹

And yet, Dr. Bailey has replicated the exact same incomplete analysis in the Amended Application, failing to provide the required market share projections as part of her market impact analysis. The analysis in Dr. Bailey’s second verified statement again merely reflects Applicants’ 2023 volumes, revenue, and/or corresponding shares added together but labeled as “projected” shares.²² In other words, Dr. Bailey again adds the Union Pacific volumes from 2023 and the

¹⁹ Initial Application Rejection at 6.

²⁰ *Id.*

²¹ See 49 C.F.R. § 1180.7(a); § 1180.7(b)(2) (“Actual and projected market shares of originated and terminated traffic by railroad for each major point on the combined system”); § 1180.7(b)(3) (“Actual and projected market shares of revenues and traffic volumes for major interregional or corridor flows by major commodity group.”).

²² See Am. Appl. Vol. 2 at 13 (citing appendices D-F, which are highly confidential); see also *id.* at 160 (“The table also shows the projected share of the combined railroad, which is estimated as

Norfolk Southern volumes from 2023 to determine the merged entity’s market shares and calls those numbers projections. But this only accounts for the traffic Applicants moved before the proposed merger during the historical period. It does not at all answer what competitive impacts will occur in 2030 (at the earliest) because of the merger. Indeed, while Dr. Bailey acknowledges that the Board “requested that Applicants provide projected market share data that are consistent with the projected traffic diversions” provided elsewhere,²³ **she does not provide projected market shares or use them in the full-system competition impact analyses that she sponsors.**

Rather, Dr. Bailey asserts that analyses under the 2023 Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission (“DOJ/FTC Merger Guidelines”) add the merging parties’ pre-merger market shares together and that “[t]hese pro forma changes to market shares do not take into account any change in the output of the merged firm that results from the merger – even though such changes may be likely or anticipated to occur following the consummation of the merger.”²⁴ And so she instead only references—without incorporating them in her competition analyses—“the projected future shares that are presented in” the Verified Statement of David T. Hunt (who is not a competition expert).²⁵

The Board did not simply require that “projected future shares” be stated somewhere in the application. On the contrary, it “conclude[d] that the [Initial] Application is incomplete because

the combined share of UP and NS **before** the proposed merger”); *id.* at 165 (“The projected volume of the combined railroad is also shown, which is estimated as the combined volume of UP and NS **before** the proposed merger.”); *id.* at 166 (“The projected volume of the combined railroad is also shown, which is estimated as the combined volume of UP and NS **before** the proposed merger.”) (emphases added).

²³ Am. Appl. Vol. 2 at 13-14.

²⁴ *Id.* at 47-48. Specific to traffic diversions—which are one component of the projected future circumstances that must be taken into account under § 1180.7(a) and (b)—Dr. Bailey also claims that “it would not be appropriate” to consider the effects of diverted traffic. *See id.* at 46.

²⁵ *Id.* at 45-46.

the full-system impact analyses do not contain Applicants’ ‘projected market shares’ as required by 49 C.F.R. § 1180.7(b).”²⁶ And the Board explained its rejection on the basis that “**Bailey’s analyses** do not ‘reflect the consolidated company’s marketing plan’ and other projected business operations as reflected in the Application.”²⁷ Applicants have not sought reconsideration of the Board’s Initial Application Rejection; the deadline to do so has long passed, and even if it had not, Applicants could not meet the standard for doing so.²⁸

For the Amended Application’s competitive impact analyses, as noted, Dr. Bailey maintains her prior approach of simply adding historical market shares together, without looking forward in time to account for the anticipated effects of the merger.²⁹ Dr. Bailey’s analyses once again do not reflect growth under the consolidated company’s marketing plan and other projected business operations as reflected in the Amended Application. Referencing “projected future shares” elsewhere in the application but expressly declining to use them in the analyses of the merger’s competitive impacts runs afoul of both the Initial Application Rejection and § 1180.7.

Rather than complying with the Board’s requirements, Applicants run out the same lineup of arguments that the Board rejected the first time. The Board already found “unpersuasive” the idea that antitrust analyses cannot be forward looking and that Dr. Bailey does not have to project market shares beyond the merger’s consummation date.³⁰ This is understandable given that Applicants’ marketing plans, diversion study, and operating plan project anticipated new volumes

²⁶ Initial Application Rejection at 5 (emphasis added).

²⁷ Initial Application Rejection at 6 (emphasis added) (quoting § 1180.7(a)).

²⁸ See 49 C.F.R. § 1115.3 (stating a 20-day deadline and requiring a showing either that the decision will be affected materially because of new evidence or changed circumstances or that it involves material error).

²⁹ See *supra* note 24.

³⁰ Initial Application Rejection at 6.

in the future where the merged railroad would be integrated—three years after consummation (2030 at the earliest).³¹

Yet Dr. Bailey tries this approach again, hoping that a few additional citations will suffice and essentially asking the Board to overturn its prior decision.³² These new citations do not suffice. As the Board noted, even under the antitrust framework that Applicants invoke, analyzing the impacts of a proposed merger necessarily focuses on the future.³³ But even if it did not, Dr. Bailey’s reliance on the DOJ/FTC Merger Guidelines could not override the Board’s own requirement in its regulation that market analyses “demonstrate the impacts of the transaction” through projected market shares.³⁴ Dr. Bailey claims that the DOJ/FTC Merger Guidelines do not account for changes that are “likely or anticipated to occur following the consummation of the merger”—as attempted support for her own decision not to consider projected post-consummation changes—but analysis of those changes is precisely what § 1180.7 requires.³⁵ And an analysis that affirmatively excludes growth under the consolidated company’s marketing plan and other projected business operations does not demonstrate the impacts of the transaction.³⁶

³¹ See, e.g., Am. Appl. Vol. 1 at 311 (discussing anticipated intermodal growth); *id.* at, 330-37 (discussing marketing goals).

³² *Id.* at 46.

³³ Initial Application Rejection at 6.

³⁴ 49 C.F.R. § 1180.7(b).

³⁵ Compare Am. Appl. Vol. 2 at 47 (indicating that Dr. Bailey’s approach, based on a reading of the DOJ/FTC Merger Guidelines, is to “add[] the two merging parties’ pro forma market shares prior to the transaction”) and Am. Appl. Vol. 2 at 160 (acknowledging that Dr. Bailey merely added pre-merger shares together) with 49 C.F.R. § 1180.7(a), (b)(2), (b)(3) (expressly requiring consideration of projected future circumstances, e.g., to reflect the consolidated company’s marketing plan) and Initial Application Rejection at 5-6.

³⁶ See, e.g., Am. Appl. Vol. 2 at 626 (Growth Plan expecting that Applicants expect to attract new traffic through the merger).

None of Dr. Bailey’s competition impact assessments throughout her second verified statement, including her analyses of corridor competition and geographic competition, account for the projected post-merger market shares required by the Board’s regulations.³⁷ As such, the Amended Application should again be rejected.

B. Applicants Provide Inconsistent Post-Merger Market Share Estimates in the Amended Application, and Such Inconsistencies Prevent a Meaningful Assessment of the Impacts of the Proposed Merger.³⁸

Applicants’ attempt to provide post-merger market shares in Mr. Hunt’s second verified statement introduces new inconsistencies and still fails to reflect Applicants’ post-merger growth modeled in the diversion analysis and the operating plan. These inconsistencies—that are only generally acknowledged in the Amended Application without citations to workpapers, preventing the Board and interested parties from evaluating their nature—undermine the ability to analyze Applicants’ approach and deny parties a meaningful opportunity to comment. At minimum, the Board should pause the proceeding until these inconsistencies are addressed to ensure the Board and interested parties are clear on which set of market shares to evaluate. These discrepancies are not a mere technicality. It is important to have one, consistent set of market share numbers that

³⁷ Moreover, the Amended Application fails to otherwise provide the market share projections required by 49 C.F.R. § 1180.7(b). Neither Dr. Bailey nor Mr. Hunt’s analyses take into consideration the post-merger world, including accounting for Applicants’ proposed conditions to preserve competition and the condition that Applicants claim will enhance competition. Applicants should not be excused from the requirement to model the required conditions. *See* 49 C.F.R. § 1180.7(b)(1) (requiring applicants’ impact analyses to provide information on “[t]he anticipated effects of the transaction on traffic patterns, market concentrations, and/or transportation alternatives available to the shipping public. Consistent with § 1180.6(b)(10), **these would incorporate a detailed examination of any competition-enhancing aspects of the transaction and of the specific measures proposed by applicants to preserve existing levels of competition and essential services.**”) (emphasis added).

³⁸ CN raised the issue of inconsistent market shares in a letter to Applicants on March 23, 2026. CN-12, FD 36873 (filed Mar. 23, 2026). This issue was raised as part of a larger critique of Applicants’ diversion analysis. Applicants have not resolved these larger issues in the Amended Application and CN reserves all rights to raise these arguments at a later stage of the proceeding.

flow through the entire application, including the competition analyses, the diversion study, and the operating plan.

i. Applicants Offer at Least Three Different Sets of Post-Merger Market Shares without Adequate Justification or Explanation.

Applicants present **at least three** different sets of purported post-merger market shares across the Amended Application yet fail to reconcile or adequately explain the inconsistencies among them. A fourth inconsistency—which CN raised to Applicants in March—may continue to exist, but Applicants have deleted evidence of the issue.

Dr. Bailey’s 2023 addition of pre-merger market shares: As noted above, Dr. Bailey presents market shares for the competitive impact analysis in Appendices D, E, and F of her report (disingenuously referring to these as “projected”), but her shares simply add Applicants’ 2023 pre-merger shares to one another and do not account for anticipated future merger-related growth.³⁹ As discussed above, Dr. Bailey’s refusal to provide market share projections reflecting post-merger growth violates 49 C.F.R. § 1180.7(b) and the Board’s clear directive in the Initial Application Rejection.

Mr. Hunt’s post-merger projections calculated in an attempt to comply with 49 C.F.R. § 1180.7(b): Mr. Hunt references workpapers containing post-merger market shares in Exhibit E-2 of Appendix E of his verified statement, which use Dr. Bailey’s additive market shares as a starting point, and then add in his rail-to-rail and truck-to-rail diversion estimates “to show the post-merger mature state of the freight transportation market, including the effects of the combined UP-NS network.”⁴⁰ He provides these estimates purportedly to satisfy the requirements

³⁹ See *supra* Section I.A.

⁴⁰ Am. Appl. Vol. 2 at 585.

of 49 C.F.R. § 1180.7(b).⁴¹ However, as noted above, Dr. Bailey does not incorporate these estimates into her competitive assessment of the transaction, which therefore fails to satisfy § 1180.7(b) and the Board’s Initial Application Rejection. Mr. Hunt also does not use these market shares in his diversion analysis. Rather, Mr. Hunt explicitly states that he incorporates additional traffic and a different set of market shares for the diversion analysis.⁴² The market shares that Mr. Hunt offers—unsuccessfully—to attempt to satisfy the Board’s requirement for the competitive impact analysis is therefore missing certain traffic reflected in the diversion analysis and operating plan.

Mr. Hunt’s post-merger projections calculated in diversion study: Separately, Mr. Hunt claims to provide yet another set of post-merger market shares resulting from his diversion analysis and flowing into the operating plan.⁴³ Critically, Mr. Hunt himself acknowledges that these post-merger market shares in Appendix E differ from those presented in the diversion analysis and operating plan.⁴⁴

While Mr. Hunt provides one explanation for why those differences exist, that explanation is not readily verifiable because nowhere in his verified statement does Mr. Hunt reference a workpaper substantiating that explanation.⁴⁵ Specifically, Mr. Hunt attributes at least some of the

⁴¹ *Id.*

⁴² *Id.* at 587 (“[T]he rail-to-rail diversion presented in the market share tables is ~8% less than that presented in the diversion calculations and traffic used in the Operating Plan.”).

⁴³ As noted in Section I.B.ii *infra*, CN is unable to verify the consistency of the post-merger market shares resulting from the diversion analysis with the operating plan because Applicants have deleted the relevant exhibit, deleted reference to market shares in their operating plan workpapers, and omitted data files necessary for replicating the diversion analysis.

⁴⁴ Am. Appl. Vol. 2 at 587 (“[T]he rail-to-rail diversion presented in the market share tables is ~8% less than that presented in the diversion calculations and traffic used in the Operating Plan.”).

⁴⁵ These missing citations are flatly inconsistent with the Board’s directive in this case. Decision No. 3, FD 36873 (STB served Aug. 28, 2025) at Rule 2 (“requiring that “[a]ll data and claims

difference in market shares to a difference in how the universe of addressable traffic is defined across his diversion and market share analyses. As Mr. Hunt explains,

[t]he CRA 100% waybill file was used as the basis for rail-to-rail diversions and future state before truck-to-rail diversions. Solely for this market share analysis, the same filters CRA used were replicated and applied to generate 2023 current-state actuals. . . . [Nevertheless], the rail-to-rail diversion presented in the market share tables is ~8% less than that presented in the diversion calculations and traffic used in the Operating Plan.⁴⁶

As mentioned above, Mr. Hunt does not provide a citation to a workpaper identifying this difference, preventing assessment of the statement.⁴⁷ The missing traffic is, at least partially, attributed to revenue empties,⁴⁸ but Mr. Hunt again provides no citations to where an explanation of this missing traffic can be found. In one place in his Appendix E, Mr. Hunt suggests that the excluded traffic is composed of revenue empties, but later, Mr. Hunt references both revenue

referenced in a filing should have **citations to the relevant spreadsheet or document**. These citations should be as specific as possible (e.g., to the relevant record, or variable (i.e., column) within a record, spreadsheet cell, or page number in which the data or claim is found).” (emphasis added); *see also id.* at Rule 9 (“Include an explanation for any metric calculated for use and cited in the narrative or an analytical work paper. The explanation can be written in the narrative or analysis itself, in a footnote, or by some other clear method of notation. **The explanation should include the name of the relevant data file(s) and the names of variables used in the calculation and outline the mathematical formulae used to calculate the metric.** This requirement pertains only to source narrative or work papers where the calculation originates. References to calculations made in other work papers or analysis should cite the subject work paper.”) (emphasis added).

⁴⁶ Am. Appl. Vol. 2 at 587.

⁴⁷ Mr. Hunt provides another, similar statement, again made without citation: “Rail-to-rail diversions: To align with the CRA current-state analysis, the same set of filters were applied to the 100% waybill data. These reduced addressable rail-to-rail traffic by ~5% (e.g., revenue empties, low-volume traffic flows), which reduced diverted traffic by ~8% and consequently the revenue shift to UP-NS.” Am. Appl. Vol. 2 at 591.

⁴⁸ Am. Appl. Vol. 2 at 586-87 (“An example of this narrower definition is the exclusion of revenue empties, which are considered addressable traffic for diversions in the rail-to-rail model.”); *see also id.* at 591.

empties and so-called “low-volume traffic flows,”⁴⁹ without explanation of how low-volume traffic flows are defined.^[REDACTED] If these mysterious exclusions include other traffic as well, the Board and interested parties currently have no way of knowing. Without citation to the underlying information, it is not possible to assess what the missing traffic that Applicants failed to model actually consists of—where it is located, what commodities it may include, and whether there are other categories of traffic Applicants have not modeled.

Without more information, the Board and interested parties cannot meaningfully assess the nature of the inconsistencies to understand which set of post-merger market shares should be used in evaluating the proposed merger.

ii. Applicants Further Conceal a Potential Fourth Inconsistency by Deleting Evidence of the Issue.

CN first put the Applicants on notice about concerns with inconsistent post-merger market shares presented in the diversion analysis and the operating plan on March 23, 2026, over a month in advance of their Amended Application submission date.⁵⁰ Rather than addressing CN’s concerns regarding the inconsistencies in Applicants’ market shares,⁵¹ Applicants instead deleted the offending Exhibit A-11⁵² from Mr. Hunt’s second verified statement and any references in the workpapers, thus hiding the inconsistencies in their own analysis. Mr. Hunt’s second verified

⁴⁹ Am. Appl. Vol. 2 at 591.

⁵⁰ See generally CN-12, FD 36873.

⁵¹ CN-12, FD 36873 at 7 (“[W]ithin the Initial Application . . . Applicants have already provided two different post-merger market share numbers: (1) those underpinning the Diversion Analysis; and (2) the post-merger market shares used in the operating plan. This has resulted in Applicants modeling only 46% post-merger market share in automotive traffic in the operating plan, even though the Diversion Analysis estimates 61% market share. Similarly, for bulk traffic, Applicants model only 42% post-merger market share, even though the Diversion Analysis estimates 60%.”).

⁵² See Init. Appl. Vol. 2 at 406 and Exhibit A-11; see also CN-12, FD 36873 at 9.

statement still references an Exhibit A-11,⁵³ but no such exhibit is provided. The exhibit from the Initial Application, shown below, demonstrates the inconsistencies in the post-merger market shares in Applicants’ diversion analysis and operating plan—the result of which is that the operating plan leaves substantial volumes of traffic behind. Without a similar exhibit in the Amended Application (including in any workpapers), the Board and interested parties cannot tell if these inconsistencies have been resolved.

Exhibit A-11: Comparison of UP-NS historical traffic vs. rail-to-rail diversion model pre-merger and post-merger estimates¹²¹

Thousands of carloads/intermodal units

	Total market	Actual UP-NS carloads	Model: Est. UP-NS carloads pre-merger	Model: Est. UP-NS carloads post-merger	Diversions (post-minus pre-)	Traffic (actual UP-NS + diversions)	Diff: traffic minus post-
Merchandise	780	252	277	439	162	414	(25)
Intermodal	1,217	379	346	550	204	583	33
Bulk	192	53	87	115	28	81	(34)
Automotive	201	41	72	124	52	93	(31)
<i>Total</i>	<i>2,390</i>	<i>725</i>	<i>782</i>	<i>1,228</i>	<i>447</i>	<i>1,171</i>	<i>(57)</i>

Percentage of market

	Total market	Actual UP-NS cars	Model: Est. UP-NS share pre-merger	Model: Est. UP-NS share post-merger	Diversions (post-minus pre-)	Traffic (actual UP-NS + diversions)	Diff: traffic minus post-
Merchandise	100%	32%	36%	56%	21%	53%	-3%
Intermodal	100%	31%	28%	45%	17%	48%	3%
Bulk	100%	28%	45%	60%	15%	42%	-18%
Automotive	100%	20%	36%	61%	26%	46%	-15%

The operating plan workpapers submitted with the Amended Application further illustrate Applicants’ efforts to obscure the inconsistencies. In the Initial Application, the operating plan included a supporting workpaper that compared market shares across the three operating plans

⁵³ See Am. Appl. Vol. 2 at 500 (“Merchandise, bulk, and automotive traffic all exhibit positive match rates above 70%, while intermodal is lower at 60% (Exhibit A-11).”).

(Base, Optimized, and Growth) for various traffic categories.⁵⁴ Applicants described this file as “Competitor market share projections and calculations.”⁵⁵

The Amended Application includes a similar workpaper, described as “UP / NS splits by traffic category.”⁵⁶ The primary distinction between these workpapers is that the version in the Amended Application excludes market shares. The replacement of a workpaper that included post-merger market shares with one that omits that data—the data CN had flagged as inconsistent—is telling and is in line with Applicants’ broader pattern of concealing the impacts of the proposed merger.

These inconsistencies—three different sets of post-merger market shares, significant missing traffic, and the deliberate deletion of market shares from exhibits and workpapers to avoid highlighting any additional inconsistencies rather than resolving them—are an attempt to hinder a meaningful assessment of the proposed merger’s competitive impacts. If the Board does not reject the Amended Application, it should at least pause this merger proceeding until these inconsistencies are addressed.⁵⁷

⁵⁴ See tab “Industry market share” in Init. Appl. Workpaper “20251124_Market share calculations.xlsx.”

⁵⁵ Init. Appl. Workpaper Index, FD 36873.

⁵⁶ See “C-Summary of UPNS Traffic vFinal.xlsx”; Am. Appl. Workpaper Index, FD 36873.

⁵⁷ See, e.g., Decision No. 16, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 et al., slip op. 3-4 (STB served Mar. 16, 2022) (suspending procedural schedule and ordering applicants to explain traffic inconsistencies within merger application); Decision No. 17, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 et al., slip op. 5-7 (STB served Apr. 27, 2022) (continuing suspension of procedural schedule and ordering applicants to resolve noted deficiencies relating to their operating plan).

C. Applicants Still Fail to Identify All Impacted Shippers at 2-to-1 and 3-to-2 Points as Required by 49 C.F.R. § 1180.7(b)(2).

Applicants’ attempt to address their omission of 2-to-1 and 3-to-2 points under 49 C.F.R. § 1180.7(b)(2) misses the mark. They did identify more customers—nine now in the Amended Application—that would be harmed by the merger, rather than the initial three identified in their Initial Application, and they acknowledge that additional harmed customers may be identified during this proceeding (apparently expecting other parties to carry the burden on this crucial competition question).⁵⁸ In response to CN’s Initial Comment that raised many issues with Applicants’ flawed analysis of 2-to-1 and 3-to-2 points, Applicants have now explained for the first time their methodology for identifying these points and purport to identify all impacted shippers. But their explanation only reveals the flaws in their analysis. Applicants now identify five 2-to-1 facilities⁵⁹ and four 3-to-2 customers.⁶⁰ Yet, as explained in the attached Statement of Dr. Mary Coleman (“Coleman Statement”), Applicants’ flawed methodology fails to identify at least three 2-to-1 shippers: one because of Applicants’ failure to reference a more recent data source, and two others because Applicants improperly include short line access as equivalent to Class I access. Moreover, Applicants’ improper treatment of short lines as Class Is omits or misclassifies eighteen additional impacted 3-to-2 shippers, including the majority of the Des Moines, Iowa area. All told, the Amended Application excludes **three** 2-to-1 customers across Federal and Mount Vernon, Illinois and Des Moines, Iowa, and **eighteen** 3-to-2 customers across Des Moines, Iowa and Danville, Illinois.⁶¹

⁵⁸ Am. Appl. Vol. 1 at 397.

⁵⁹ *Id.* at 395-97.

⁶⁰ Am. Appl. Vol. 2 at 59-60.

⁶¹ Coleman Statement at 3.

Rather than acknowledge and address what they inaccurately characterize as a “tiny overlap,”⁶² Applicants continue to do the bare minimum, despite direction from the Board encouraging Applicants to improve their Amended Application.⁶³ Applicants’ failure to adequately identify all 2-to-1 and 3-to-2 points, such as by counting short lines in order to understate the number of customers that will experience a reduction in Class I access, should render the Application incomplete.

i. Applicants’ Analysis Omits Three 2-to-1 Shippers

While Applicants claim they “carefully reviewed” relevant data to determine the universe of impacted shippers,⁶⁴ their analysis is still lacking. As explained in the Coleman Statement, more recent SCRS data reveals that both Union Pacific and Norfolk Southern have access to Alton Steel in Federal, Illinois.⁶⁵ The data that Dr. Bailey used only identified Union Pacific as having access to Alton Steel, and it is therefore excluded from the list Ms. Novak analyzed.⁶⁶ But their data is wrong, and so Alton Steel should be classified as a 2-to-1 customer.

Two other 2-to-1 shippers, Milano Metals & Recycling / Milano Railcar Services in Mount Vernon, Illinois and Titan Tire Corp. in Des Moines, Iowa, are misclassified because Applicants improperly count access through a non-Class I railroad (a short line) as equivalent to access to two Class I railroads, which as detailed below, runs afoul of Applicants’ own statements and

⁶² Am. Appl. Vol. 1 at 347.

⁶³ See Initial Application Rejection at 12 (“nothing prevents Applicants from making additional changes to improve their Application”).

⁶⁴ Am. Appl. Vol. 1 at 394.

⁶⁵ Coleman Statement at 6.

⁶⁶ *Id.*

established precedent. The Coleman Statement explains that these shippers are additional 2-to-1 customers that Applicants fail to remedy.

ii. Applicants Systematically Omit or Misclassify at Least 18 Customers that are 3-to-2 by Treating Short Line Access as Equivalent to Class I Access

Applicants’ methodology impermissibly considers a point that is served by a short line that connects to a Class I to fall outside the definition of a 2-to-1 point, contradicting Board precedent and Applicants’ own statements focused on preserving shippers’ access to “Class I” railroads.⁶⁷ Ms. Novak’s own statements focus on the importance of Class I access, with a whole section on “No Shipper Facility Will Lose Access to Service by Two Class I Railroads as a Result of the UP/NS Merger”⁶⁸ and statements that “Applicants are committed to ensuring that the UP/NS merger does not leave any shipper facility currently served by UP and NS and no other railroad (a ‘2-to-1 shipper facility’) without access to at least two Class I railroads after the merger.”⁶⁹ Similarly, Dr. Bailey’s statements are also consistent with a focus on Class I railroads, noting that “Applicants have committed to entering into agreements that would allow another existing Class I railroad to serve the facilities”⁷⁰ and dismissing concerns for certain shippers that she deems will “have access to another Class I railroad other than UP or NS, and will continue to have that other option after UP and NS merge.”⁷¹ And when describing the “Benefits of the Proposed Merger,” Dr. Bailey states that one of the primary benefits of the combined railroad is that of **removing**

⁶⁷ See, e.g., Am. Appl. Vol. 1 at 13 (“Applicants propose . . . protections for shipper facilities currently served by UP and NS that would have **no access to another Class I railroad . . . (‘2-to-1’ shipper facilities)**”) (emphasis added).

⁶⁸ See Am. Appl. Vol. 1 at 393-97.

⁶⁹ *Id.* at 393-94.

⁷⁰ Am. Appl. Vol. 2 at 59.

⁷¹ *Id.* at 60.

interchanges,⁷² and describes the challenges of interline rail services across independent railroads.⁷³

The Amended Application cites no precedent that supports its contradictory and unconventional inclusion of short line railroads when considering customer access. As a result, Applicants and their experts dismiss a number of potentially impacted shippers because they have access to a short line that can elsewhere interchange with another Class I, counting the competitive option of “short line-bridge-to-another-Class I” as an equal competitive alternative to “direct access to a Class I.”⁷⁴ But a short line bridging to another Class I is not equal to direct Class I access for this type of analysis. Union Pacific has previously conceded that Class I access is key. In its prior application for control over Southern Pacific Rail Corporation, it proposed, and the Board accepted as appropriately addressing competitive harms, conditions that would remedy 2-to-1 shippers “that can be served directly, or through reciprocal switching, by [applicants] but **by no other Class I railroad.**”⁷⁵ Surely, if direct Class I access was key under the pre-2001 rules, then it must be paramount under the new rules that explicitly acknowledge the “heavier burden” on mergers due to the “small number of remaining Class I railroads.”⁷⁶

⁷² Am. Appl. Vol. 2 at 11 (“One component of this overall figure comes from potential benefits for customers affecting the approximately 877,000 carloads that UP and NS interchanged in 2023. The combined railroad will replace these interline services with single-line ones. I find that the combined railroad will be more likely to make operating improvements, offer more competitive service, and ensure reliable service on these routes than UP and NS would absent the merger.”).

⁷³ See *id.* at 41 (detailing the benefits of single line movements).

⁷⁴ See, e.g., Am. Appl. Vol. 1 at 492 (claiming Shapiro Bros of Illinois “has access to BNSF and CSX through Evansville Western Railway,” counting this connection as access to **two** additional Class Is).

⁷⁵ See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233, 390-91 (1996) (emphasis added).

⁷⁶ *Major Rail Consol. Proc.*, 5 S.T.B. at 546.

Moreover, if short line access was sufficient as a remedy, that would undermine the entire premise of protecting these shippers that would be harmed by a merger of two Class I railroads. It would mean that many individual stations losing access to a Class I railroad because of a merger with another Class I would no longer be considered in assessing merger impacts simply because they have access to a short line that at some point connects to another Class I, even if that Class I railroad is not available at the station directly or by reciprocal switching (and therefore does not provide direct rail competition), let alone the extra physical handoffs between the short line and the other Class I. This is untenable, and an argument the Board has already rejected.⁷⁷ Again, in Union Pacific’s application for control of Southern Pacific, the Board declined to “redefin[e] 2-to-1 points as those within some arbitrary proximity to two rail carriers (a BEA or 4-digit SPLC), and thus treat[] direct and indirect rail competition as equivalent.”⁷⁸ But Applicants’ current proposal does just this—Applicants do not explain how far or close the short line and Class I access must be in order to be sufficient for resolving the competitive impacts, nor do they address whether the short lines can actually handle the shippers’ loads or get their products where they need to go.⁷⁹

II. Applicants Fail to Address the Possibility of Future Mergers as Required by 49 C.F.R. § 1180.6(b)(12)(i) and Contrary to Evidence They Submitted to the Board.

The Board’s regulations require that Applicants address downstream competition impacts and “anticipate whether additional Class I mergers are likely to be proposed in response to their own proposal and explain how, taken together, these mergers, if approved, could affect the

⁷⁷ See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. at 372.

⁷⁸ *Id.*

⁷⁹ For example, whether the short line is restricted in its ability to serve certain traffic, as is the case with respect to Iowa Interstate Railroad in Des Moines, which Applicants rely upon in their analysis. See Coleman Statement at 9.

eventual structure of the industry and the public interest.” Indeed, the Board requires that “commentary . . . that would give [the Board] the information we need to rule on what could likely be the first step in an end-game situation in which only two or three competing transcontinental carriers would remain in North America.” Applicants’ Amended Application does not include any such commentary and indeed avoids the question altogether—contrary to Applicants’ own analysis revealed in documents produced in response to Board Decision No. 13.

In the section of their Amended Application purporting to address this requirement, Applicants claim that they “cannot predict whether other Class I railroads may choose to pursue mergers in the future.”⁸⁰ But, in Applicants’ own Board of Directors documents produced in response to a Board request, {{

}}⁸¹ This stands in direct contradiction to the Amended Application’s claims that {{

}}⁸² Moreover, this proves how important comprehensive discovery is in this case, as these documents were only produced on April 7, 2026 in response to the Board’s Decision No. 13, which ordered the production of such “ordinary course” documents that “are likely to provide valuable insight into the proposed merger’s effects.”⁸³ The Board’s order proved prescient. And this document could be just the tip of the iceberg, as Applicants are accused of

⁸⁰ Am. Appl. Vol. 1 at 95.

⁸¹ UP-STB-D13-0000639 (Highly Confidential).

⁸² Am. Appl. Vol. 1 at 95.

⁸³ See Decision No. 13, FD 36873 et al., slip op. at 5 (STB served Mar. 18, 2026).

withholding other “ordinary course” documents that may address the very impacts on competition at the heart of this proposed merger.⁸⁴

Applicants are required to set forth commentary on potential mergers, yet they failed to do so, even though they clearly have considered these very risks, {{

}} This is a willful failure to provide the Board with the information it needs to make an informed decision on the proposed merger and which is indeed required in 49 C.F.R. § 1180.6(b)(12)(i). The Amended Application should be deemed incomplete for failure to address the potential mergers {{

III. Applicants Still Fail to Propose Competitive Enhancements Required by 49 C.F.R. § 1180.1(c).

As Applicants well know, the Board’s new regulations “significantly increase the burden on applicants to demonstrate that a proposed merger would be in the public interest.”⁸⁵ Consistent with this enhanced standard, any applicants seeking approval for a major transaction are expected to propose conditions that preserve competition and also enhance competition.⁸⁶ This new requirement was implemented with thoughtful intention. The Board undertook a 15-month, three-stage rulemaking proceeding to develop the updated merger regulations. And it found that, because of the “service problems that have arisen in recent mergers, and the scale of the transaction that we would be asked to approve in future major rail merger applications,” “offering some new or enhanced rail-to-rail competition or other competitive benefits is likely to be necessary to

⁸⁴ See generally BNSF-22, FD 36873 (filed Apr. 27, 2026); CPKC-17, FD 36873 (filed Apr. 28, 2026).

⁸⁵ See *Major Rail Consol. Proc.*, 5 S.T.B. at 604; see also Initial Application Rejection at 9 n.9 (“[W]e believe that future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest.”) (citing *Major Merger Rules*, 5 S.T.B. at 546).

⁸⁶ 49 C.F.R. § 1180.1(c).

resolve substantial difficulties so as to tip the balance in favor of the public interest.”⁸⁷ The Board rejected any idea that a merger between Class Is could in and of itself be pro-competitive, finding that “carriers underestimate the difficulties [the Board] could face in attempting to remedy, in a direct and proportionate manner, losses of both direct and indirect competition.”⁸⁸ As such, the requirement that Applicants propose enhancements to competition is a core tenet of a major merger application under the new rules.

Despite having been given a chance to address CN’s comments on the Initial Application’s failure to propose any competitive enhancements,⁸⁹ Applicants continue to rest solely on their faulty “Committed Gateway Pricing” proposal. Applicants once again pay only lip service to concerns about the lack of enhancements, suggesting that the Board should order “adjustments” to its proposed CGP program if needed, like extending its duration beyond the monitoring period.⁹⁰

CGP cannot be what the Board intended under the new rules when it adopted the requirement that applicants propose competitive enhancements. As Applicants’ own expert, Dr. Israel, acknowledges, CGP will actually have a negative impact on shippers.⁹¹ Less than 1%

⁸⁷ *Major Rail Consol. Proc.*, 5 S.T.B. at 550.

⁸⁸ *Id.* at 655.

⁸⁹ *See* CN’s Initial Comment at 31-33.

⁹⁰ Am. Appl. Vol. 1 at 392. Applicants maintain there are only a limited set of circumstances under which such an extension would be appropriate. *See* Am. Appl. Vol. 1 at 393 (“[A]bsent a finding by the Board during the oversight process that the program is necessary to address service disruptions from service integration, or demonstrated loss of indirect competition, or the failure to achieve anticipated merger benefits in a timely manner, it is appropriate for the program to sunset after a reasonable period.”).

⁹¹ Am. Appl. Vol. 2 at 256-57 (“However, using the incumbent carrier’s rate (UP/NS in this application) as an input for establishing the gateway rates can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism.”); Am. Appl. Vol. 2 at 262 (“As explained above, the CGP proposal creates an incentive to compete less aggressively on some of the shipments used in the generation of the Committed Gateway Prices.”).

of all rail traffic is eligible for CGP. However, Dr. Israel's analysis incorporates both CGP eligible traffic, as well as CGP ineligible traffic to calculate the CGP rates. Shippers with both types of traffic – CGP eligible, and CGP ineligible traffic used to calculate CGP rates – may be harmed:

- Shippers with CGP eligible traffic may have other traffic that is not CGP eligible, potentially generating more harm than benefit for those shippers.
- Shippers with no CGP eligible traffic may also experience harm on the shipments used for generating the CGP prices.

Indeed, approximately 46% of shippers studied by Dr. Israel (which includes both CGP eligible shippers, and other shipments used for generating CGP prices) would experience increased rail shipping costs from the CGP program. These shippers exist in nearly every state in the contiguous United States. For approximately 45% of shippers studied, rail shipping costs would decrease, while rail shipping costs for approximately 9% of shippers studied would remain unchanged.⁹² As shown in the maps below, CGP, by its design, has winners and losers among the shippers whose carloads are eligible. **Bottom line: CGP will harm some shippers in nearly all states**, regardless of whether you look at CGP's impact allocated by shipment origination state, destination state, or the net state-level impact (i.e., originating and / or terminating in a given state).⁹³ In many states, including throughout the watershed, there are a greater number of shippers that will be harmed by CGP than will benefit. And in fact, if one

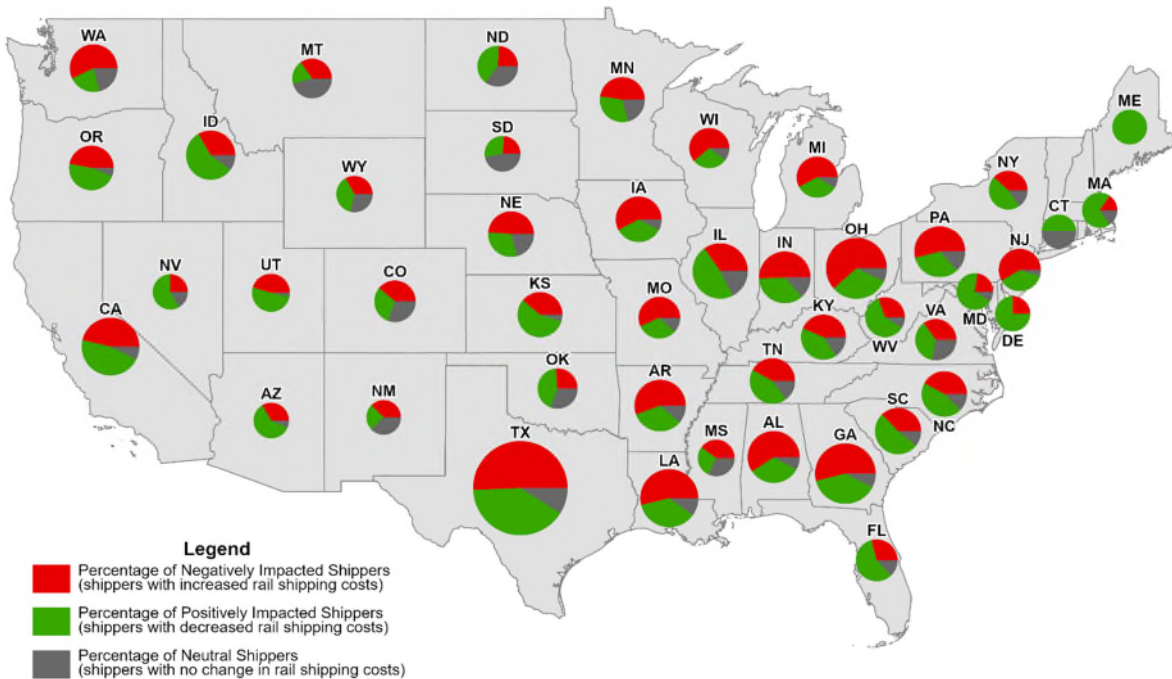
⁹² Percentages calculated based on the set of shippers that Dr. Israel studies in his simulation. Shippers studied include those who set prices for CGP and/or are eligible for CGP.

⁹³ See generally the Kahwaty Statement for a description of the methodology used to prepare these maps.

aggregates the CGP impact to the shipper level across *all* states, the simulation results suggest that CGP would *harm* a greater number of shippers than it would benefit.⁹⁴

Figure 1⁹⁵

Impacts of CGP on Rail Shipping Costs by State
Percentage of Shippers with Positive, Negative, or Neutral Impacts by Origin State



Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. The sizes of the pie charts are based on the relative number of shippers studied in each state. Insufficient data exist to show aggregate impacts in Vermont, New Hampshire, and Rhode Island. Shipments are limited to those originating and terminating within the United States.

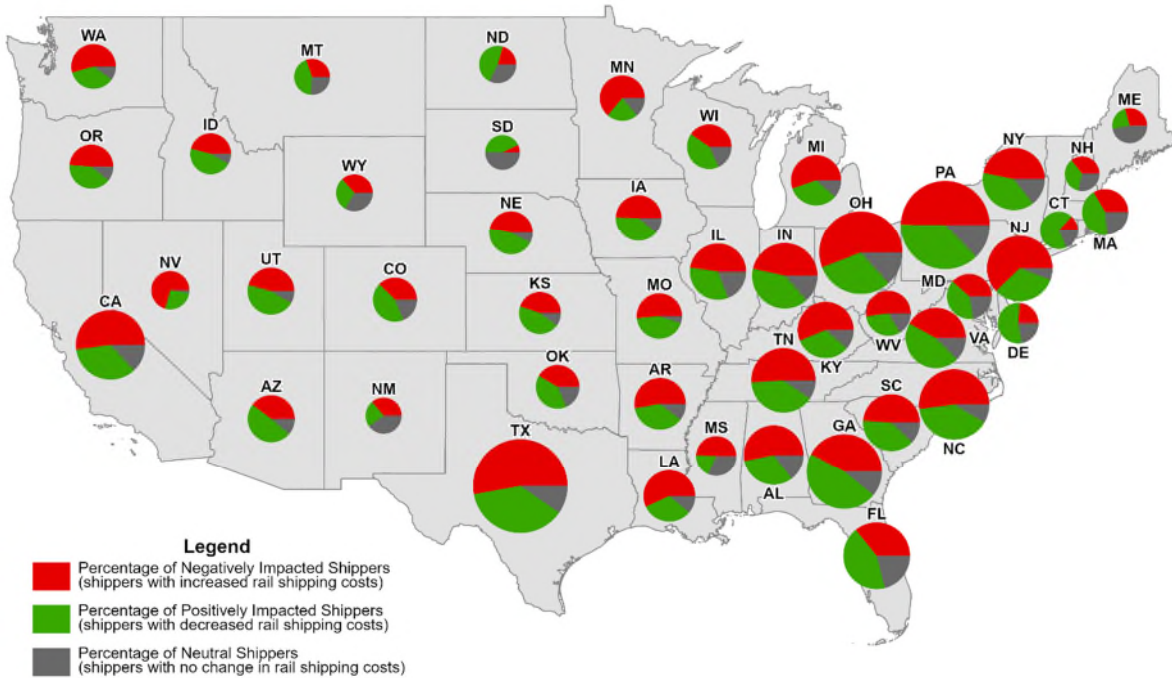
Source: Amended Israel Workpapers and Kahwaty CGP VS Workpapers.

⁹⁴ Kahwaty Statement at 9.

⁹⁵ See Kahwaty Statement Figure 1.

Figure 2⁹⁶

Impacts of CGP on Rail Shipping Costs by State
Percentage of Shippers with Positive, Negative, or Neutral Impacts by Destination State



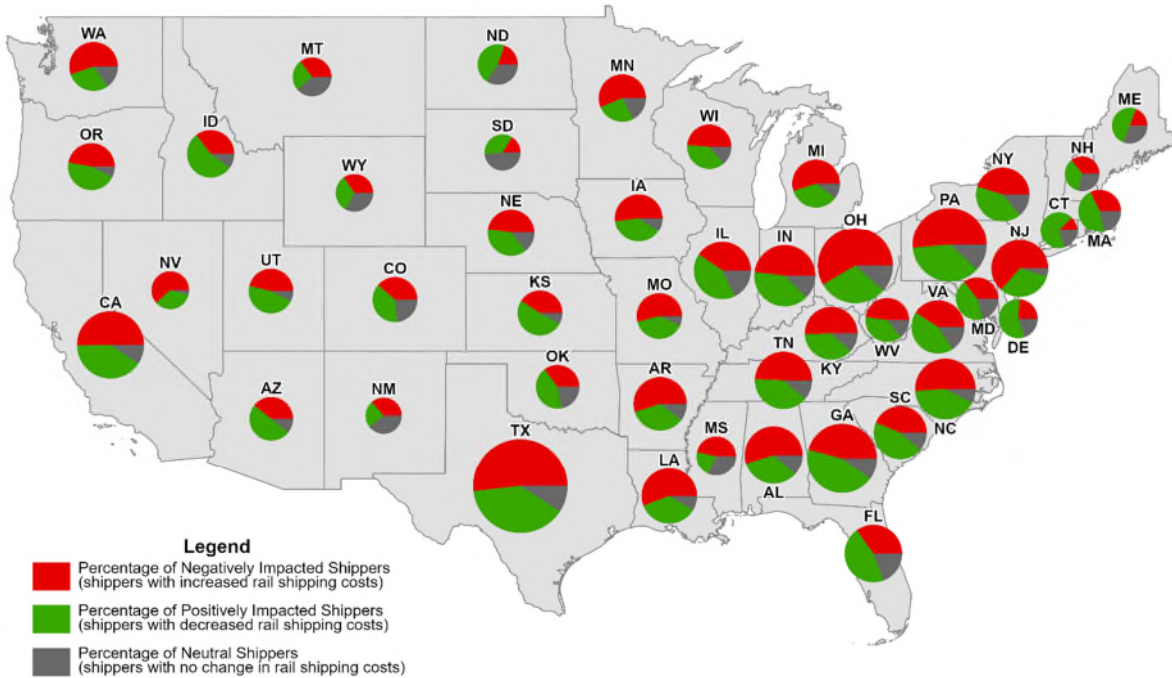
Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. The sizes of the pie charts are based on the relative number of shippers studied in each state. Insufficient data exist to show aggregate impacts in Vermont and Rhode Island. Shipments are limited to those originating and terminating within the United States.

Source: Amended Israel Workpapers and Kahwaty CGP VS Workpapers

⁹⁶ See *id.* at Figure 2.

Figure 3⁹⁷

Impacts of CGP on Rail Shipping Costs by State
Percentage of Shippers with Net Positive, Net Negative, or Net Neutral Impacts by State



Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. The sizes of the pie charts are based on the relative number of shippers studied in each state. Insufficient data exist to show aggregate impacts in Vermont and Rhode Island. Shipments are limited to those originating and terminating within the United States.

Source: Amended Israel Workpapers and Kahwaty CGP VS Workpapers.

⁹⁷ See *id.* at Figure 3.

That means that the sole alleged enhancement to competition is anything but. Despite claiming that under CGP shippers will have access to rates that “reflect the benefits of the UP/NS merger,”⁹⁸ CGP has numerous limitations and does not help the vast majority of shippers:

- **Time Limited. CGP is temporary** and ends with the completion of the oversight period unless extended by the Board or made permanent by separate agreement.
- **Applies to Negligible Traffic. Less than 1%** of U.S. rail traffic is eligible for CGP. **CGP excludes:**
 - Numerous kinds of traffic that make up the majority of railcar volumes, including intermodal, unit trains, and automotive finished vehicles;
 - Any facility that is not “sole served” by (1) UP/NS **and** BNSF; or (2) UP/NS **and** CSXT or a dedicated short line and facilities owned by any rail carrier;
 - All traffic carried by CN and CPKC, and most short lines;
 - Any traffic that does not move through Chicago, St. Louis, Memphis, or New Orleans.
- **Uneven distribution of benefits.** As shown above, a close analysis of CGP reveals that a large subset of shippers will in fact see *increases* in rail shipping costs because of CGP. Shippers in some states will be more negatively impacted than others, but nearly every state has shippers who will lose. Applicants themselves acknowledge that CGP would incentivize the combined company to compete less aggressively for certain movements, resulting in increased pricing for shippers utilizing those movements after the proposed merger.⁹⁹

Applicants’ continued failure to propose any competitive enhancements—and indeed only propose conditions that will necessarily create negative impacts—is a fundamental failure.

⁹⁸ Am. Appl. Vol. 1 at 377.

⁹⁹ Am. Appl. Vol. 2 at 256-57 (“However, using the incumbent carrier’s rate (UP/NS in this application) as an input for establishing the gateway rates can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism.”); Am. Appl. Vol. 2 at 262 (“As explained above, the CGP proposal creates an incentive to compete less aggressively on some of the shipments used in the generation of the Committed Gateway Prices.”).

Accordingly, the Board should reject the Amended Application as incomplete and require Applicants to propose the required enhancements.

IV. Applicants Failed to Submit a Significant Transaction Application for TRRA Pursuant to 49 C.F.R. § 1180.2(b)(2) and Decision No. 9.

Another independent reason for the Board’s rejection of the Initial Application was Applicants’ failure to take seriously the potential competitive impacts of a combined UP/NS’s control over the TRRA. In rejecting Applicants’ initial related minor transaction application to control TRRA, the Board held that, “[a]lthough Applicants state that they intend to divest NS’s ownership interest in TRRA to reduce their post-merger ownership interest in TRRA below 50%, they do not offer to condition the Transaction on this divestiture, and their commitment is contingent on TRRA’s other owners offering to pay fair market value.”¹⁰⁰ Moreover, the Board could not “find that any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated public benefits. 49 C.F.R. § 1180.2(b)(2).”¹⁰¹ And for good reason: Union Pacific also controls another switching carrier in St. Louis—the Alton and Southern. As a result, the Board directed Applicants to submit an application for control over the TRRA under the requirements of a significant transaction. Yet Applicants did not submit a significant transaction application with their Amended Application.

Instead, Applicants **deleted their prior minor transaction application**, meaning they provide **no application for control at all**. Applicants now purport to offer a “TRRA Commitment” that makes a vague promise “to divest[] NS’s ownership interest in TRRA and redistribut[e] NS’s shares equally to UP and TRRA’s other current owners,” such that UP/NS will

¹⁰⁰ Initial Application Rejection at 11.

¹⁰¹ *Id.*

not have a controlling share of TRRA at any point.¹⁰² Notably, this proposed divestment is nearly identical to the proposal in the Initial Application that the Board rejected. This “new” plan comes with no specifics on (i) when the divestment will happen, (ii) how the divestment will happen (including how Union Pacific can purport to divest Norfolk Southern’s shares without first acquiring control over Norfolk Southern), (iii) whether the divestment complies with the TRRA Operating Agreement and Bylaws, (iv) the proposed price for the shares, (v) how the divestment of Norfolk Southern’s shares will impact its board seat in the TRRA, or (vi) how the divestment will impact Norfolk Southern’s obligations under the Merchants Bridge Rehabilitation Agreement. Applicants nevertheless ask the Board to “expressly condition its authorization of the proposed merger on their compliance with this TRRA Commitment,”¹⁰³ and consider their obligation to address the Initial Application’s deficiency fulfilled.

Should the other owners of the TRRA not want Norfolk Southern’s shares, Applicants have no backup plan. The Amended Application contains further vague notions of “negotiations” with TRRA management regarding other reforms to limit Applicants’ control over the TRRA.¹⁰⁴ But these are **not** part of the TRRA Commitment and so there is no mechanism for enforcing any of these proposals. Rather than address the myriad of competitive issues posed by Applicants’ control over the TRRA and the broader St. Louis area as the result of the proposed merger, Applicants propose a vague fix that would merely kick the can down the road for the Board and other stakeholders to address the TRRA’s future, without the benefit of a significant transaction application that would allow for a thorough assessment of those issues. And these are serious

¹⁰² Am. Appl. Vol. 1 at 401.

¹⁰³ *Id.* at 402.

¹⁰⁴ *Id.*

questions. What will the financial impact of the proposed merger be on the TRRA’s future revenues and operations? Will Union Pacific accept financial responsibility for Norfolk Southern’s contingent guaranty of \$222 million for the Merchants Bridge rehabilitation?¹⁰⁵ The Board was right to require Applicants to submit a significant transaction application, as originally intended, rather than allow them to sweep their TRRA control problems under the rug.

Under Applicants’ proposal, their \$85 billion transaction would depend on future compliance with the TRRA Commitment, assuming it could be performed in a way that would not first transfer control of TRRA or Norfolk Southern. But other TRRA board of directors and shareholders have already expressed concern with Applicants’ plans and their feasibility under the TRRA’s operative governance documents, which contain explicit share transfer restrictions. When Applicants first brought a proposal to the TRRA shareholders and board for a potential sale of Norfolk Southern’s shares to other members in February via a special meeting called by Union Pacific, the members immediately took issue with it.

CN noted several concerns with the proposal, including the fundamental fact that shares of TRRA (including those of Norfolk Southern) **are nontransferable**.¹⁰⁶ Per the terms of the Stock Certificates issued to each shareholder, the shares were issued to the TRRA owners “subject to an agreement between said Railroad Company and [the TRRA] that the ownership of the said shares of stock shall be forever inseparably associated with said Railroad, and shall never become the property of any person or corporation whatsoever, except the person or corporation which may, for the time being, be the owner of said Railroad. **This certificate is not transferable except**

¹⁰⁵ See Steve Smedley, *St. Louis Merchants Bridge project reaches final major milestone*, (Aug. 26, 2022), <https://www.trains.com/trn/news-reviews/news-wire/st-louis-merchants-bridge-project-reaches-final-major-milestone>; see also Workpaper “Merchants Bridge Rehabilitation Agreement.”

¹⁰⁶ See Workpaper “CN Letter to UP re: TRRA” (Mar. 13, 2026).

back to [the TRRA].”¹⁰⁷ The “agreement” referenced in the stock certificate is the Agreement for Reorganization of St. Louis Terminal dated October 1, 1889, which included the identical stock restriction and required the stock to be issued with that restriction prohibiting sale of the stock.¹⁰⁸ To further emphasize the importance of the restriction, even stock transferred to Directors in the Operating Agreement includes the restriction on sale.¹⁰⁹ This restriction immediately blocks the TRRA Commitment to sell Norfolk Southern’s shares.

Moreover, changes to these governance documents to remove this restriction would likely require unanimous approval of the other directors and shareholders, which is not guaranteed. Should Applicants want to contest this share restriction in state court under Missouri law, they will

¹⁰⁷ Workpaper “TRRA Share Certificate” (emphasis added).

¹⁰⁸ The Agreement for Reorganization states:

[I]t being the intention of the parties that the ownership of the stock referred to in this paragraph shall be forever associated inseparably with the several railroads terminating in St. Louis and East St. Louis as aforesaid, and shall never become the property of any person or corporation whatsoever, except the person or corporation which may, for the time being, be the owner of such railroad; it is agreed that said certificates of stocks shall be issued in such form and tenor in respect to ownership and transferability as well secure perpetually the intention of the parties as herein expressed in relation thereto.

See Workpaper “TRRA 1889 Agreement” at 4. Union Pacific and Norfolk Southern’s predecessors are signatories to this agreement, as were all other owners of the TRRA.

¹⁰⁹ Section XIV of the TRRA Operating Agreement states:

The first party agrees that it will cause the corporate existence of the Union Depot Company and of the Union Railway and Transit Company of East St. Louis and of the Terminal Railroad of East St. Louis, to be maintained in case counsel shall deem the same necessary, and that each of said companies shall exercise its franchises solely for the benefit of the first party. All capital stock of these companies as purchased by the first party shall express on the face of the certificates thereof that it is the property of said first party, and that it is not to be alienated from its owner, except that portions of it may be transferred to individuals to qualify them as directors and inspectors of elections under the law; but such stock so issued shall express upon its face that it is transferable only back to the company. *See* Workpaper “TRRA Operating Agreement” at 5.

face an uphill battle. Missouri law permits restrictions on transfer where they serve a legitimate purpose, which here is the maintenance of stability and order within a terminal railroad at the heart of St. Louis, Missouri and East St. Louis, Illinois.¹¹⁰ There is a risk that Applicants will have to resort to court proceedings that will certainly delay closing of this merger, even if approved by the Board. Where Applicants have apparently made a strategic litigation decision in the Amended Application to no longer seek control of the TRRA, they should not be entitled to change their mind later or attempt to divest shares of the TRRA in a way that constitutes unauthorized control.

Other directors and shareholders, like CN, also took issue with the fact that Union Pacific was purporting to control and sell Norfolk Southern's shares in the TRRA, despite the fact that Union Pacific does not own Norfolk Southern, nor Norfolk Southern's shares in the TRRA.¹¹¹ CN warned Applicants of premature coordination and control of a target company (whether Norfolk Southern or TRRA) prior to a merger's closing, as at no point had Norfolk Southern expressed any interest or intent in transferring its TRRA shares. And indeed, there is little evidence of a real commitment even in the Amended Application to come to a resolution—as discussed, there are still no details on how the transfer will happen, when it will happen, or at what price it will happen. And because TRRA has provisions that prohibit non-discrimination between owners and non-owners,¹¹² there is no incentive for non-owners to become an owner: non-owners do not contribute capital other than paying the TRRA fees and those fees are the same for owners and

¹¹⁰ See *Witte v. Beverly Lakes Inv. Co.*, 715 S.W.2d 286, 294 n.4 (Mo. Ct. App. 1986) (noting that the general standard for reasonableness of a share transfer restriction is whether it is “sufficiently needed by the particular enterprise to justify overriding the general policy against restraints on alienation”).

¹¹¹ See Workpaper “CN Letter to UP re: TRRA” (Mar. 13, 2026).

¹¹² See Section XVI, Workpaper “TRRA Operating Agreement” at 5.

non-owners. All of these missing details lead CN to doubt whether the TRRA Commitment can or will ever be satisfied, casting doubt on the proposed merger writ large.

Applicants again disregard the explicit requirements of the Board to avoid doing the work of the significant transaction application, rather than actually addressing the important implications of their proposed merger on the TRRA and rail competition in St. Louis, Missouri and East St. Louis, Illinois. Indeed, Applicants themselves note that the TRRA will face “consequential” impacts because of the transaction.¹¹³ The Board should reject Applicants’ vague TRRA Commitment and reiterate the need for a significant transaction application regarding control of the TRRA as a requirement of completeness.

CONCLUSION

For the reasons stated above, the Board should reject the Amended Application as incomplete and require Applicants to file a further amended application that rectifies the deficiencies and accurately reflects the wide-ranging impacts of the proposed merger. Alternatively, if the Board accepts the Amended Application, it should pause the proceeding until the market share inconsistencies are addressed and other missing information is provided.

¹¹³ Am. Appl. Vol. 1 at 13.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of May 2026, I caused a true and correct copy of the foregoing Grand Trunk Corporation's Comments on Completeness of Union Pacific and Norfolk Southern's Application (CN-15) to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew Bernstein

Andrew Bernstein

Sr. Paralegal Manager

Simpson Thacher & Bartlett LLP

Exhibit 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36873

**UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY**

—CONTROL—

**NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY**

Verified Statement of Dr. Mary Coleman

May 8, 2026

I. INTRODUCTION

A. QUALIFICATIONS, ASSIGNMENT, AND SUMMARY OF CONCLUSIONS

1. My name is Mary Coleman. I am a Senior Managing Director and Head of the U.S. Antitrust Practice at Compass Lexecon, which is a division of FTI, Inc. I received my Ph.D. in economics from Stanford University and my B.A. in economics from Stonehill College. My consulting practice specializes in the assessment of competitive effects arising from business conduct and transactions, particularly mergers and acquisitions, and litigation involving antitrust issues. My experience spans a wide range of industries and includes presentations before U.S. and foreign antitrust authorities as well as sworn deposition and trial testimony. I have published a number of articles addressing antitrust issues and the use of econometrics and other empirical methods in antitrust analysis. In addition, I have served as an advisor on antitrust and regulatory issues to many organizations, including the American Bar Association, the Department of Justice, and the Federal Trade Commission (“FTC”).

2. During 2001-2004, I served as Deputy Director for Antitrust in the Bureau of Economics at the FTC. As Deputy Director for Antitrust, I supervised the economic analysis on all antitrust matters at the FTC, as well as provided advice to the FTC on the economic aspects of antitrust investigations and policy issues related to antitrust. The cases I supervised at the FTC covered a broad spectrum of industries and antitrust issues, including mergers, horizontal restraints, monopolization, and vertical restraints.

3. My *curriculum vitae*, which includes a complete list of my publications, is attached as Appendix A.

B. ASSIGNMENT

4. I have been asked by counsel for Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries¹ (collectively “CN”) to assess the market analyses provided by Union Pacific Corporation, Union Pacific Railroad Company (“UP”), Norfolk Southern

¹ Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

Corporation, and Norfolk Southern Railway Company (“NS”) (collectively, “Applicants”) in their amended application seeking authority for the acquisition of control by Union Pacific Corporation of Norfolk Southern Corporation and, through it, NS (the “Amended Application”).² Specifically, I have been asked to opine on the completeness of the Amended Application’s Market Impact Analyses – Exhibit 12 [Section 1180.7]³ to address 49 C.F.R. § 1180.7(b)(2)’s requirement to “list points where the number of serving railroads would drop from two to one and from three to two, respectively, as a result of the proposed transaction (both before and after applying proposed remedies for competitive harm).”⁴ I reserve the right to update my opinions as my review of the Amended Application continues or as new information becomes available.

C. SUMMARY OF CONCLUSIONS

5. Applicants’ amended market impact analysis omits (either entirely or through misclassification) at least 21 customer facilities that would experience a reduction in competitive Class I rail options from 2-to-1 or 3-to-2 as a result of the proposed UP/NS transaction. Specifically, I identify the following gaps in Applicants’ analysis of 2-to-1 and 3-2 customers:⁵

- **2-to-1 Customers:** Applicants fail to identify three customers whose rail service options would be reduced from two Class I carriers to one. *First*, Alton Steel Inc. in Federal, Illinois is omitted because Applicants relied on outdated Serving Carrier Reciprocal Switch (“SCRS”) data. *Second*, Milano Metals & Recycling / Milano Railcar Services in Mount Vernon, Illinois and Titan Tire Corp. in Des Moines, Iowa are misclassified because Applicants improperly count access through a non-Class I railroad (a short line) to bridge to another railroad as equivalent to Class I railroad access.

² UP-39/NS-37; UP-40/NS-38; UP-41/NS-39; UP-42/NS-40, FD 36873 (filed Apr. 30, 2026) [hereinafter “Amended Application”].

³ Amended Application Vol. 1, Pages 97-100.

⁴ 49 C.F.R. § 1180.7(b)(2).

⁵ See Appendix B for details.

- **3-to-2 Customers:** Applicants fail to identify at least 18 customers whose rail service options would be reduced from three Class I carriers to two. *First*, Applicants misclassify Wheeler Consolidated and omit 14 3-to-2 customers in Des Moines, Iowa. *Second*, Applicants omit three 3-to-2 customers in Danville, Illinois. These customers are omitted or misclassified because Applicants improperly count access through short line to bridge to another railroad as equivalent to Class I railroad access.

II. BACKGROUND

6. I previously provided a Verified Statement⁶ included as Exhibit 1 in Grand Trunk Corporation's Comments on Completeness of Union Pacific and Norfolk Southern's Application, submitted on December 29, 2025.⁷ In that statement, I addressed 49 C.F.R. § 1180.7(b)(2)'s completeness requirement with respect to the Initial Application, identifying examples of customers that had not been identified by Applicants but that would likely face a reduction in competitive rail options as a result of the proposed transaction, with access reduced from 2-to-1 or 3-to-2 Class I rail options.⁸

7. The Initial Application identified three 2-to-1 customers but failed to explain the methods and sources Applicants used to identify those customers.⁹ The Amended Application provides certain details on the methods and sources used to identify 2-to-1 customers in the Amended Application. First, Dr. Elizabeth Bailey explains in her Verified Statement how she conducted an initial review to identify potential 2-to-1 and 3-to-2 facilities. Then, the Amended Verified Statement of Katherine Novak explains further steps UP took to either confirm, or rule out, the set of customers initially identified by Dr. Bailey.

⁶ CN-6, FD 36873 (filed Dec. 29, 2025), Verified Statement of Mary Coleman (Dec. 29, 2025) [hereinafter "Coleman Initial Statement"].

⁷ CN-6, FD 36873 (filed Dec. 29, 2025), addressing UP-13/NS-11; UP-14/NS-12; UP-15/NS-13; UP-16/NS-14, FD 36873 (filed Dec. 19, 2025) [hereinafter the "Initial Application"].

⁸ These 2-to-1 or 3-to-2 customers included Mighty River Recycling, Milano Railcar Services, Edmund Allen Lumber Co., Viscofan USA, and Cargill. Coleman Initial Statement at Page 11, ¶ 14.

⁹ Coleman Initial Statement at Page 5, ¶ 7.

8. In her Verified Statement, Dr. Bailey described a review she conducted using Serving Carrier Reciprocal Switch (“SCRS”) data that “provisionally identifies customer facilities where a combination of UP and NS would reduce the number of railroads accessible to the customer from 2-to-1 or from 3-to-2.”¹⁰ Dr. Bailey identifies 11 potential 2-to-1 facilities and 13 potential 3-to-2 facilities,¹¹ eight of which I identified in my previous Verified Statement.¹²

9. Katherine Novak, in her Amended Verified Statement, explains that building upon Dr. Bailey’s initial list of potential 2-to-1 or 3-to-2 facilities, UP reviewed additional sources of information including Railinc’s Centralized Station Master, railroad reciprocal switch circulars, and trackage, haulage, and other joint facility agreements to “determine whether SCRS correctly identified the carriers with access to each facility or whether further investigation was warranted.”¹³ In addition, Ms. Novak states that NS provided feedback to UP on the results of its review.¹⁴ The results are included in Appendix B of Ms. Novak’s report.

10. For 2-to-1 customers, Ms. Novak’s analysis confirms five and dismisses six of the 11 potential 2-to-1 customer facilities identified by Dr. Bailey.¹⁵ Of the five customer facilities Ms. Novak’s analysis confirms, three had previously been identified in the Initial Application, and Applicants discuss commitments made to those customers to preserve two-Class I carrier competition via haulage or trackage rights.¹⁶ For the two additional 2-to-1 customers identified in

¹⁰ Amended Application Vol. 2, Verified Statement of Elizabeth Bailey at App. Vol. 2, Page 56, ¶ 109 (April 27, 2026) [hereinafter “Bailey Amended Statement”].

¹¹ See “SCRS 3-to-2 and 2-to-1 customer notes.xlsx” contained within the Bailey Amended Statement workpapers. Milano Metals & Recycling/Milano Railcar Services are treated as a single customer and Mighty River Recycling LLC is considered a potential 3-to-2 customer in Amended Application Vol. 1, Verified Statement of Katherine N. Novak at App. Vol. 1, Page 491, Appendix B (April 29, 2026) [hereinafter “Novak Amended Statement”].

¹² Coleman Initial Statement at Page 11, ¶ 14 and footnote 40. Cargill is another customer I identified that Dr. Bailey failed to identify for reasons described in § IV.

¹³ Novak Amended Statement at App. Vol. 1, Page 394, ¶ 53.

¹⁴ Novak Amended Statement at App. Vol. 1, Page 395, ¶ 53.

¹⁵ Novak Amended Statement at App. Vol. 1, Pages 491-92, Appendix B.

¹⁶ Novak Amended Statement at App. Vol. 1, Page 395, ¶ 54-56.

the Amended Application and “any other shipper facility later identified as a 2-to-1 shipper facility,” Applicants committed to remedy “such situations using haulage rights.”¹⁷

11. For 3-to-2 customers, Ms. Novak’s analysis confirms three and dismisses 10 of the 13 potential 3-to-2 customers originally identified by Dr. Bailey.¹⁸ In addition, Ms. Novak reclassifies one of Dr. Bailey’s potential 2-to-1 customers as being a 3-to-2 customer.¹⁹ Neither Dr. Bailey nor Ms. Novak discuss any commitments made by the Applicants to preserve competition for these customers. Dr. Bailey states that if a customer is classified as 3-to-2, it “means they have access to another Class I railroad other than UP or NS, and will continue to have that other option after UP and NS merge.”²⁰

12. Utilizing many of the same materials that the Applicants now rely on, I find that Applicants have omitted or misclassified at least 21 additional 2-to-1 or 3-to-2 customers. I reviewed UP and NS traffic data, other railroads’ traffic data used by the Applicants, the STB Carload Waybill Sample (“CWS”), the North American Centralized Station Master (“CSM”), Serving Carrier/Reciprocal Switch (“SCRS”) file, and publicly available reciprocal switching tariff information. I reviewed customers identified in traffic tapes, as well as those identified in the SCRS data and reciprocal switching tariff information. I compared the details surrounding customers’ access options to information in the CSM and the CWS to ensure consistency.

13. I have also reviewed the methods and details around Applicants’ review of 2-to-1 and 3-to-2 customers. Applicants’ identification of errors and erroneous entries in the SCRS data and their consideration of trackage, haulage, and other joint agreements are appropriate to consider when identifying railroad access to customers.²¹ For two 2-to-1 customer examples I previously identified, Applicants rely on additional materials that purport to identify additional direct Class I

¹⁷ Novak Amended Statement at App. Vol. 1, Page 397, ¶ 58.

¹⁸ Bailey Amended Statement, App. Vol. 2, Page 58, Exhibit 11.

¹⁹ Edmund A. Allen Lumber, originally identified as a possible 2-to-1 customer is confirmed by Ms. Novak’s analysis as a 3-to-2 customer (Novak Amended Statement at App. Vol. 1, Page 491, Appendix B).

²⁰ Bailey Amended Statement at App. Vol. 2, Page 60, ¶ 116. Dr. Bailey excludes these customers from concern about the effects of the proposed transaction, stating there is “limited scope for adverse horizontal competitive effects.” Bailey Amended Statement at App. Vol. 2, Page 88, ¶ 191.

²¹ Novak Amended Statement at App. Vol. 1, Pages 491-93, Appendix B.

railroad access options.²² If accurate, then a reclassification of these two customers from 2-to-1 to 3-to-2 may be appropriate.²³ For two 2-to-1 customers I had previously identified, however, Applicants discuss additional materials that identify connection to Class I railroads only via a non-Class I railroad.²⁴ I discuss the potential issues with this approach in Section IV. Details on the customers identified by the Applicants and those additional customers I have identified are included in Appendix B.

III. APPLICANTS' METHODS FAIL TO IDENTIFY A 2-TO-1 CUSTOMER IN FEDERAL, IL

14. Having conducted my own review based on additional sources, as detailed above, I have identified at least one additional 2-to-1 customer that Applicants fail to identify (or discuss). Recent updates to SCRS data include both UP and NS entries for Alton Steel Inc. in Federal, IL.²⁵ The August 2025 SCRS data Dr. Bailey relied upon identified only UP as having access to Alton Steel Inc.; it therefore was excluded from the list that Ms. Novak reviewed and further narrowed down. However, the updated SCRS data identifies both UP and NS with direct access to Alton Steel Inc. and identifies no other Class I railroad with direct access. Accordingly, Alton Steel Inc. should be counted as a 2-to-1 customer according to the latest SCRS data.

²² Ms. Novak identifies a joint facility agreement between UP and Kansas City Southern Railway she claims grants CPKC access to Mighty River Recycling. She identifies a commercial arrangement between UP and CSX she claims grants CSX access to Edmund Allen Lumber. Novak Amended Statement at App. Vol. 1, Page 396, ¶ 57.

²³ Ms. Novak did not describe any review of additional evidence that could reveal additional 2-to-1 facilities not already identified by Dr. Bailey.

²⁴ Ms. Novak refers to SCRS listings for Milano Metals & Recycling and Shapiro Bros. of Illinois, Inc (which are separate SCRS entries than Milano Railcar Services in the SCRS data) as evidence that Milano Railcar Services has access to BNSF and CSX via interchange with Evansville Western Railway. She describes Iowa Interstate Railroad's switching access to Titan Tire Corp as evidence of access to BNSF, CN, CPKC, and CSX. *See* Novak Amended Statement at App. Vol. 1, Page 491-93, Appendix B.

²⁵ *See* CN SCRS extract 20260223 no dups.xlsx.

IV. APPLICANTS CONSIDER NON-CLASS I RAILROADS AS CLASS I RAILROADS IN THEIR ASSESSMENT OF 2-TO-1 AND 3-TO-2 CUSTOMERS RESULTING IN THE OMISSION OF SEVERAL 2-TO-1 AND 3-TO-2 CUSTOMERS

15. I understand from Counsel that it is appropriate to consider only access to Class I rail options when identifying 2-to-1 or 3-to-2 customers, which is consistent with how Applicants have approached this analysis in prior railroad merger cases and Board precedent.²⁶ Ms. Novak’s statements are consistent with this approach:

- “No Shipper Facility Will Lose Access to Service by Two Class I Railroads as a Result of the UP/NS Merger”²⁷, and
- “Applicants are committed to ensuring that the UP/NS merger does not leave any shipper facility currently served by UP and NS and no other railroad (a ‘2-to-1 shipper facility’) without access to at least two Class I railroads after the merger.”²⁸

Similarly, Dr. Bailey’s statements are also consistent with a focus on Class I railroads:

- “Applicants have committed to entering into agreements that would allow another existing Class I railroad to serve the facilities”²⁹, and

²⁶ See, e.g., UP/SP Decision No. 44, 1 S.T.B. 233, at 390-91 (describing “[t]o identify points to be covered by corrective trackage rights, applicants have identified 2-to-1 points as those that can be **served directly, or through reciprocal switching, by UP and SP but by no other Class I railroad.**”) (emphasis added). The STB, in a 2021 Decision regarding the Classification of Carriers, notes the following: “The operational characteristics of regional carriers, like MRL, significantly differentiate them from Class I carriers. The record establishes that even the largest Class II carriers, such as MRL, have much smaller rail networks and service territories than Class I carriers, have local or regional service territories, and lower traffic densities; are heavily dependent in many critical ways on their Class I interchange partners; and have more limited and less diverse traffic bases than Class I carriers. Similarly, even the largest Class II carriers generate far less revenue than the smallest Class I.” See Decision, EP 763 (STB served April 5, 2021) at 5 (internal citations omitted).

²⁷ Novak Amended Statement at App. Vol. 1, Page 393, § II.

²⁸ Novak Amended Statement at App. Vol. 1, Pages 393-94, ¶ 52.

²⁹ Bailey Amended Statement at App. Vol. 2, Page 59, ¶ 114.

- “These are all 3-to-2 customers (and possibly 4-to-3 for two customers in Danville), which means they have access to another Class I railroad other than UP or NS, and will continue to have that other option after UP and NS merge.”³⁰

16. Despite these statements, not only do the Applicants consider non-Class I railroads (also known as Class II or Class III carriers or as short line or regional railroads) in their methods to identify 2-to-1 and 3-to-2 customer facilities, but they also in some cases treat a short line bridging to another Class I as equivalent to direct Class I access. Dr. Bailey explains this rationale:³¹

If one of the railroads other than UP and NS was a Class II or Class III, I consider whether that railroad could interchange with one or more Class I railroads other than UP or NS. For example, if a customer facility has access to Evansville Western Railway, which gives them access to BNSF and CSXT, then BNSF and CSXT are counted as separate individual access points.

In Dr. Bailey’s example, Evansville Western Railway (EWVR)’s access to a customer is not treated as a single non-Class I railroad when defining 2-to-1 or 3-to-2 customers but rather as two Class I railroads (BNSF and CSXT). Dr. Bailey fails to explain why it is appropriate to define the number of rail options available to a customer by including a Class II or Class III railroad that can interchange with Class I railroads. Nor has she identified any other relevant factors that could impact those customers’ “access” to other Class I railroads through a Class II or Class III railroad (e.g., the distance to interchange with the Class I railroad(s), paper barriers or other restrictions faced by the Class II or III railroad, and all involved railroads’ operating plans).

³⁰ Bailey Amended Statement at App. Vol. 2, Page 60, ¶ 116.

³¹ Bailey Amended Statement at App. Vol. 2, Page 56, ¶ 108.

17. Indeed, when describing the “Benefits From the Proposed Merger,” Dr. Bailey states that one of the primary benefits of the combined railroad is that of *removing* interchanges,³² and describes the challenges of interline rail services across independent railroads:³³

Interline rail services are a good example. For two independent railroads to successfully operate an interline rail service, they must coordinate the movement of a single shipment across distinct, but connected networks. A shipment originating on one railroad’s network must be transferred at an interchange point, handled according to agreed-upon procedures, and transferred to the second railroad’s network (often where it is handled again) prior to reaching its final destination. The train must move over the network subject to congestion and competing traffic. At the interchange, the cars must be set out on designated tracks, categorized, and accepted by the receiving railroad in a timely fashion. The receiving railroad must incorporate those cars into its operating plan, re-sort the cars if needed, and form the new outbound train before final dispatch. At each step, the railroads must make coordinated decisions despite uncertain and highly unpredictable operating conditions (*complexity*); they must rely on assets and operating choices that are largely outside of the railroad’s control (*asset-specificity*); and they must implement real-time adjustments to ensure that trains remain on schedule (*adaptability*).

18. If, as Dr. Bailey describes, removing interchanges is a benefit of the proposed transaction because it eliminates inefficiencies that reduce the quality or raise the cost of the rail service provided to customers, then it follows that indirect customer access to Class I railroads via interchanges with Class II or Class III railroads does not provide the same level of competition as direct customer access to Class I railroads.

19. In the following sections, I identify 2-to-1 and 3-to-2 customer facilities not listed by Dr. Bailey when non-Class I railroads are removed from the identification of customers’ access to Class I railroads pre- and post-merger. Once the Applicants’ methodology is adjusted to remove

³² See, e.g., Bailey Amended Statement at App. Vol. 2, Page 11, ¶ 18 (“One component of this overall figure comes from potential benefits for customers affecting the approximately 877,000 carloads that UP and NS interchanged in 2023. The combined railroad will replace these interline services with single-line ones. I find that the combined railroad will be more likely to make operating improvements, offer more competitive service, and ensure reliable service on these routes than UP and NS would absent the merger.”).

³³ Bailey Amended Statement at App. Vol. 2, Pages 41-42, ¶ 70.

consideration of non-Class I railroads, I identify two additional 2-to-1 customers and 18 additional 3-to-2 customers that Applicants fail to acknowledge or address.

A. **MILANO METALS & RECYCLING/MILANO RAILCAR SERVICES IN MOUNT VERNON, IL AND TITAN TIRE CORP. IN DES MOINES, IA ARE BOTH 2-TO-1 CUSTOMERS**

20. Ms. Novak’s notes on the review of Milano Metals & Recycling/Milano Railcar Services in Mount Vernon, IL describe the following:³⁴

As discussed in the body of the verified statement, Milano, which was formerly known as Shapiro Bros of Illinois, has access to BNSF and CSX through Evansville Western Railway, which directly serves the facility.

As discussed above, even if both Milano Metals & Recycling and Milano Railcar Services have access to the Evansville Western Railway (EVWR), only two Class I railroads (UP and NS) can directly access Milano’s customer facilities.³⁵ EVWR is a Class II railroad, and therefore does not qualify as another “Class I railroad to serve the facilities.”³⁶ Therefore, Milano Metals & Recycling and Milano Railcar Services is a 2-to-1 customer when excluding access through the EVWR.

21. Ms. Novak’s notes on the review of Titan Tire Corp in Des Moines, IA describe the following:³⁷

This is an NS-served facility, open to switching for UP and Iowa Interstate Railroad (which can interchange with BNSF, CN, CPKC, and CSX).

Even if Titan Tire Corp has access to the Iowa Interstate Railroad (IAIS), only two Class I railroads (UP and NS) can directly access Titan Tire Corp’s customer facilities. IAIS is a Class

³⁴ Novak Amended Statement at App. Vol. 1, Page 491, Appendix B.

³⁵ EVWR interchanges with CSXT in Evansville, IN and with BNSF in Woodlawn, IL. *See* EVRW System Map at <https://evwr.com/system-maps/>.

³⁶ Bailey Amended Statement at App. Vol. 2, Page 59, ¶ 114.

³⁷ Novak Amended Statement at App. Vol. 1, Page 493, Appendix B.

II railroad, and therefore does not qualify as another “Class I railroad to serve the facilities.”³⁸ Therefore, Titan Tire Corp is a 2-to-1 customer when excluding access through the IAIS.

22. In addition to the limitations that IAIS faces as a Class II railroad in providing rail services to customers, IAIS’s access to many of these customers is subject to certain restrictions. For example, the UP Reciprocal Switching Circular notes that every UP-served industry in Des Moines eligible for reciprocal switching, is “[a]pplicable only from or to IAIS stations not also served by UP. No restrictions on BNSF or NS linehaul traffic.”³⁹ Practically, this means that IAIS cannot even compete for those customers’ traffic unless it is from or to a station on its network that is not also served by UP.

B. AT LEAST 15 CUSTOMERS IN DES MOINES, IA ARE 3-TO-2 CUSTOMERS

23. Dr. Bailey identifies a total of eight potential 2-to-1 or 3-to-2 customers in Des Moines, IA, of which none are considered 2-to-1 or 3-to-2 based on Ms. Novak’s subsequent review.⁴⁰ One of the reasons for Applicants’ exclusion of these customers is their access to “Iowa Interstate Railroad (which can interchange with BNSF, CN, CPKC, and CSX).”⁴¹ IAIS, however, is not a Class I railroad and faces the limitations described above.

24. If the connection points to IAIS are excluded, Wheeler Consolidated from Dr. Bailey’s list of potential 3-to-2 customers would continue to be classified as 3-to-2. Moreover, I have identified an additional 14 customer facilities located at the Des Moines station that are 3-to-2 customers when IAIS is excluded. Neither Dr. Bailey nor Ms. Novak discuss these customers in their verified statements. These 3-to-2 customers are shown in Table 1 below.

³⁸ Bailey Amended Statement at App. Vol. 2, 59, ¶ 114.

³⁹ UP Reciprocal Switching Circular UP 8005 J (Effective July 1, 2025), at 6 and note 4 at 17.

⁴⁰ See Novak Amended Statement at App. Vol. 1, 491-93, Appendix B and Bailey Amended Statement at App. Vol. 2, Page 58, Exhibit 11.

⁴¹ Other reasons include “erroneous” SCRS data entries and closed facilities. See Novak Amended Statement at App. Vol. 1, 491-93, Appendix B.

Table 1: Additional 3-to-2 Customer Facilities in Des Moines, IA

Customer	Class I Railroad Access
ARCHER DANIELS MIDLAND CO	UP, NS, BNSF
BRIDGESTONE AMERICAS TIRE OPERATIONS LLC	UP, NS, BNSF
ALTER METAL RECYCLING	UP, NS, BNSF
CARGILL INC	UP, NS, BNSF
KRU LTD	UP, NS, BNSF
HEARTLAND CO-OP	UP, NS, BNSF
DES MOINES INDUSTRIAL LLC	UP, NS, BNSF
GENERAL MILLS INC	UP, NS, BNSF
HELENA AGRI-ENTERPRISES LLC	UP, NS, BNSF
BLUELINX	UP, NS, BNSF
BITUMINOUS MATERIALS & SUPPLY LP	UP, NS, BNSF
ALTER TRADING CORP	UP, NS, BNSF
DARLING INGREDIENTS INC	UP, NS, BNSF
ADM SOYBEAN PROCESSING	UP, NS, BNSF

C. AT LEAST THREE ADDITIONAL CUSTOMERS IN DANVILLE, IL ARE 3-TO-2 CUSTOMERS

25. Dr. Bailey identifies two potential 3-to-2 customers in Danville, IL, Lebanon Chemical Corp and Viscofan USA Inc., neither of which are dismissed based on Ms. Novak’s review.⁴² Due to her inclusion of Class III Kankakee, Beaverville & Southern Railroad (KBSR) as an alternative for customers in Danville, Dr. Bailey fails to identify three additional 3-to-2 customers.⁴³ These are shown in Table 2 below.

⁴² See Novak Amended Statement at App. Vol. 1, 492-93, Appendix B and Bailey Amended Statement at App. Vol. 2, Page 58, Exhibit 11. Ms. Novak adds a qualifier that, “It is unclear whether the facility is also open to Kankakee, Beaverville & Southern Railroad (‘KBSR’), which the shipper could use to connect to CN, because the SCRS record does not show the facility as ‘restricted.’” Novak Amended Statement at App. Vol. 1, 493, Appendix B. Dr. Bailey notes uncertainty around CN’s inclusion in Exhibit 11, stating “unclear whether customer is 3-to-2 or 4-to-3.” Bailey Amended Statement at App. Vol. 2, 58, Exhibit 11.

⁴³ KBSR connects with CN on the opposite end of KBSR’s network in Kankakee, IL. See Kankakee Beaverville & Southern Railroad at <https://irp.cdn-website.com/ec68fca5/files/uploaded/KBSR%20Sitemap.pdf>.

Table 2: Additional 3-to-2 Customer Facilities in Danville, IL

Customer	Class I Railroad Access
BUNGE MILLING INC	NS, UP, CSXT
REG DANVILLE LLC	NS, UP, CSXT
THE QUAKER OATS CO	NS, UP, CSXT

V. CONCLUSION

26. Dr. Bailey and Ms. Novak identify two additional 2-to-1 (five total) and four 3-to-2 customers in the Amended Application. Although the descriptions of their methods and the additional information used to identify 2-to-1 and 3-to-2 customers are useful, their analysis fails to identify all 2-to-1 and 3-to-2 customers. Their methods omit Alton Steel Inc. (a 2-to-1 customer) by failing to account for the most recent data sources. Their choice to include non-Class I railroads when assessing customers' rail service options results in many customers being misclassified, including Milano Metals & Recycling / Milano Railcar Services and Titan Tire Corp (2-to-1 customers), at least 15 Des Moines, IA customers (3-to-2 customers), and at least 3 Danville, IL customers (3-to-2 customers). In total, Dr. Bailey and Ms. Novak omit from their analysis or misclassify 21 customers, including 3 additional 2-to-1 customers and 18 additional 3-to-2 customers.

VERIFICATION

I, Mary Coleman, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 8th day of May, 2026.

A handwritten signature in blue ink that reads "Mary Coleman". The signature is written in a cursive style and is positioned above a horizontal line.

Mary Coleman, Ph.D.

Appendix A

MARY COLEMAN

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EDUCATION

1990, *PhD in Economics*, Stanford University
Dissertation: "Movements in the Earnings-Schooling Relationship: 1940 – 1988"
Advisor: Professor John Pencavel, Department of Economics
1986, *BA in Economics, summa cum laude*, Stonehill College

PROFESSIONAL EXPERIENCE

2025 - Present, *Senior Managing Director and Head of US Antitrust Practice*, Compass Lexecon, Boston, MA
2013 - 2025, *Executive Vice President*, Compass Lexecon, Boston, MA
2009 - 2013, *Senior Vice President*, Compass Lexecon, Boston, MA
2004 - 2009, *Director/Managing Director of Mergers and Acquisitions Practices*, LECG, LLC, Washington, DC
2002 - 2004, *Deputy Director for Antitrust*, Bureau of Economics, Federal Trade Commission
2001 - 2002, *Associate Director for Competitive Analysis*, Bureau of Economics, Federal Trade Commission
2000 - 2001, *Practice Director, Mergers and Acquisitions Group*, LECG, LLC, Washington, DC
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1990 - 1993, *Economist*, Bureau of Economics, Federal Trade Commission, Washington, DC

TESTIMONY

- Trial and deposition testimony: *In re Carnival v. DeCurtis Corporation and DeCurtis LLC*, U.S. Dist. Court, Civil Action N. 20-22945-CIV-SCOLA.
- Deposition testimony: *In re Online DVD Rental Antitrust Litigation*, U.S. Dist. Court, M:09-cv-2029 PJH.
- Submission of expert affidavit in settlement hearing in *Shawn Sullivan et al v. DB Investments Inc., De Beers SA et al*, Civil Action Index No. 04-02819, United States District Court, District of New Jersey (2008).
- "Oil Pipelines' Effects on Refined Products Prices," Federal Trade Commission Conference, *Factors that Affect Prices of Refined Petroleum Products*, August 2, 2001.

PUBLICATIONS AND PAPERS

"PBMs and Prescription Drug Distribution: An Economic Consideration of Criticisms Levied Against Pharmacy Benefit Managers," with Dennis W. Carlton, Nauman Ilias, Theresa Sullivan, and Nathan Wilson, research funded by Caremark, Express Scripts, and Optum Rx, October 2024.

"Economic Analysis of Merger Remedies," with David Weiskopf, jointly authored chapter *Global Competition Review's Guide to Merger Remedies, 2020*.

- “Joint Purchasing: Efficiency Enhancing or Cause for Concern? It Depends?” with Jonathan Bowater, submission for ABA Antitrust Section Spring Meeting 2020.
- “Summary of Selected Literature re: Product Hopping and REMS,” with John Hore and David Weiskopf, submission for Antitrust in Healthcare Conference, May 2018
- “Market Definition in Merger Analysis: Who Buys the Products and How They Are Purchased Matters” with Jonathan Bowater, submission for 2018 ABA Antitrust Section Spring Meeting, April 2018.
- “Economic Analysis of Merger Remedies,” with David Weiskopf, jointly authored chapter Global Competition Review’s, *Guide to Merger Remedies*, 2018.
- “Are Pharmaceutical Companies Product Hopping Down an Anti-Competitive Trail?”, submission for Antitrust in Health Care Conference, May 2014.
- “Buyer Power in Merger Review” with Dennis Carlton and Mark Israel, jointly authored chapter in *The Oxford Handbook of International Antitrust Economics* 529-550 (R. Blair and D. Sokol ed.), 2014.
- Co-editor (with Bruce Hoffman) of ABA’s Section of Antitrust Law, *Market Power Handbook*, 2012.
- “Market Definition in Consumer Products Industries,” with David Weiskopf, jointly authored chapter in ABA Section of Antitrust Law, *Market Definition Handbook*, 2012.
- “Natural Experiments,” with James Langenfeld, in 1 Issues in Competition Law and Policy 743 (ABA Section of Antitrust Law 2008).
- “Key Issues in Proving Unilateral Effects after Oracle,” *Antitrust*, Spring 2005, 19(2), p. 26-30.
- “The Use of Economics by the European Commission and the U.S. Antitrust Agencies, with Henry Kahwaty, *International Antitrust Bulletin*, Spring/Summer 2004, p. 35-40.
- “The Use of Natural Experiments in Antitrust Analysis,” presented at ABA Fall Forum, November 2004, available upon request.
- “Empirical Analyses of Potential Competitive Effects of a Horizontal Merger: the FTC’s Cruise Ships Mergers Investigation,” with David Meyer and David Scheffman, 2003, *Review of Industrial Organization*, 23, 121-155.
- “Dialogue and Consultation Facilitates Convergence in Analyses of Mergers in the EU and US,” *ABA M&A Committee Newsletter*, 2003, <http://www.ftc.gov/be/convergence.pdf>
- “Quantitative Analyses of Potential Competitive Effects from A Merger,” with David Scheffman, 2003, *George Mason Law Review*, Winter 2003, 12, p. 319-370.
- “Best Practices for Interacting with the Federal Trade Commission, Re: Data and Empirical Analyses in Antitrust Investigations,” *ABA Economics Committee Newsletter*, 2003, <http://www.ftc.gov/be/bestpractices.pdf>
- “FTC Perspectives on the Use of Econometric Analyses in Antitrust Cases,” with David Scheffman, 2002, <http://www.ftc.gov/be/ftcperspectivesoneconometrics.pdf>
- “Current Economic Issues at the FTC” with David Scheffman, *Review of Industrial Organization*, 21: 357-371, 2002.
- “Oil Pipelines’ Effects on Refined Products Prices,” with George Schink and James Langenfeld, presented Federal Trade Commission conference, *Factors that Affect Prices of Refined Petroleum Products*, August 2, 2001.

“The Meaning of Monopoly: Antitrust Analysis in High Technology Industries,” with David Teece, *Antitrust Bulletin*, Fall/Winter 1998, p. 801-857.

The Merger Guidelines in the United States, Australia and New Zealand: An Economic Perspective,” with Christopher Pleastsikas and David Teece, *Trade Practices Journal*, 6(3), September 1998, pp. 153 – 171.

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“Changes in Work Hours of Male Employees Since 1940,” with John Pencavel, *Industrial and Labor Relations Review*, January 1993, pp. 262 – 283.

“Small Children, Small Pay: Why Child Care Pays So Little,” with Victor Fuchs, *American Prospect*, Winter 1990.

MEMBERSHIPS IN PROFESSIONAL SOCIETIES

Associate Member, Antitrust Section, American Bar Association (Vice Chair, Finance Committee, Former Chair Women.Connected Committee and Economics Committee)

AWARDS AND HONORS

Lexology (formerly *Who’s Who Legal*)

Global Competition Review

Appendix B: 2-to-1 and 3-to-2 Customers

Customer	Location	Preliminary Classification by Applicants ¹	Reason for Change ¹	Classification by Applicants in Amended Application ²	Coleman Classification	2023 UP + NS Shipments	Avg 2022-2024 UP + NS Shipments	Initial Identification
AGRAIL LLC	Bloomington, IL	2-to-1		2-to-1	2-to-1	{{ }}	{{ }}	Initial Application
HILLSBORO ENERGY LLC	Hillsboro, IL	2-to-1		2-to-1	2-to-1	{{ }}	{{ }}	Initial Application
MACOUPIN ENERGY LLC	Monterey Mine 1 / Carlinville, IL	2-to-1		2-to-1	2-to-1	{{ }}	{{ }}	Initial Application
MIDWEST SALT LLC	Chicago, IL	2-to-1		2-to-1	2-to-1	{{ }}	{{ }}	Amended Application
US GLU-LAM INC	Chicago, IL	2-to-1		2-to-1	2-to-1	{{ }}	{{ }}	Amended Application
ALTON STEEL INC	Federal, IL	Omitted		Omitted	2-to-1	{{ }}	{{ }}	Coleman May VS
MILANO METALS & RECYCLING/ MILANO RAILCAR SERVICES ³	Mt. Vernon, IL	2-to-1	Considers non-Class I access	Omitted	2-to-1	{{ }}	{{ }}	Coleman Dec. VS
TITAN TIRE CORP	Des Moines, IA	3-to-2	Considers non-Class I access	Omitted	2-to-1	{{ }}	{{ }}	Coleman Dec. VS
MIGHTY RIVER RECYCLING LLC/ AZCON INC. (FORMER OWNER OF MRR LLC'S FACILITY) ³	Federal / Alton, IL	3-to-2 (Mighty River); 2-to-1 (Azcon)	Agreement that includes a Class I	3-to-2	3-to-2	{{ }}	{{ }}	Coleman Dec. VS
EDMUND A. ALLEN LUMBER CO	Momence, IL	2-to-1	Agreement that includes a Class I	3-to-2	3-to-2	{{ }}	{{ }}	Coleman Dec. VS
LEBANON CHEMICAL	Danville, IL	3-to-2	Possible non-Class I access	Unclear if customer is 3-to-2 or 4-to-3	3-to-2	{{ }}	{{ }}	Amended Application
VISCOFAN USA INC	Danville, IL	3-to-2	Possible non-Class I access	Unclear if customer is 3-to-2 or 4-to-3	3-to-2	{{ }}	{{ }}	Coleman Dec. VS
BUNGE MILLING INC	Danville, IL	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
REG DANVILLE LLC	Danville, IL	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
THE QUAKER OATS CO	Danville, IL	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
ADM SOYBEAN PROCESSING ⁴	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS

PUBLIC VERSION

Customer	Location	Preliminary Classification by Applicants ¹	Reason for Change ¹	Classification by Applicants in Amended Application ²	Coleman Classification	2023 UP + NS Shipments	Avg 2022-2024 UP + NS Shipments	Initial Identification
ALTER METAL RECYCLING	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
ALTER TRADING CORP	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
ARCHER DANIELS MIDLAND CO ⁴	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
BITUMINOUS MATERIALS & SUPPLY LP	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
BLUELINX	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
BRIDGESTONE AMERICAS TIRE OPERATIONS LLC	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
CARGILL INC	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman Dec. VS
DARLING INGREDIENTS INC	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
DES MOINES INDUSTRIAL LLC	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
GENERAL MILLS INC	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
HEARTLAND CO-OP	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
HELENA AGRI-ENTERPRISES LLC	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
KRU LTD	Des Moines, IA	Omitted		Omitted	3-to-2	{{ }}	{{ }}	Coleman May VS
WHEELER CONSOLIDATED INC	Des Moines, IA	3-to-2	Considers non-Class I access	Omitted	3-to-2	{{ }}	{{ }}	Coleman Dec. VS
FORD MOTOR CO	Birmingham, MO	3-to-2	Erroneous SCRS record	Omitted	NA ⁵			Amended Application
HOLCIM	Des Moines, IA	3-to-2	Erroneous SCRS record	Omitted	NA ⁵			Amended Application
LUMBERMAN'S WHOLESALE CO	Des Moines, IA	3-to-2	Erroneous SCRS record	Omitted	NA ⁵			Coleman Dec. VS
RUAN LOGISTICS CORP	Des Moines, IA	2-to-1	Erroneous SCRS record	Omitted	NA ⁵			Amended Application

PUBLIC VERSION

Customer	Location	Preliminary Classification by Applicants ¹	Reason for Change ¹	Classification by Applicants in Amended Application ²	Coleman Classification	2023 UP + NS Shipments	Avg 2022-2024 UP + NS Shipments	Initial Identification
SCRAP PROCESSORS INC	Des Moines, IA	2-to-1	Erroneous SCRS record	Omitted	NA ⁵			Amended Application
SINGLE SOURCE TRANSPORTATION CO	Des Moines, IA	3-to-2	Erroneous SCRS record	Omitted	NA ⁵			Amended Application
TRIPLE F INC	Des Moines, IA	3-to-2	Erroneous SCRS record	Omitted	NA ⁵			Coleman Dec. VS
STEWART GRAIN COMPANY INC	Marshfield / Stewart, IN	3-to-2	Considers non-Class I access	Omitted	NA ⁵			Amended Application
COTTON PRESS WAREHOUSE LLC	Meridian, MS	3-to-2	Erroneous SCRS record	Omitted	NA ⁵			Amended Application
SHAPIRO BROS OF ILLINOIS INC	Mt. Vernon, IL	3-to-2	Former name of Milano Metals & Recycling. Considers non-Class I access	Omitted	NA ⁵			Amended Application

Sources: Dr. Bailey’s Backup, Novak Amended Statement, STB Carload Waybill Sample (“CWS”), North American Centralized Station Master (“CSM”), Serving Carrier/Reciprocal Switch (“SCRS”) file, and publicly available reciprocal switching tariff information.

1. The Preliminary Classification by Applicants corresponds to the list evaluated in Ms. Novak’s Verified Statement (Appendix B). Column “Reason for Change” summarizes the arguments made by Ms. Novak for each of the customers that were omitted/misclassified.
2. The Classification by Applicant in Amended Application corresponds to the list included in Dr. Bailey’s Verified Statement (Exhibit 11).
3. Ms. Novak categorizes the customer Mighty River Recycling as a 3-to-2 and explains that customer Azcon Inc. (initially identified as a 2-to-1) was the former owner of the facility currently owned by Mighty River and should be considered as part of the same affected customer.
4. The volumes for ADM SOYBEAN PROCESSING carloads are included in the totals for ARCHER DANIELS MIDLAND CO.
5. If additional materials Applicants have provided accurately describe data errors or additional railroad access, then I would not consider these to be 2-to-1 or 3-to-2 customers.

Notes:

- Volumes refer to the sum of carloads. To calculate them I rely on distinct values of variables *cycl_seq_nbr* for UP and *trans_wb_sn* for NS.
- Customer names correspond to shippers at origination locations and consignees at termination locations.
- Traffic includes carloads that were originated or terminated by UP or NS for each customer at the respective SPLC.
- Traffic includes non-empty, revenue/billed carloads at a SPLC as flagged by Dr. Bailey.
- The cells in gray shading identify customers that I classified as 2-to-1 or 3-to-2, and that were omitted by the Applicants.

Exhibit 2

DOCKET NO. FD 36873

**UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY**

—CONTROL—

**NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY**

Second Verified Statement of Henry J. Kahwaty, Ph.D.

May 8, 2026

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I. ASSIGNMENT AND SUMMARY OF CONCLUSIONS

A. Assignment

1. My name is Henry J. Kahwaty. I am a Managing Director with Berkeley Research Group, LLC. I have been retained by counsel for Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively, “CN”).¹ I previously filed a Verified Statement dated March 23, 2026 (the “Kahwaty Diversion VS”),² concerning the proposed merger between Union Pacific Corporation, Union Pacific Railroad Company (“UP”), Norfolk Southern Corporation, and Norfolk Southern Railway Company (“NS”) (collectively, “Applicants”). A copy of my curriculum vitae was provided as Attachment A to the Kahwaty Diversion VS.³ I studied elements of the diversion analysis submitted by Applicants in their initial application filed on December 19, 2025,⁴ and I reported my conclusions in the Kahwaty Diversion VS. Those opinions are unchanged and are not addressed in this Verified Statement.
2. The Applicants filed an amended application on April 30, 2026 (the “Amended Application”).⁵ The Amended Application includes a Verified Statement by Dr. Mark A. Israel (the “Amended Israel VS”), which addresses the Applicants’ proposed Committed Gateway Pricing (“CGP”) program and includes a simulation model evaluating its implementation.⁶ I have been asked by counsel for CN to review the results of Dr. Israel’s CGP simulation model. Specifically, I have been asked to evaluate the distribution of

¹ Bessemer and Lake Erie Railroad Company; Cedar River Railroad Company; Chicago, Central & Pacific Railroad Company; Grand Trunk Western Railroad Company; Illinois Central Railroad Company; Iowa Northern Railway Company; The Pittsburgh & Conneaut Dock Company; and Wisconsin Central Ltd.

² CN-12, FD 36873 (filed Mar. 23, 2026).

³ Kahwaty Diversion VS, Attachment A, Pages 66-75.

⁴ UP-13/NS-11, FD 36873 (Dec. 19, 2025); UP-14/NS-12, FD 36873 (Dec. 19, 2025); UP-15/NS-13, FD 36873 (Dec. 19, 2025); and UP-16/NS-14, FD 36873 (Dec. 19, 2025).

⁵ UP-39/NS-37, FD 36873 (Apr. 30, 2026) (“Am. App. Vol. 1”); UP-40/NS-38, FD 36873 (Apr. 30, 2026) (“Am. App. Vol. 2”); UP-41/NS-39, FD 36873 (Apr. 30, 2026) (“Am. App. Vol. 3”); and UP-42/NS-40, FD 36873 (Apr. 30, 2026) (“Am. App. Vol. 4”).

⁶ Am. App. Vol. 2, Pages 177-387.

shipper impacts shown by the results of the simulation model as detailed in Appendix C to the Amended Israel VS.⁷

B. Summary of Conclusions

3. Applicants have proposed the CGP program as a way to allow shippers to participate in the proposed merger's alleged benefits on certain shipments, even if they would not otherwise benefit directly from the proposed merger because their movement would not involve a UP service on one end with an NS service on the other.⁸ The CGP program's effects, however, would benefit some shippers while harming others.
4. Dr. Israel conducts a simulation exercise to assess the effects of CGP on shippers (and their shipments), for both the set of traffic used to generate CGP prices and the set that would use CGP prices. The results of the simulation show that CGP impacts are positive for some shippers, but are negative for others because the proposed CGP program provides incentives for the merged railroad to increase their shipping costs (i.e., the amount paid by shippers), instead of reducing them.⁹
5. To study the negative impact for certain shippers indicated by Dr. Israel's simulation results, I aggregate impacts on shippers at the state level and present the distribution of gains and losses due to the CGP impacts by state. Dr. Israel estimates effects for individual

⁷ Amended Israel VS, Appendix C (Am. App. Vol. 2, Pages 315-336).

According to the Amended Israel VS Workpapers, the term "shipper" (as it is used in Dr. Israel's CGP simulation model to represent a unique customer) reflects the bill to customer or freight payer. This "shipper" can exist on the originating end, terminating end, or neither end of the shipment (when a third-party handles payment). Throughout this Verified Statement, I adopt this definition of the term "shipper."

I also understand that the Amended Israel VS defines a "shipper" as being, within each CGP cell, "a unique combination of shipper, route (origin SPLC6 to destination SPLC6), contracting railroads, contracting arrangement (e.g., through rate or Rule 11), and time period." Amended Israel VS, Appendix C, ¶ 36 (Am. App. Vol. 2, Page 328). For clarity and because Dr. Israel's definition of "shipper" contains the term itself, I generally refer to this unique combination as a shipment.

⁸ See, e.g., Amended Israel VS, ¶ 12 (Am. App. Vol. 2, Page 186).

⁹ Amended Israel VS, ¶ 167 (Am. App. Vol. 2, Pages 256-57) ("However, using the incumbent carrier's rate (UP/NS in this application) as an input for establishing the gateway rates can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism."); Amended Israel VS, ¶ 177 (Am. App. Vol. 2, Page 262) ("As explained above, the CGP proposal creates an incentive to compete less aggressively on some of the shipments used in the generation of the Committed Gateway Prices.").

CGP pricing “cells” (the commodity and distance groupings used to set BNSF and CSXT prices under the proposed CGP program). My aggregation of the simulation results shows that in almost every state there would be shippers that would experience negative impacts (i.e., increased rail shipping costs) as the result of CGP, and overall, a greater number of shippers would experience negative impacts from CGP than positive impacts.¹⁰

C. Materials Relied Upon

6. For purposes of this verified statement, I have relied on the backup materials produced by Applicants’ expert Dr. Israel in support of the Amended Israel VS (the “Amended Israel Workpapers”).¹¹ A complete list of Amended Israel Workpapers I relied upon can be found in the workpaper index accompanying this Verified Statement.
7. This Verified Statement does not include any Confidential or Highly Confidential information, as defined by the applicable Protective Order.¹² While I understand that materials underlying Dr. Israel’s simulation model and its corresponding outputs have been designated Highly Confidential, the results reported in this Verified Statement, including in its Figures and Attachment, contain no commercially sensitive information and have been aggregated in a manner that does not reveal any Confidential or Highly Confidential Information under the Protective Order;¹³ are consistent with the governing aggregation

¹⁰ At the time of this Verified Statement, I have not conducted an exhaustive review of Dr. Israel’s simulation model, his general analysis and commentary on Applicants’ proposed CGP program, or his overall review of the likely competitive effects of the proposed merger of UP and NS as presented in the Amended Israel VS, and I reserve the right to offer additional opinions on these topics in a future Verified Statement.

¹¹ As explained in more detail in Section III, to summarize Dr. Israel’s simulation results at the state level, I also relied on PC Miler to confirm and impute certain state designations for origin or destination Standard Point Location Codes (“SPLCs”) present in the routes that Dr. Israel’s simulation model analyzes. A SPLC is assigned to all stations registered by rail carriers. The code is between six to nine digits and is used to specify the physical location of a station. SPLCs are assigned by the National Motor Freight Traffic Association for U.S. and Mexican locations and by the Railway Association of Canada for Canadian provinces. Railinc, Standard Point Location Code, available at <https://public.railinc.com/resources/standard-point-location-code>.

¹² Decision No. 1, FD 36873 (STB served Aug. 5, 2025) [hereinafter the “Protective Order”].

¹³ The Protective Order defines Confidential Information as “traffic data[,] . . . the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.” Protective Order, ¶ 1(b). Highly Confidential Information, a more restrictive designation, is defined as “particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information.” Protective Order, ¶ 6.

principles of 49 C.F.R. § 1244.9; and are consistent with the levels of aggregation that the Applicants present in the Amended Israel VS.¹⁴ I understand that the aggregation of these results is also similar to aggregated results from the CGP simulation that Applicants have previously agreed can be made public in correspondence with counsel for CN.

8. Section II provides a brief description of the CGP program and Dr. Israel's simulation results. Section III describes how I used Dr. Israel's simulation results and underlying materials to summarize the results at the state level. Section IV provides illustrations of Dr. Israel's aggregated simulation results, focusing separately on shipments originating and terminating within the continental United States, where data are available and can be presented publicly in a way that is consistent with the governing aggregation principles of 49 C.F.R. § 1244.9. I also provide results that combine the estimated impact on shipments originating and/or terminating in each state (the "net state impact").

II. DESCRIPTION OF CGP AND DR. ISRAEL'S SIMULATION RESULTS

9. The proposed CGP program is described in Section V of the Amended Israel VS and elsewhere in the Amended Application.¹⁵ The proposed CGP program is an Applicant-constructed pricing framework that uses rates charged by the merged UP/NS, including rates from competitive situations, and applies them elsewhere. Proposed CGP rates are based on 23 commodity categories and four distance categories, giving a total of 92 commodity-distance pairs. Each such pair is called a "pricing cell."¹⁶ **Table 1** provides the 23 commodity categories, and **Table 2** provides the four distance categories proposed by the Applicants that make up the pricing cells.

¹⁴ Amended Israel VS, Appendix C, Pages C-18 to C-22 (Am. App. Vol. 2, Pages 332-36).

¹⁵ Amended Israel VS, Section V, Pages 67-87 (Am. App. Vol. 2, Pages 247-67); Verified Statement of Katherine N. Novak ("Amended Novak VS"), Section I, Pages 2-20 and Appendix A (Am. App. Vol. 1, Pages 375-93 and 407-89).

¹⁶ Amended Novak VS, ¶ 14 (Am. App. Vol. 1, Page 379).

**Table 1
Applicants' Proposed CGP Commodity Categories**

• Auto Parts	• Grain	• Petcoke
• Coals & Renewables	• Grain Products I	• Petroleum
• Construction	• Grain Products II	• Plastics
• Fertilizer & Sulfur	• Industrial Chemicals	• Refrigerated
• Food & Beverage I	• LPG	• Sand
• Food & Beverage II	• Metals & Ores I	• Soda Ash
• Forest Products I	• Metals & Ores II	• Specialized Markets
• Forest Products II	• OTE	

Source: Amended Novak VS, Appendix A, Page 35 (Am. App. Vol. 1, Page 408).

**Table 2
Applicants' Proposed CGP Distance Categories**

- | |
|---|
| <ul style="list-style-type: none"> • Less Than 500 Miles; • 500 To Less Than 1,000 Miles; • 1,000 To Less Than 1,500 Miles; and • 1,500 Miles Or Greater. |
|---|

Source: Amended Novak VS, Page 14 (Am. App. Vol. 1, Page 387).

10. The CGP rates are determined using a three-step process: (1) identify relevant UP/NS traffic and segment the traffic based on the 92 pricing cells (each a “cell”); (2) identify UP/NS rates for the traffic relevant to each cell and set the cell’s CGP rate to the 70th percentile of the UP/NS rates (expressed in dollars per car-mile)¹⁷; and (3) provide to BNSF

¹⁷ The 70th percentile rate is weighted by carloads. Amended Israel VS, ¶ 165 (Am. App. Vol. 2, Pages 255-56). In addition, rates are calculated separately for CSXT and BNSF, with the rate for a cell for CSXT (BNSF) being calculated using traffic moving on all routes served by UP (NS) in the west (east) and interconnecting with NS (UP) or CSXT (BNSF) in the east (west). Only traffic between sole-served UP (NS) and sole-served CSXT (BNSF) locations is excluded. These rates are available to CSXT (BNSF) only to and from its sole-served customers in the east (west) and only on routes that are sole-served by UP (NS) in the west (east). Amended Israel VS, ¶ 169 (Am. App. Vol. 2, Page 257).

and CSXT, separately, the CGP rates for each cell.^{18,19} CGP rates would be recalculated and updated annually²⁰ and are proposed to be made available to CSXT and BNSF during the term of the oversight period.²¹ CSXT and BNSF can use these rates when quoting prices for interline traffic where part of the movement is interlined with UP/NS, essentially capping the rates UP/NS can charge for its part of the movement.

11. Applicants' expert Dr. Israel states that the CGP mechanism may cause the merged UP/NS to increase the rates it charges in certain instances. Dr. Israel explains:

However, using the incumbent carrier's rate (UP/NS in this application) as an input for establishing the gateway rates can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism.²²

12. As such, Dr. Israel acknowledges that while some shippers may gain from CGP rates because their rail shipping costs would decrease, others would lose and see their rates increase in an attempt by the merged railroad to increase the 70th percentile rate charged to others under the CGP mechanism. This provides the merged railroad an incentive to increase some rates in order to earn more when CGP rates are charged.
13. To evaluate the effects of the CGP proposal on shippers, Dr. Israel constructed a simulation model in which railroads set rates to maximize their profits subject to shipper choices of routes and contractual arrangements. The simulation model is calibrated using observed data on rates, interline shipment traffic volumes used to calculate CGP rates, interline

¹⁸ Amended Israel VS, ¶ 149 (Am. App. Vol. 2, Pages 247-48); Amended Novak VS, ¶¶ 26-27 (Am. App. Vol. 1, Pages 385-86).

¹⁹ If a cell has data for fewer than 100 observations, then the CGP rate for the cell is based on all movements from the relevant distance category and is not limited to data for that commodity. Amended Israel VS, fn. 87 (Am. App. Vol. 2, Page 248).

²⁰ Amended Israel VS, ¶ 165 (Am. App. Vol. 2, Pages 255-56).

²¹ Amended Israel VS, ¶ 166 (Am. App. Vol. 2, Page 256).

²² Amended Israel VS, ¶ 167 (Am. App. Vol. 2, Pages 256-57).

shipments eligible to use CGP rates, and UP and NS average margins. The simulation model is described in Section V.E.2 in the Amended Israel VS.²³

14. Using Dr. Israel’s simulation results, I address the distribution of shippers that would gain and that would lose from the CGP program and aggregate these results at the state level by originating state, destination state, and the net state impact. In the next section, I describe my estimation procedure, and the subsequent section provides the results showing the state-level distributions of gains and losses.

III. METHODOLOGY FOR AGGREGATING DR. ISRAEL’S CGP SIMULATION RESULTS TO THE STATE LEVEL

15. This Section contains a general description of my process for allocating Dr. Israel’s simulation results to the state and shipper level and then aggregating these results and presenting them at the state level. Generally, the process requires attaching state designations to the shipments comprising the 140 CGP cells studied by Dr. Israel’s simulation model.²⁴ The workpapers accompanying this statement (the “Kahwaty CGP VS Workpapers”) detail the full scope of my allocation and aggregation methodology.
16. First, I combined the simulation results produced in the Amended Israel Workpapers using standard data processing procedures.²⁵ The simulation results files contain, amongst other information, the simulation model’s estimated change in “consumer surplus” (which can be understood generally as rail shipping costs) for each shipper (or shipment) in a given CGP cell. According to the Amended Israel Workpapers, Dr. Israel defines a shipper (shipment) as “a unique combination of shipper, route (origin SPLC6 to destination SPLC6), contracting railroads, contracting arrangement (e.g., through rate or Rule 11), and

²³ Amended Israel VS, Pages 81-87 (Am. App. Vol. 2, Pages 261-67).

²⁴ According to Dr. Israel, he performed “the model calibration and simulation on the set of CGP cells where at least 10 percent of the number of carloads in both the input and application sets (before the redistribution of carloads excluded from the model) [had] sufficient information to be included in the model.” Amended Israel VS, Appendix C, ¶ 41 (Am. App. Vol. 2, Page 330).

²⁵ Dr. Israel’s simulation results are provided in the Amended Israel Workpapers for each of the 140 cells he studies. In total, Dr. Israel produced 140 excel files containing his baseline simulation results.

time period.”²⁶ The shipments reflected in these results files (i.e., studied by Dr. Israel’s simulation model) are sourced from the waybill data provided to Dr. Israel by Charles River Associates (the “CRA Waybill Data”).²⁷ While the results files identify the origin and destination SPLC codes for each shipment studied, the results files do not include origin and destination state abbreviations (or designations). I added this state information to the combined results file using the SPLC codes present in Dr. Israel’s results files.²⁸ The first two digits of a SPLC code identify the region and the next two digits identify the state or province.²⁹

17. The primary source for obtaining state designations is the CRA Waybill Data. A small number of SPLCs in Dr. Israel’s simulation results did not have a populated state designation in the CRA Waybill Data. Another small subset of SPLCs in Dr. Israel’s simulation results had conflicting state designations in the CRA Waybill Data.³⁰ In both such cases, I validated the state designation using PC Miler software and inserted the appropriate state designation.³¹
18. Once I attached origin and destination state designations to the simulation results, I aggregated the results to the state level and computed the percentage of shippers negatively impacted, positively impacted, or not impacted by the estimated effects of the proposed CGP program. First, I totaled Dr. Israel’s estimated change in consumer surplus (i.e., rail shipping costs) for each state at the shipper level.

²⁶ Amended Israel VS, Appendix C, ¶ 36 (Am. App. Vol. 2, Page 328). As mentioned above in footnote 7, I generally refer to this unique combination as a shipment.

²⁷ The Amended Israel Workpapers demonstrate the use of CRA Waybill Data in Dr. Israel’s CGP simulation model.

²⁸ Kahwaty CGP VS Workpaper, “01 - Load and Process CGP Simulation Results.do.”

²⁹ National Motor Freight Traffic Association, Inc., SPLC, available at <https://nmfta.org/marketplace/splc/>.

³⁰ A total of 1 origin SPLC and 10 destination SPLCs in Dr. Israel’s simulation results either did not have corresponding state designations or had conflicting state designations in the CRA Waybill Data. Kahwaty CGP VS Workpaper, “Footnote Calculations.txt.”

³¹ Kahwaty CGP VS Workpaper, “01 - Load and Process CGP Simulation Results.do.”

19. Next, I separately counted the number of shippers whose estimated change in consumer surplus on shipments involving a given state was negative (indicating shipping cost increases), positive (indicating shipping cost decreases), or zero (indicating no shipping cost changes). I conducted these two steps separately for origin states and destination states, and I used the calculations for each to conduct a net impact analysis involving shipments to and/or from a given state. Net state impacts consider simulation results for the same shipment in both the origin state and in the destination state, except when the shipment has the same origin and destination state; in these cases, I only count the shipment once.³²
20. I took an additional step to account for duplicate shipments across the input set used to determine prices for the CGP program because the input sets for BNSF cells and the input sets for CSXT cells include the same set of UP-NS interline shipments.³³ The Amended Israel VS and the Amended Israel Workpapers identify the duplicate CGP shipments,³⁴ and the Figures and Attachment in this Verified Statement apply Dr. Israel's adjustment at the state and shipper level. Generally, the process for applying Dr. Israel's adjustment involved removing the duplicate CGP impacts (either from the BNSF cell or the CSXT cell) at the state and shipper level.³⁵ The adjustments reflected in the Figures and Attachment in this Verified Statement are applied to the same CGP cells and are of the same magnitude as those detailed in the Amended Israel VS and the Amended Israel Workpapers.³⁶

³² Combining the shipper calculations for origin states and destination states necessitated I adjust for shipments that originated and terminated in the same state to avoid double counting the estimated change in consumer surplus on that shipment.

³³ Dr. Israel uses the term "input set" to describe "the set of routes where the shipments and their associated rates will be used as inputs in calculating the CGP tables." Dr. Israel uses the term "application set" to describe the "set of routes that are eligible to utilize the CGP." Amended Israel VS, Appendix C, ¶ 1 (Am. App. Vol. 2, Pages 315). *See also*, Amended Israel VS, Appendix C, ¶ 43 and Figure 3 (Am. App. Vol. 2, Pages 335-36).

³⁴ Amended Israel VS, Appendix C, Figure 1, Figure 2, and ¶ 43 (Am. App. Vol. 2, Pages 332-35).

³⁵ According to the Amended Israel Workpapers, Dr. Israel removes the maximum of the BNSF and the CSXT estimated consumer surplus changes to make his adjustment. Amended Israel Workpaper, "Main.m." My complete process for applying Dr. Israel's duplicate shipment adjustment is demonstrated in the Kahwaty CGP VS Workpapers, "01 - Load and Process CGP Simulation Results.do" and "02 - Generate State Level Summaries.do."

³⁶ The total impact of this adjustment is identified in Figure 3 of Appendix C in the Amended Israel VS. Amended Israel VS, Appendix C, Page C-22 (Am. App. Vol. 2, Page 336). *See also*, Amended Israel Workpaper, "Main.m."

21. I understand that an additional adjustment is imposed by Dr. Israel in the Amended Israel VS that extrapolates the results of his CGP simulation model to the CGP cells he is unable to study due to data limitations.³⁷ These adjustments only account for approximately 1% of the overall change in consumer surplus calculated by Dr. Israel.³⁸ The scope of this Verified Statement, however, focuses only on the CGP cells studied by Dr. Israel's simulation model and does not consider the findings related to the CGP cells for which Dr. Israel decided to extrapolate his results. As such, this Verified Statement and the aggregate simulation results presented herein display only the estimated impact of CGP on cells for which Dr. Israel directly estimated a CGP rate.

IV. INTERPRETING THE STATE LEVEL CGP IMPACT RESULTS

22. The Figures and Attachment presented in this Verified Statement reflect the results of Dr. Israel's CGP simulation aggregated to the state level. Consistent with the acknowledgments in the Amended Israel VS, Dr. Israel estimates that CGP would harm certain shippers while benefiting others.³⁹ The harm Dr. Israel refers to is illustrated in **Figure 1 - Figure 3** which contain pie charts for each state that show the distribution of negatively impacted shippers (shippers that would experience an increase in rail shipping costs) in the state (in red), positively impacted shippers (shippers that would experience a decrease in rail shipping costs) in the state (in green), and shippers in the state that are not affected (in gray). The figures are limited to shipments originating and terminating within

³⁷ Amended Israel VS, Appendix C, ¶ 44 and Figure 3 (Am. App. Vol. 2, Pages 335-36). According to the Amended Israel VS, Dr. Israel only studies CGP cells where he has sufficient data to estimate shippers' demand and margins of railroads reliably. Amended Israel VS, ¶ 180 (Am. App. Vol. 2, Page 266). Dr. Israel further explains that 44 CGP cells are not studied by his simulation model either because "the data identifies no eligible shipments in those cells or because the information on shipment rates and/or mileages is missing for a large fraction of shipments in those cells." Amended Israel VS, fn. 102 (Am. App. Vol. 2, Page 266). Dr. Israel's adjustment to extrapolate his results increases the overall estimated change in consumer surplus by approximately one percent.

³⁸ $(\$327,487 / \$28,985,782) = 1.1\%$. Amended Israel VS, Appendix C, Figure 3 (Am. App. Vol. 2, Page 336).

³⁹ Amended Israel VS, ¶ 167 (Am. App. Vol. 2, Pages 256-57) ("However, using the incumbent carrier's rate (UP/NS in this application) as an input for establishing the gateway rates can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism."); Amended Israel VS, ¶ 177 (Am. App. Vol. 2, Page 262) ("As explained above, the CGP proposal creates an incentive to compete less aggressively on some of the shipments used in the generation of the Committed Gateway Prices.").

the United States. The percentages underlying the state-specific results provided in **Figure 1 - Figure 3** are detailed in **Attachment A**. I provide the counts underlying the percentages in the Kahwaty CGP VS Workpapers.⁴⁰

23. **Figure 1** provides origin state results. It shows, for example, that 57% of the shippers for shipments *originating* in Missouri and studied by Dr. Israel’s CGP simulation model are estimated to experience increased shipper costs (harm) as a result of CGP, 32% are estimated to benefit from CGP, and 12% are expected not to be impacted.⁴¹ In Ohio, 62% of shippers are negatively impacted, 32% are positively impacted, and 7% are not impacted.⁴² Similarly, **Figure 2** provides destination results and shows, for example, for shipments *terminating* in Missouri and studied by Dr. Israel’s CGP simulation model, that 52% of shippers are negatively impacted, 43% are positively impacted, and 5% are not impacted. In Ohio, 56% of shippers are negatively impacted, 31% are positively impacted, and 13% are not impacted. Lastly, **Figure 3** provides the state-level *net impact* results. For Missouri, it shows the aggregate impact on shippers for shipments to and/or from the state and indicates that 54% of shippers involved in CGP-related shipments are estimated to be harmed, 39% are estimated to benefit, and 7% are expected to not be impacted. In Ohio, 58% of shippers are negatively impacted, 30% are positively impacted, and 12% are not impacted.
24. The trends are similar in other states with the percentage of negatively impacted shippers often being higher than the percentage of positively impacted shippers, though this relationship is reversed in several states, such as Arizona and Massachusetts. Moreover, aggregating the CGP impact to the shipper level across *all* states shows that the proposed CGP program would *harm* a greater number of shippers than it would benefit.⁴³

⁴⁰ Kahwaty CGP VS Workpaper, “Underlying Counts.xlsx.”

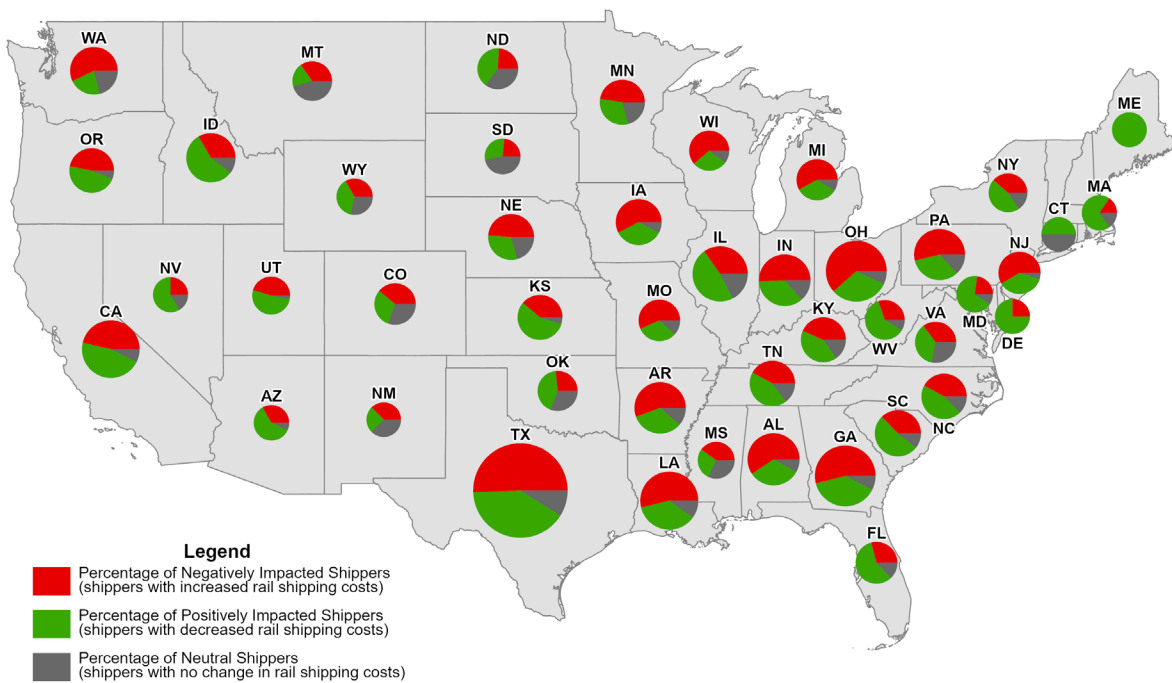
⁴¹ These sum to 101% due to rounding.

⁴² These sum to 101% due to rounding.

⁴³ The count of unique shippers with a negative, positive, and no impact from CGP are 822, 795, and 165, respectively. When limited to shipments originating and terminating within the United States, the count of unique shippers with a negative, positive, and no impact from CGP are 814, 789, and 165, respectively. Unique shippers are counted using the shipper names Dr. Israel uses in his simulation. Kahwaty CGP VS Workpaper, “Footnote Calculations.txt.”

Specifically, Dr. Israel’s simulation model estimates that 814 (46% of) shippers he studies (which includes both CGP eligible shippers and other shipments used for generating CGP prices) would experience increased rail shipping costs from the CGP program.⁴⁴ For 789 (45% of) shippers studied, rail shipping costs would decrease, while rail shipping costs for 165 (9% of) shippers studied would remain unchanged.⁴⁵

Figure 1
Impacts of CGP on Rail Shipping Costs by State
Percentage of Shippers with Positive, Negative, or Neutral Impacts by Origin State



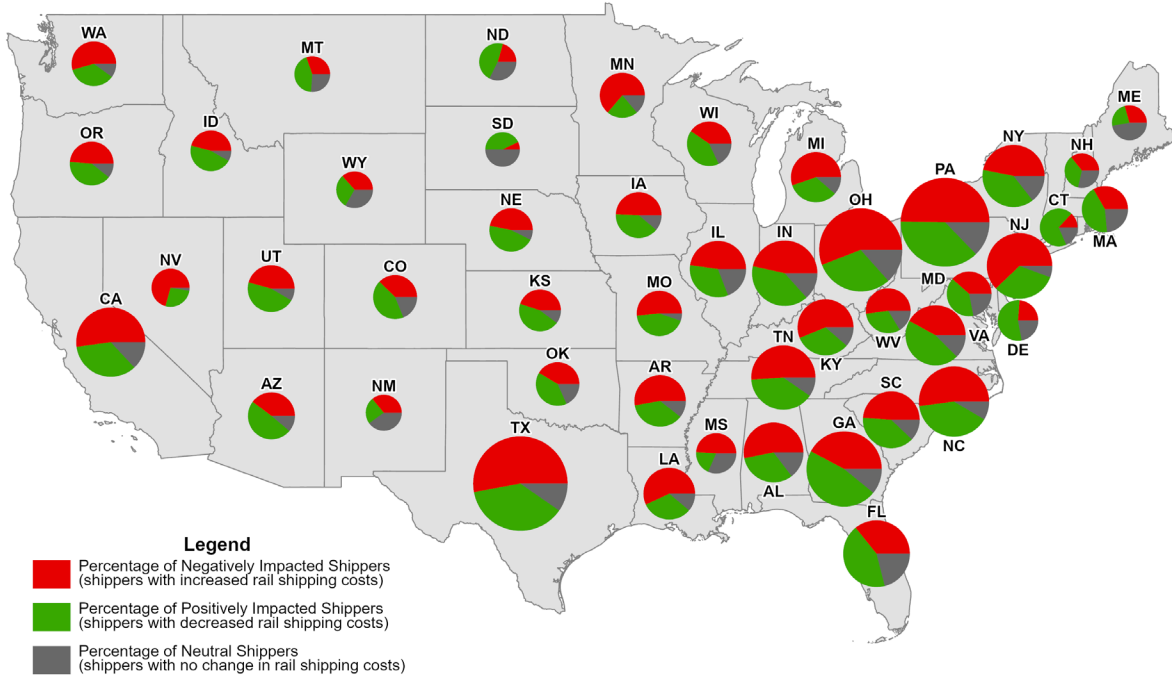
Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. The sizes of the pie charts are based on the relative number of shippers studied in each state. Insufficient data exist to show aggregate impacts in Vermont, New Hampshire, and Rhode Island. Shipments are limited to those originating and terminating within the United States.

Source: Amended Israel Workpapers and Kahwaty CGP VS Workpapers.

⁴⁴ $[814 / (814 + 789 + 165)] = 46\%$.

⁴⁵ $[789 / (814 + 789 + 165)] = 45\%$; $[165 / (814 + 789 + 165)] = 9\%$.

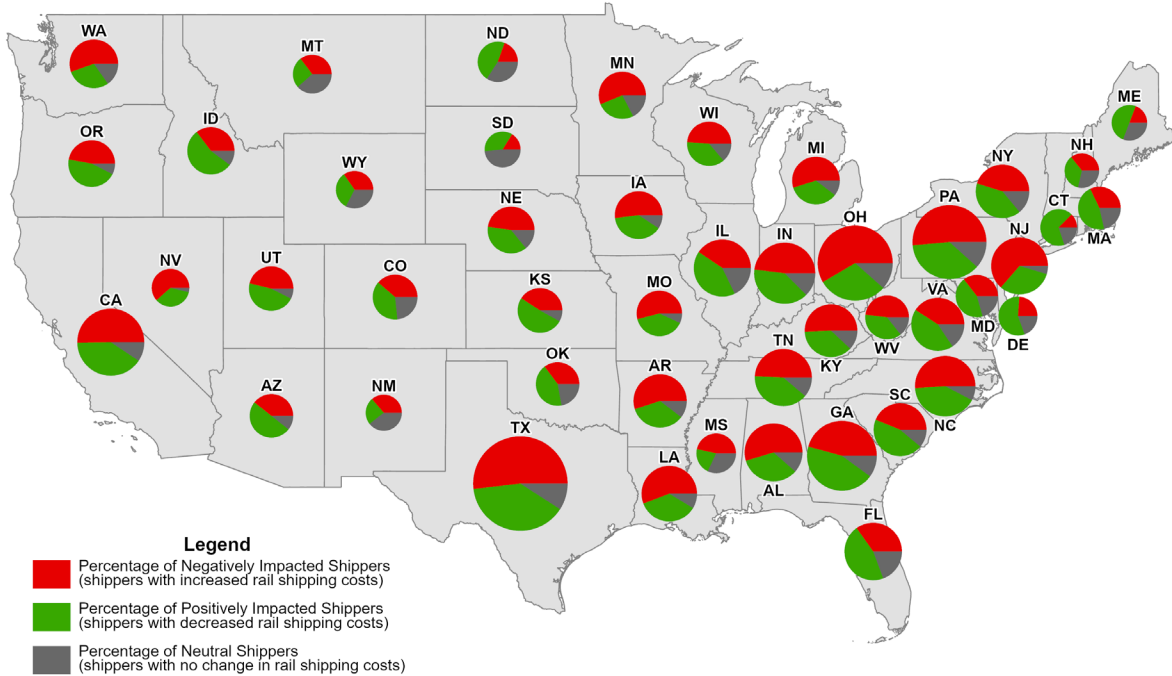
Figure 2
Impacts of CGP on Rail Shipping Costs by State
Percentage of Shippers with Positive, Negative, or Neutral Impacts by Destination State



Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. The sizes of the pie charts are based on the relative number of shippers studied in each state. Insufficient data exist to show aggregate impacts in Vermont and Rhode Island. Shipments are limited to those originating and terminating within the United States.

Source: Amended Israel Workpapers and Kahwaty CGP VS Workpapers.

Figure 3
Impacts of CGP on Rail Shipping Costs by State
Percentage of Shippers with Net Positive, Net Negative, or Net Neutral Impacts by State



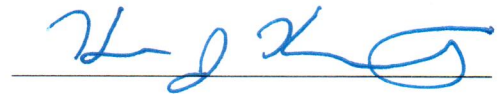
Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. The sizes of the pie charts are based on the relative number of shippers studied in each state. Insufficient data exist to show aggregate impacts in Vermont and Rhode Island. Shipments are limited to those originating and terminating within the United States.

Source: Amended Israel Workpapers and Kahwaty CGP VS Workpapers.

VERIFICATION

I, Henry J. Kahwaty, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 8th day of May, 2026.



Henry J. Kahwaty, Ph.D.

Attachment A

Percentages Underlying Figure 1 - Figure 3

State	Origin State Results			Destination State Results			Net State Impact Results		
	Negative	Positive	Neutral	Negative	Positive	Neutral	Negative	Positive	Neutral
AL	59%	33%	8%	53%	32%	15%	55%	34%	11%
AR	56%	33%	11%	53%	37%	11%	55%	35%	10%
AZ	33%	60%	7%	40%	49%	11%	39%	50%	11%
CA	46%	46%	7%	52%	35%	13%	50%	40%	9%
CO	39%	31%	31%	38%	44%	19%	39%	38%	23%
CT	0%	50%	50%	13%	68%	18%	13%	68%	20%
DE	25%	75%	0%	24%	54%	22%	24%	57%	19%
FL	29%	58%	13%	36%	43%	21%	35%	46%	19%
GA	54%	39%	7%	42%	47%	11%	46%	44%	10%
IA	58%	35%	8%	49%	39%	11%	52%	39%	9%
ID	33%	56%	10%	46%	46%	8%	35%	54%	10%
IL	35%	48%	17%	48%	33%	19%	41%	42%	18%
IN	51%	36%	13%	47%	40%	13%	48%	39%	13%
KS	39%	56%	5%	45%	45%	10%	41%	51%	8%
KY	44%	41%	15%	56%	32%	11%	51%	37%	12%
LA	54%	36%	10%	57%	32%	11%	56%	36%	9%
MA	15%	69%	15%	33%	43%	24%	32%	46%	21%
MD	23%	68%	9%	38%	40%	22%	36%	44%	21%
ME	0%	100%	0%	29%	24%	47%	19%	50%	31%
MI	58%	33%	9%	55%	33%	11%	55%	35%	10%
MN	48%	31%	21%	64%	22%	14%	56%	26%	17%
MO	57%	32%	12%	52%	43%	5%	54%	39%	7%
MS	40%	28%	32%	49%	19%	32%	47%	21%	32%
MT	35%	20%	46%	30%	43%	26%	35%	26%	38%
NC	42%	45%	13%	52%	39%	8%	51%	41%	8%
ND	24%	41%	35%	21%	47%	32%	20%	46%	34%
NE	49%	30%	21%	47%	46%	7%	48%	38%	14%
NH				36%	36%	29%	36%	36%	29%
NJ	58%	37%	5%	62%	32%	6%	64%	32%	5%
NM	38%	25%	38%	36%	24%	40%	36%	24%	39%
NV	25%	58%	17%	71%	27%	2%	62%	35%	4%
NY	38%	46%	15%	47%	39%	14%	45%	41%	14%
OH	62%	32%	7%	56%	31%	13%	58%	30%	12%
OK	27%	43%	31%	41%	40%	18%	35%	43%	22%
OR	47%	47%	6%	49%	40%	11%	47%	45%	7%
PA	54%	33%	13%	50%	38%	13%	51%	37%	12%
RI									
SC	37%	52%	11%	49%	39%	12%	44%	45%	11%
SD	24%	29%	47%	7%	43%	50%	16%	35%	48%
TN	42%	43%	15%	51%	39%	10%	49%	40%	11%
TX	51%	40%	9%	53%	37%	10%	52%	39%	9%
UT	45%	52%	3%	46%	46%	8%	46%	46%	7%
VA	35%	37%	28%	42%	45%	13%	41%	43%	16%
VT									
WA	57%	22%	21%	54%	36%	10%	55%	29%	15%
WI	61%	29%	10%	40%	42%	18%	49%	37%	14%
WV	30%	61%	9%	52%	32%	16%	48%	38%	14%
WY	33%	38%	29%	37%	30%	33%	35%	33%	33%

Note: Impacts are limited to the shippers (and shipments) studied by Dr. Israel’s CGP simulation model. Insufficient data exist to show impacts in Vermont and Rhode Island, and in New Hampshire as an originating state. Shipments are limited to those originating and terminating within the United States.

Source: Amended Israel Workpapers and Kahwaty CGP VS Workpaper, “Attachment A.xlsx.”