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UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

**APPLICANTS' REPLY TO COMMENTS
ON COMPLETENESS OF AMENDED APPLICATION**

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On April 30, 2026, Applicants¹ submitted their Amended Application in accordance with the Board's Decision No. 9. Applicants took seriously the issues the Board identified in Decision No. 9 regarding the completeness of their original Application and resolved them in the Amended Application. Applicants also addressed other comments regarding the original Application in response to the Board's invitation to "mak[e] additional changes to improve their Application." Decision No. 9 at 12.

As detailed below, the result of Applicants' careful compliance with Decision No. 9's guidance is an Amended Application that is comprehensive and complete, and provides all the information that the Board identified in Decision No. 9 as necessary to complete the application.²

¹ "Applicants" are 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").

² *Cf.* 49 C.F.R. § 1180.4(c)(7)(ii) (Board decisions rejecting an application "shall explain specifically why the application was incomplete").

First, the Amended Application provides the market-share, revenue, and volume projections required by the Board’s rules seeking “actual and projected” traffic data. *See* 49 C.F.R. § 1180.7(b)(2)–(4). Specifically, Applicants started with tables showing “actual” market shares, revenues, and traffic volumes in the same format as those in the original Application, which Decision No. 9 did not suggest were insufficient and which no party challenged as incomplete. Applicants then used the best information available regarding projected merger-related changes in traffic—their traffic diversion study—to produce a new set of tables in which all projections in the original Appendices have been updated to reflect both the combination of UP/NS on Day 1 and the projected traffic diversions.

Second, in the Amended Application, Applicants unambiguously and unconditionally state that they will not obtain control of the Terminal Railroad Association of St. Louis (“TRRA”). They also ask the Board to condition approval of their transaction on adherence to that commitment. In Decision No. 9, the Board required Applicants to submit an application for a significant transaction, rather than a minor transaction, if their plans involved obtaining control of TRRA. Because Applicants will not control TRRA as a result of their transaction, they did not submit a related application to control TRRA in the Amended Application.

Third, the Amended Application provides all schedules and exhibits to Applicants’ merger agreement.

Fourth, as directed by the Board, Applicants corrected certain “minor technical discrepancies, errors, or ambiguities in the [original] Application.” Decision No. 9 at 14.

Fifth, Applicants have followed and will continue to follow the process specified by the Board when making changes to workpapers after submitting the Amended Application. *See id.* at 15.

Finally, Applicants followed the Board’s invitation to make “additional changes to improve their application now that they have received comments from other stakeholders,” *id.* at 12, and the Amended Application contains additional information and supplemental analyses in response to those comments.

In the sections below, Applicants address comments submitted by interested parties claiming that the Amended Application is incomplete. In accordance with the Board’s order that “comments should solely address whether the [Amended] Application is complete,” Applicants are not responding to comments addressing the merits of the Amended Application and will respond to such issues at the appropriate time set forth in the Board’s forthcoming procedural schedule. Decision No. 17, at 2. Nor are Applicants responding to comments about the procedural schedule, which are untimely under Decision No. 6.

I. The Amended Application Provides “Projected” Market Shares, Revenues, And Traffic Volumes.

CPKC and CN contend that the Amended Application remains incomplete because it does not provide market-share, revenue, and volume projections, and thus violates the Board’s rules requiring “actual and projected” traffic data and shares and

the Board’s directives in Decision No. 9. That is not correct. Applicants, supported by their experts Dr. Bailey, Dr. Israel, and Mr. Hunt, have provided all the requisite information and complied in full with the Board’s directives.

A. The Amended Competition Analysis and Projected Data Provided in the Amended Application Comply Fully with Decision No. 9.

In Decision No. 9, the Board concluded “that the [original] Application [wa]s incomplete because the full-system impact analyses d[id] not contain Applicants’ ‘projected market shares’ as required by 49 C.F.R. § 1180.7(b).” Decision No. 9 at 5. The Board observed that the original Application included claims that the merger will grow Applicants’ traffic but that the projected market shares included in the Application—specifically, in the Verified Statement of Dr. Bailey—did not reflect that anticipated growth. The Board concluded that because Dr. Bailey’s analyses did not “project the market-share increases that Applicants are plainly expecting, they [we]re not the ‘projected market shares’ that the impact analysis regulation requires.” Decision No. 9 at 6.³

Applicants and their experts followed a multi-step process to ensure that the Amended Application fully addresses this concern and carefully follows the Board’s

³ The Board also observed that Dr. Bailey’s original analysis of horizontal effects did not address the effect of the proposed transaction on “the number of independent routes in corridors where UP and NS may serve different legs of the movement.” *Id.* at 7. The Board’s rules do not require applicants to analyze a proposed transaction’s effects on independent routes in corridors where they serve different legs of a movement. However, that analysis has now been performed by Dr. Israel, and no party has claimed the Amended Application is incomplete in this respect. See *Am. App.*, Vol. 2 at 220–25, Verified Statement of Mark A. Israel (“Israel VS”) ¶¶ 78–92; see also *id.* at 75–77, Verified Statement of Elizabeth M. Bailey (“Bailey VS”) ¶¶ 153–57 (addressing loss of independent routes).

direction to include projected market shares that reflect the growth that Applicants expect to result from the merger.

The first step was to update all of Dr. Bailey’s underlying data work using complete 100% Class I traffic files.⁴ To do so, Dr. Bailey reproduced actual data reflecting Applicants’ post-close “Day One” market shares, both in Dr. Bailey’s analyses and in the appendices provided in her report. These reproductions followed the same format that was used in the original Application; for example, Dr. Bailey again provided projected Day One market shares by adding the Applicants’ shares together, to demonstrate the combined company’s share of different corridors immediately after the merger closes.

The second step was to move from the Day One projected shares to calculate longer-term projected shares reflecting the expected traffic diversions, as directed in Decision No. 9. Mr. Hunt from Oliver Wyman undertook that work because he sponsored the traffic diversion study. Mr. Hunt worked closely with the CRA team to ensure that his diversion-driven changes to the actual shares that CRA prepared are fully consistent with the underlying competition analyses and data definitions reflected in the CRA appendices and in Dr. Bailey’s work.⁵ The diversion estimates were then mapped to the same major points, lanes, and commodity groupings used in

⁴ Use of 100% Class I traffic files allowed more accurate identification of divertible traffic and thus more accurate projections of projected post-merger market shares.

⁵ See Am. App., Vol. 2 at 585–92, Verified Statement of David T. Hunt (“Hunt VS”), Appendix E.

the underlying market analyses, with the focus remaining on the same major points and commodity groups.

Importantly, the format and presentation of the data are identical to the original Application. This approach also permits the Board and other parties to separately identify and evaluate each analytical step. For example, if parties challenge the traffic diversion data that were added to the projection per the Board's direction, they can adjust the market share projections by using the same base of data that Applicants used to comply with Decision No. 9.

The result is a set of updated market share, traffic volume, and revenue data that fully satisfies Decision No. 9, and that preserves transparency, comparability, and analytical continuity across the original and Amended Applications. Every single "projection" contained in the original CRA report has been updated in Mr. Hunt's statement to reflect not just the combination of UP and NS, but also the anticipated traffic diversions in the Amended Application. We describe below why the challenges to the completeness of these analyses are not correct.⁶

⁶ To comply with Section 1180.7(b)(4), Dr. Bailey provided actual revenues for different traffic flows by major commodity group. *See* Bailey Electronic Appendices "Appendix F1, F2, F3, F4.xlsx." She also explained in detail the unique data limitations in the combined waybill data that hindered these calculations. *See* Am. App., Vol. 2 at 53–54, Bailey VS ¶ 101; *id.* at 143–45, Bailey App. C ¶¶ 68-73. As a result of these data limitations, Mr. Hunt was able to provide projected revenue information by commodity group/origin pair or commodity group/destination pair for the combined UP/NS in his Appendices F3 and F4, but the data did not permit him to develop reliable revenue projections for other railroads. *See* Hunt Workpaper "Appendix F1, F2, F3, F4_80pct_vFinal.xlsx."

B. Applicants Properly Presented the Projected Market Share Data Required by the Board's Rules.

CPKC raises a number of challenges to how the Applicants presented the projected market share data.⁷ We address them in turn.

First, Mr. Hunt's decision to place his voluminous projected market share dataset in an electronic workpaper rather than an appendix to his report has no bearing on the completeness of the application. The underlying data were fully produced and searchable. Workpaper placement does not alter the substance of the information provided or diminish the ability of the Board and interested parties to review, analyze, sort, aggregate, or manipulate the data.

Second, CPKC argues that Applicants failed to present sufficient market share information for individual railroads other than UP/NS. For Section 1180.7(b)(2), CPKC asserts that the projected market shares were provided only for the combined UP/NS system. It is true that the projected share of interest in this proceeding, that of the combined UP/NS, was reported in the summary tab of that workpaper.⁸ But the projected shares for BNSF, CSX, CN, CPKC, and Other railroads were provided in the next tabs in the same Excel workpaper.⁹

CPKC also raises concerns that the data provided in response to Section 1180.7(b)(3) does not provide a by-railroad market share breakdown. But Section

⁷ See CPKC's Comments on the Completeness of the Amended Application ("CPKC-19") (filed May 8, 2026).

⁸ See Hunt Workpaper "Appendix D1, D2_80pct_vFinal.xlsx," Tabs D1_80pct" and "D2_80pct."

⁹ See Hunt Workpaper "Appendix D1, D2_80pct_vFinal.xlsx,"; Tabs "table_D1_OW_80pct," and "table_D2_OW_80pct."

1180.7(b)(3) requires information organized by transportation mode and by single-line and interline routings—not by individual railroad—and Section 1180.7(b)(4) does not require market share reporting at all, instead calling for “actual and projected revenues and traffic volumes” indicating “patterns of geographic competition or product competition across different railroad systems.”¹⁰

Third, CPKC argues that Applicants reported traffic data at a granular BEA-to-BEA level rather than aggregating the information into broader interregional or corridor flows. But the Board’s regulations leave to Applicants’ discretion how to define “major points,” “major interregional or corridor flows,” and “major commodity group.” CPKC’s argument is therefore directed at how Applicants chose to present the required data, not whether the data were present and complete. Dr. Bailey explains her methodology in her report, including how and why she chose the aggregation levels she used, how she defined “major” points and corridors, and so on.¹¹ Interested parties are free to aggregate the data into different regions, corridors, or commodity groupings if they wish.

Moreover, the level of detail and aggregation did not materially change from the original Application. No party objected to that presentation format during the

¹⁰ Upon further review, Applicants identified that projected traffic volume information for railroads other than UP/NS was omitted from Mr. Hunt’s Appendices F1 and F2, which were provided in response to Section 1180.7(b)(4). Corrected versions of the relevant workpapers will be submitted on May 13, 2026.

¹¹ See Am. App., Vol. 2 at 89–90, Bailey VS ¶¶ 193–96; see also *id.* at 159–60, Bailey VS, Appendix D (explaining treatment of “major” origins and destinations); *id.* at 164–66, Bailey VS, Appendix F (explaining how “major commodity groups” were identified).

first round of comments, and the Board likewise did not identify any defect in the structure, aggregation, or organization of the analyses in Decision No. 9. Instead, the Board instructed Applicants to ensure that all reported projections reflect not just the combination of UP and NS on Day 1, but also the projected diversion effects associated with the merger. Applicants did exactly that.

Finally, in Appendix A to its filing, CPKC asserts that certain projected originating or terminating carload information does not align with the Operating Plan. CPKC is apparently referring to Mr. Hunt’s work to align his diversion estimates to the market share analysis, which is discussed above. Mr. Hunt’s diversions otherwise align with the Operating Plan, and CPKC neither explains nor supports any assertions to the contrary.

C. Dr. Bailey’s Market Impact Analysis Fully Satisfies the Board’s Completeness Requirements

CN and CPKC raise concerns about how Dr. Bailey incorporated the projected diversion analysis into her competition assessment. CN, for example, argues that the projected diversion effects and anticipated future growth should have been mechanically folded into every aspect of Dr. Bailey’s competitive impact analyses—not merely provided in the broader Application and supporting projected datasets.¹² CPKC similarly asserts that Dr. Bailey’s analysis is not complete because she did not appropriately incorporate the projected diversion work into her work, suggesting as a result that she offered no meaningful market-impact analysis at all. Those

¹² See Grand Trunk Corporation’s Comments on Completeness of Union Pacific and Norfolk Southern’s Amended Application (“CN-15”) (filed May 8, 2026).

criticisms reflect objections to Dr. Bailey’s *methodology* but fail to demonstrate that her *analyses* are incomplete. They are not.

The analysis of a merger’s competitive effects is necessarily prospective and forward-looking.¹³ It can include both an analysis of the potential harm from eliminating horizontal competition between the merging parties and an assessment of the potential benefits of a transaction as a result of efficiencies. Dr. Bailey’s analysis includes both of these analyses. For the first part (harm from reduced horizontal competition), Dr. Bailey studies the full dataset of all Class I freight railroads’ 100% waybill data for the years 2019 to 2024, supplemented with Confidential Waybill Sample data for non Class I railroads, and examines the potential impact of the merger on competition at specific points, along corridors, and on interregional and corridor flows of commodity groups.¹⁴ For the second, she carefully considers the potential procompetitive benefits of the transaction discussed in the Gehringer-Orr Verified Statement, which describes the Operating Plan for the combined railroad, as well as the growth projected by Mr. Hunt’s diversion analyses and reflected in the projected shares and other information he calculated.¹⁵ She then balances those procompetitive benefits against the limited areas of horizontal overlap.¹⁶

¹³ See, e.g., *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321, 362 (1963) (evaluating a merger under Sec. 7 of the Clayton Act requires “a prediction of its impact upon competitive conditions in the future”).

¹⁴ See Am. App., Vol. 2 at 49–87, Bailey VS ¶¶ 88–187.

¹⁵ See Am. App., Vol. 2 at 29–49, Bailey VS ¶¶ 46–87.

¹⁶ See Am. App., Vol. 2 at 88–89, Bailey VS ¶¶ 189–92.

CN and CPKC fault Dr. Bailey for not addressing the projected traffic diversions in other aspects of her analysis, but that reflects a merits disagreement with her approach. Dr. Bailey expressly explains that, although the diversions are included in Mr. Hunt’s projected future shares to comply with 49 C.F.R. § 1180.7(b)(3) and (4), “such diversions are a benefit of the proposed merger,” and she addresses them as such in her report. She also notes that “it would not be appropriate as a matter of economic analysis to consider the diverted traffic and any associated increases in the post-merger firm’s market shares . . . as a potential competitive harm or as evidence suggesting the potential for such harm.”¹⁷ Dr. Israel reaches the same conclusion, explaining that “[d]iversions of traffic to the merged carriers from either trucks or other rail carriers are a demonstration of the pro-competitive effects of the merger” and “are evidence of enhanced competition—of customers ‘voting with their feet’ and shifting business to more efficient and attractive options.”¹⁸ CPKC fails to account for those aspects of the work of Drs. Bailey and Israel when it points to results of Mr. Hunt’s work that it argues are examples of the proposed transaction strengthening the “dominance” of UP and NS—the exact analytical error that Dr. Bailey discusses in several pages of her report.¹⁹ CN and CPKC are, of course, free to disagree with Dr. Bailey’s (and Dr. Israel’s) economic conclusions and to present expert testimony advocating alternative methodologies or interpretations of the diversion data. But nothing in Section 1180.7(b) or Decision No. 9 prescribes any

¹⁷ Am. App., Vol. 2 at 45–46, Bailey VS ¶ 78.

¹⁸ Am. App., Vol. 2 at 240, Israel VS ¶ 129.

¹⁹ Am. App., Vol. 2 at 45–49, Bailey VS ¶¶ 78–87.

single mandatory economic methodology that Applicants’ experts must adopt when evaluating competitive effects.

What the regulations do require—and what Applicants provided—is the detailed underlying projected traffic, revenue, and market information as directed by the Board in Decision No. 9. As a result, interested parties such as CN and CPKC will be able to test Applicants’ assumptions, conduct their own analyses, and develop rebuttal evidence if they disagree with Dr. Bailey (or Dr. Israel).

D. The Other Issues Raised By CPKC and CN Do Not Demonstrate that the Amended Application is Incomplete.

We address next the other objections advanced by CN and CPKC relating to the projected market data and competitive analyses. None demonstrates any failure to comply with the Board’s rules or Decision No. 9.

Reliability of Diversions. CPKC challenges the reliability of the modeling work that Mr. Hunt undertook to generate his diversion analysis. In support, CPKC criticizes the steps that Mr. Hunt took to account for random variation and so-called “confounding factors,” and similarly challenges Mr. Hunt’s decision to impose a cap preventing projected diversions from exceeding total observed market traffic on a lane. CPKC also points to supposed irregularities discussed in isolated footnotes, and even questions Applicants’ decision to rely on modeling rather than speculation of railroad marketing executives for the diversion calculations.

These criticisms are unfounded,²⁰ but in any event they present methodological disagreements about the diversion analysis performed by Mr. Hunt—precisely the types of issues that are appropriately addressed during the evidentiary phase of the proceeding through competing expert testimony.²¹

Multiple Post-Merger Market Shares Data. CN argues that the Amended Application contains multiple allegedly inconsistent sets of post-merger market shares—the Bailey dataset, the Hunt dataset, and a putative “third” or even “fourth” dataset—that Applicants failed to reconcile or adequately explain. That is not correct.

As described above, Dr. Bailey presented projected “Day One” market shares that reflected the combination of UP’s and NS’s existing market shares, and Mr. Hunt augmented that dataset by adding longer-term projected market shares that accounted for the anticipated diversion of traffic to the combined railroad. There is no inconsistency between those two market share datasets—indeed the second builds upon the first.

Contrary to CN’s suggestion, there is no “third” (or “fourth”) set of projected market shares underlying the diversion analysis and Operating Plan. Instead, CN

²⁰ For example, as Mr. Hunt explained, railroad marketing and operating personnel were consulted throughout the process to ensure the modeling was based on accurate, reliable inputs and produced realistic results. *See, e.g.*, Am. App., Vol. 2 at 572, 536, 531, 516, 469, 452, 448, 446, 437, Hunt VS at 185, 149, 144, 129, 82, 65, 61, 59, 50; *see also* Am. App., Vol. 1 at 334, Verified Statement of Kenny Rocker and Claude E. “Ed” Elkins (“Rocker/Elkins VS”) ¶ 138 (traffic projections “reflect months of close work between Oliver Wyman and our marketing teams”).

²¹ CPKC does identify a coding error in which a limited number of “actuals” figures from the CRA appendices were presented incorrectly in a Hunt workpaper table. That issue, which has been corrected, did not affect Mr. Hunt’s calculations or the projected diversion outputs themselves, which remain accurate.

appears to be referring to the 100% traffic diversion data that Mr. Hunt used in the diversion analysis and flowed through the Operating Plan. But those diversion files did not themselves contain separate projected market share analyses. Rather, the diversion files reflected the projected traffic movements associated with the diversion modeling and operating plan work.

Mr. Hunt took certain steps—including excluding revenue empty traffic and a limited number of “thin” lanes where Dr. Bailey similarly concluded the 100% traffic files still had too few observations on a lane to reliably include in the competition analysis—so that the projected diversion traffic created primarily for purposes of the Operating Plan could be consistently added to the actual market data to create the projected market share analyses required by the Board.²² Far from reflecting inconsistent or conflicting market share datasets, the diversion analyses and market share analyses served different purposes under the Board’s rules and operated on appropriately tailored traffic universes.²³

²² These steps aligned with those implemented by Dr. Bailey for purposes of her report. *See* Am. App., Vol 2 at 113–14, Bailey VS, Appendix C at C5–C6 (regarding “revenue empties”); *id.* at 54–55 & 151, Bailey VS ¶¶ 103–05 & Appendix C at C43 (regarding filters that were applied to account for small sample sizes). The bases for Dr. Bailey’s decisions are fully explained in her verified statement, and no party contends that those limitations render her competitive analysis incomplete.

²³ The exclusion of revenue empties and “thin” lanes accounts for the approximately 8% difference referenced by Mr. Hunt between the diversion traffic reflected in certain projected market share tables and the diversion traffic incorporated into the operating plan. Importantly, the full diversion projections—including revenue empty traffic and other operational traffic—were nevertheless flowed through the operating plan in order to evaluate the complete operational impacts of all the projected diversions, including revenue empty movements, on the combined network.

CN's other criticisms of Mr. Hunt's diversion work reflect methodological disagreements, as reflected in the substantial discussion of these issues in Mr. Hunt's Verified Statement.²⁴ CN's disagreement with the assumptions, calibration, or operation of Mr. Hunt's diversion model is not germane to whether the Amended Application contains the projected traffic and market information required by Section 1180.7(b) and Decision No. 9, which Mr. Hunt discusses in Appendix E of his Verified Statement. CN's related suggestion that Applicants somehow attempted to "hide" these issues by removing a prior exhibit is incorrect; that exhibit was removed because Applicants determined that no portion of the Amended Application relied upon it.²⁵ And it is impossible to credit accusations that Applicants attempted to bury CN's diversion criticisms when Mr. Hunt spent multiple pages directly addressing them in his revised testimony.²⁶

Projecting Competition-Preserving and Competition-Enhancing Conditions. Finally, CN argues briefly in a footnote that neither Dr. Bailey's nor Mr. Hunt's analyses properly model the full "post-merger world" because they allegedly fail to incorporate Applicants' proposed competition-preserving conditions and competition-enhancing measures into the projected market analyses. According to CN, Section 1180.7(b)(1) requires Applicants to model not only the effects of the

²⁴ See Am. App., Vol. 2 at 395–402, Hunt VS at 8–15.

²⁵ Mr. Hunt's statement does contain an erroneous reference to "Exhibit A-11," but it is not a reference to the prior exhibit; rather, as is clear from context, the statement should have referenced "Exhibit A-10." Applicants will correct that typo in a forthcoming erratum filing.

²⁶ See Am. App., Vol. 2 at 395–402, Hunt VS at 8–15.

transaction itself, but also the anticipated effects of the specific conditions and competitive enhancements proposed in connection with the merger.

The Board's rules recognize that there may be limits on the availability of reliable data necessary to perform predictive analyses, and specifically permit applicants to explain where "the lack of reliable and consistent data" limits the ability to satisfy particular analytical requirements. 49 C.F.R. § 1180.7(b)(8). Mr. Hunt expressly explained the practical limitations on the type of modeling that can reliably be performed using the available data.²⁷ Section 1180.7(b)(1) does not require Applicants to embed every proposed condition or remedial commitment directly into the econometric modeling underlying the projected market-share analyses. Rather than layering such conjectural assumptions onto the analyses, Mr. Hunt and Applicants appropriately focused on satisfying the Board's directive to provide a consistent and integrated framework tying together the 2023 actual data, the projected traffic diversions, the Operating Plan, and the projected market analyses associated with the expanded availability of single-line service. See Decision No. 9 at 6. CN is free to challenge this framework on the merits, but it satisfies the Board's completeness requirements in full.

²⁷ See Am. App., Vol. 2 at 585, Hunt VS at 198 n.217.

II. The Amended Application Appropriately Addresses TRRA.

BNSF, CSX, and CN claim that the Amended Application is incomplete because it does not include a related application for authority to control TRRA.²⁸ But Applicants make clear in the Amended Application that they are not seeking authority to control TRRA, and they offer to condition consummation of their merger on their divesting or otherwise relinquishing control of sufficient ownership interests and governance rights in TRRA such that the combined company will not acquire control of TRRA.²⁹ Neither Decision No. 9 nor any Board rule requires Applicants to file a related application to control TRRA when they are not seeking authority to control TRRA.

In the original Application, Applicants stated that they had no intent to control TRRA and would work to divest NS's ownership interest, but they did not commit to divesting that interest before consummating their merger or offer to condition the merger on that divestment. Instead, Applicants filed an application for a "minor" transaction, in which they sought authority to control TRRA to pursue an orderly disposition process, while acknowledging they could retain control if they could not obtain fair market value for NS's shares in TRRA.

In Decision No. 9, the Board explained that "[a]lthough Applicants state that they intend to divest NS's ownership interest in TRRA to reduce their post-merger

²⁸ See BNSF Railway's Letter Regarding Completeness ("BNSF-24") at 3–4 (filed May 8, 2026); CSX Transportation, Inc.'s Comments on Completeness of Amended Application ("CSXT-7") at 4–8 (filed May 8, 2026); CN-15 at 31–36.

²⁹ See Am. App., Vol. 1 at 30–31; *id.* at 238, Verified Statement of V. James Vena ("Vena VS") ¶ 68.

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.” Decision No. 9 at 11 (emphasis added). The Board concluded that a transaction in which “Applicants would acquire control over TRRA” would be “significant” and that a related application for such a transaction would need to meet the requirements for a significant application. *Id.* at 11.

The Amended Application directly responds to Decision No. 9. Unlike in the original Application, Applicants’ commitment in the Amended Application is not contingent on the willingness of TRRA’s other owners to purchase NS’s shares for fair market value. Applicants also explicitly “offer to condition the Transaction on this divestiture”—they request that the Board condition approval of their merger on adherence to that commitment, thereby ensuring that Applicants could not acquire control of TRRA, even temporarily. Because Applicants will not acquire control of TRRA, they did not file an application for control as part of the Amended Application.

BNSF, CN, and CSX do not explain why an application to control TRRA is necessary when Applicants have committed not to control TRRA and have offered to condition approval of the merger on meeting that commitment. CN and CSX suggest that a TRRA control application would be denied.³⁰ But even if that were true, the outcome would be that the primary transaction would be conditioned on Applicants not controlling TRRA—no different than if the Board simply enforces the condition

³⁰ See CN-15 at 32–36; CSXT-7 at 5–7.

that Applicants divest or relinquish sufficient interests and rights to prevent them from controlling TRRA before consummating the merger.³¹

CN and CSX also suggest that the application process would provide an opportunity to scrutinize the UP/NS merger's potential impacts on TRRA.³² However, CN and CSX do not explain why they and any other interested parties could not address any concerns about the merger's potential impact on TRRA as part of the Board's review of the Amended Application. Indeed, TRRA itself is a party of record, as are each of TRRA's owners, and all will have a full opportunity to comment on any TRRA-related issues they wish to address.

CN and CSX further argue that the Board cannot rely on Applicants' commitment not to acquire control of TRRA because TRRA's other owners—*i.e.*, BNSF, CN, and CSX—could prevent Applicants from divesting or relinquishing sufficient ownership and governance rights in TRRA such that the combined UP/NS will not acquire control of TRRA.³³ That contention goes to implementation, not completeness. Further, CN's and CSX's assertion that they could use the provisions of Interstate Commerce Commission-authorized agreements governing TRRA or state law restrictions to block a Board-authorized merger is misguided. *See* 49 U.S.C. § 11321(a). And in any event, Applicants would need to address these ownership issues prior to consummating the proposed merger.

³¹ *See, e.g., Union Pacific Corp. et al.—Cont.—MO-KS-TX Co. et al. (“UP/MKT”),* 4 I.C.C.2d 409, 478 (1988) (requiring applicants to sell a one-sixth interest in terminal railroad company to prevent applicants from acquiring majority control).

³² *See* CN-15 at 32–33; CSXT-7 at 5–6.

³³ *See* CN-15 at 32–36; CSXT-7 at 7.

In the Amended Application, Applicants describe several ways that they could fulfill their commitment not to acquire control of TRRA: divesting shares, along with the NS board seat, to one or more of the other owners of TRRA; divesting shares, along with the NS board seat, to one or more entities that are not currently owners of TRRA; or transferring shares to TRRA, as described in more detail in the Verified Statement of Katherine Novak.³⁴ Contrary to BNSF's argument, Section 1180.6(a)(7)(ii) does not require Applicants to submit with an application any written instruments that may be required to divest or relinquish interests and rights in TRRA.³⁵ Section 1180.6(a)(7)(ii) requires applicants to submit executed or draft contracts underlying transactions for which they are seeking Board authorization, which would not include a divestment of interests in TRRA. Board precedent shows that applicants can negotiate merger-related agreements throughout a merger proceeding to resolve potential objections to a merger, and even after a merger has been authorized to address Board-imposed conditions.³⁶ The precise mechanics of divestment can appropriately be finalized during the proceeding so long as, before consummation, Applicants satisfy the Board-imposed condition that the combined company not acquire control of TRRA.

³⁴ See Am. App., Vol. 1 at 78–79; *id.* at 402–03, Verified Statement of Katherine Novak (“Novak VS”) ¶¶ 71–72.

³⁵ See BNSF-24 at 4.

³⁶ See *e.g.*, *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 223, 243 (1996) (discussing settlement agreement entered days prior to rebuttal filings); *id.* at 428 (requiring applicants to modify terms of prior agreements); *UP/MKT*, 4 I.C.C.2d at 479 (requiring applicant to negotiate terms of agreement to sell shares of terminal carrier).

Finally, CSX contends that whatever steps Applicants might take to relinquish ownership interests and governance rights in TRRA might be insufficient to prevent them from acquiring control of TRRA.³⁷ However, Applicants have offered to condition the transaction on not controlling TRRA, so the Board can and will ultimately decide whether Applicants have taken sufficient steps to meet that condition.

In sum, Applicants have expressly committed not to acquire control of TRRA and have offered to condition their merger on not acquiring control of TRRA, and thus have addressed the concern identified in Decision No. 9.

III. The Amended Application Appropriately Identifies 2-To-1 And 3-To-2 Shipper Facilities.

CN claims that the Amended Application is incomplete because it does not identify all 2-to-1 and 3-to-2 shipper facilities.³⁸ CN raised similar claims when it challenged the completeness of the original Application.³⁹ The Board did not regard the issue as a completeness issue in Decision No. 9, consistent with the fact that its rules do not require Applicants to identify every single 2-to-1 and 3-to-2 shipper facility. *See* 49 C.F.R. § 1180.7(b)(2).

In the Amended Application, Dr. Bailey expanded her competition analysis by identifying and addressing specific 2-to-1 and 3-to-2 shipper facilities.⁴⁰ CN criticizes

³⁷ *See* CSXT-7 at 6–7.

³⁸ *See* CN-15 at 18–19.

³⁹ *See* CN-6 at 10.

⁴⁰ *See* Am. App., Vol. 2 at 55–60, Bailey VS ¶¶ 106–16.

Dr. Bailey’s identification process, but even if the Board’s rules required Applicants to identify 2-to-1 and 3-to-2 shipper facilities, CN’s criticisms would involve the Amended Application’s merits, not its completeness.

BNSF claims that the Amended Application is incomplete because Applicants “fail to identify fully developed solutions for 2-to-1 shippers.”⁴¹ Like Applicants’ original Application, the Amended Application contains a commitment to ensuring that no 2-to-1 shipper facility will lose access to two Class I railroads.⁴² Contrary to BNSF’s claims, Applicants were not required to submit proposed contracts addressing those commitments. As discussed above, Section 1180.6(a)(7)(ii) requires applicants to submit contracts underlying the transactions for which they are seeking authorization. The Board’s rules do not require merger applicants to make any commitments regarding solutions to 2-to-1 shippers, much less submit contracts embodying such commitments as part of the application.⁴³

IV. The Amended Application Appropriately Addresses Applicants’ Control Of Other Rail Carrier And Non-Rail Carrier Entities.

BNSF and CPKC claim that the Amended Application is incomplete because Applicants do not seek Board authority to control Kansas City Terminal Railway (“KCT”).⁴⁴ BNSF raised the same issue when it challenged the completeness of the

⁴¹ BNSF-24 at 6.

⁴² See Am. App., Vol. 1 at 346, Rucker/Elkins VS ¶ 159.

⁴³ The Board has recognized that development of remedies for 2-to-1 shipper facilities can continue into the post-merger period. See, e.g., *Union Pacific/Southern Pacific Merger*, 1 S.T.B. at 252–53 (discussing “omnibus” clause of applicants’ settlement agreement).

⁴⁴ See BNSF-24 at 5; CPKC-19 at 13–14.

original Application.⁴⁵ In their Amended Application, Applicants provide additional information establishing that their collective 50 percent ownership would not give them control of KCT.⁴⁶ The Board did not regard the issue as a completeness issue in Decision No. 9, consistent with its precedent regarding 50 percent ownership of terminal companies like KCT.⁴⁷ If BNSF, CPKC, or other interested parties are concerned about the merger's potential impact on KCT, they can address such issues in the merits phase of the proceeding.

BNSF also claims that the Amended Application is incomplete because Applicants do not specifically address how they intend to reduce their ownership of TTX to 49 percent to fulfill their commitment in the Amended Application.⁴⁸ Applicants addressed the merger's impacts on their collective ownership of TTX in their original Application, at which time they contemplated owning up to 50 percent of TTX. They explained that the Board would not have jurisdiction over their acquisition of control in TTX. In their Amended Application, Applicants provide additional information about TTX.⁴⁹ The Board did not regard the issue as a completeness issue in Decision No. 9. If BNSF or other interested parties are concerned about the merger's potential impact on TTX, they can address such issues in the merits phase of the proceeding.

⁴⁵ See BNSF-8 at 5.

⁴⁶ See Am. App., Vol. 1 at 81–86.

⁴⁷ See Am. App., Vol. 1 at 84–86 (discussing precedent).

⁴⁸ See BNSF-24 at 4–5.

⁴⁹ See Am. App., Vol. 1 at 87–89.

V. The Amended Application Appropriately Addresses Downstream Effects.

BNSF, CN, CPKC, and CSX claim that the Amended Application is incomplete because it does not sufficiently discuss downstream effects from possible future mergers of Class I railroads.⁵⁰ BNSF, CPKC, and CSX raised the same issue regarding the original Application.⁵¹ Applicants complied with their obligations to discuss downstream effects under 49 C.F.R. §§ 1180.6(b)(12)(i) and (ii), and the Board did not regard the issue as a completeness issue in Decision No. 9.

In their new completeness challenges, BNSF, CN, CPKC, and CSX reference discovery material in which—some time before the announcement of the proposed merger—an individual at UP speculated about potential future railroad mergers. That speculation occurred before BNSF publicly and repeatedly stated its position on future mergers, which Applicants address in the Amended Application as part of their compliance with the requirements of Section 1180.6(b)(12).⁵² BNSF, CN, CPKC, and CSX obviously know more about the potential downstream effects of a UP/NS merger on mergers of other Class I railroads than the Applicants, and they are free to share those positions with the Board during the merits phase of this proceeding.

VI. The Amended Application Appropriately Proposes Measures To Enhance Competition.

CN and CSX argue that the Amended Application is incomplete because it does not contain sufficient measures to enhance competition, and they specifically

⁵⁰ See BNSF-24 at 6–7; CN-15 at 22–24; CPKC-19 at 21; CSXT-7 at 12.

⁵¹ See BNSF-8 at 4; CPKC-7 at 17; CSXT-4 at 11–12.

⁵² See Am. App., Vol. 1 at 95.

challenge the adequacy of Applicants' Committed Gateway Pricing program.⁵³ The sufficiency of Applicants' proposal for enhanced competition is a merits question, not a completeness issue. Indeed, the Board declined CSX's and CN's invitation to treat it as a completeness issue when they made similar arguments regarding the original Application.⁵⁴

CN also presents new arguments about impacts of Committed Gateway Pricing.⁵⁵ CN may disagree with Applicants' expert witness, Dr. Israel, that "CGP provides the benefit of existing rail competition and benefits from the merger to shippers on routes that would not otherwise see such benefits," and that "CGP is welfare enhancing for shippers and the economy,"⁵⁶ but arguments challenging the sufficiency of proposed competitive enhancements involve merits, not completeness.

VII. The Amended Application Appropriately Addresses Vertical Competition Issues.

CSX argues that the Amended Application is incomplete because it does not address potential harm to competition through vertical foreclosure.⁵⁷ CSX's argument ignores the comprehensive discussion of vertical competition issues in the Verified Statement of Dr. Israel.⁵⁸ The Amended Application unquestionably addresses

⁵³ See CN-15 at 24–31; CSXT-7 at 10–11.

⁵⁴ See CN-6 at 31–33; CSXT-4 at 15–17.

⁵⁵ See CN-15 at 25.

⁵⁶ Am. App., Vol. 2 at 249, 256, Israel VS ¶¶ 152, 167.

⁵⁷ See CSXT-7 at 11.

⁵⁸ See Am. App., Vol. 2 at 190–225, Israel VS ¶¶ 15–92.

vertical foreclosure issues, and CSX will have ample opportunity to examine Dr. Israel’s analysis on the merits.

VIII. The Amended Application Appropriately Addresses Additional Measures The Board Might Take If Anticipated Public Benefits Fail To Timely Materialize.

CSX argues that the Amended Application identifies only one “additional measure” that the Board could take if claimed benefits do not materialize—extending the CGP program’s duration.⁵⁹ Applicants do not agree with CSX’s characterization of the Amended Application, but in any event CSX’s concession that the Amended Application identifies an additional measure that the Board could take establishes that CSX’s criticisms involve merits, not completeness.

IX. The Amended Application Appropriately Addresses Why A Merger Is Necessary To Achieve The Claimed Public Benefits.

CPKC and CSX argue that the Amended Application does not address whether claimed benefits cannot be achieved short of merger.⁶⁰ Like the original Application, the Amended Application presents extensive witness testimony to satisfy the Board’s requirement to address whether the claimed benefits could be achieved short of a merger.⁶¹ CSX raised the same issue when it challenged the completeness of the original Application.⁶² The Board’s rules do not require Applicants to parse through

⁵⁹ See CSXT-7 at 12.

⁶⁰ See CPKC-19 at 22; CSXT-7 at 12.

⁶¹ See, e.g., Am. App., Vol. 1 at 231–32, Vena VS ¶ 49; *id.* at 338–40, Rucker/Elkins VS ¶¶ 144–48; Am. App., Vol. 2 at 39–45, Bailey VS ¶¶ 68–77; *id.* at 226–29, Israel VS ¶¶ 95–104; *id.* at 615–16, Verified Statement of Eric Gehringer and John F. Orr (“Gehringer/Orr VS”) ¶¶ 10–11; Am. App., Vol. 1 at 265–67, Verified Statement of Mark R. George ¶¶ 56–61.

⁶² See CSXT-4 at 13–15.

the benefits calculations to determine whether some fraction of the benefits could be obtained without a merger, and did not regard the issues as a completeness issue in Decision No. 9.

X. NGFA’s Concerns Involve Merits Not Completeness.

The National Grain and Feed Association (“NGFA”) also submitted comments on the Amended Application.⁶³ Applicants take seriously NGFA’s concerns, but they relate to the merits of the Amended Application. NGFA raised the same concerns regarding the original Application, and the Board did not regard them as completeness issues in Decision No. 9.⁶⁴

First, NGFA asserts that Applicants’ discussion of proposed competitive enhancements does not include a plan “to address every competitive harm that could result from the merger” and does not address “whether [Applicants] considered the other means to enhance competition specifically referenced” in the Board’s 2001 decision promulgating the current rules for major rail consolidations.⁶⁵ Second, NGFA contends that the Service Assurance Plan fails to comply with the merger rules’ requirement for a process to compensate shippers for service failures and provides little information on back-up or contingency plans that would involve other rail carriers.⁶⁶ The Amended Application is complete in both respects.

⁶³ See National Grain and Feed Association Comments on Completeness of Amended Application (filed May 8, 2026) (“NGFA-4”).

⁶⁴ See NGFA-3.

⁶⁵ See NGFA-4 at 4.

⁶⁶ See *id.* at 6, 7.

First, the Board’s decisions and rules do not require Applicants’ proposed competitive enhancements to address every competitive harm that could result from the merger. As the Board recognized in adopting its competitive enhancement rule, “the quantity and quality of competitive enhancements that would be required” depend on case specific factors, such as “any merger-related competitive harm for which feasible and effective remedies could not be devised, the amount of post-merger service disruption that would be likely to occur as a result of a particular transaction, and the amount of public benefits that could truly be expected to flow from a particular transaction.”⁶⁷

The Amended Application describes in detail Applicants’ Committed Gateway Pricing program and how it is an appropriately calibrated enhancement to a merger that will substantially enhance competition. Independently of this program, potential merger-related harms will be remedied by Applicants’ voluntary commitments, and the risks of service disruptions are low, given the end-to-end nature of the transaction and Applicants’ careful planning for integration.⁶⁸ That detailed proposal satisfies the completeness requirement, and NGFA is free to critique it on the merits during the evidentiary phase of the proceeding.

Further, the Board’s rules do not require applicants to posit and discard hypothetical access regimes across every potential geography merely to demonstrate that alternatives were considered. Rather, the Board’s rules provide illustrative

⁶⁷ *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 547 (2001).

⁶⁸ See Am. App., Vol. 1 at 375–93, Novak VS ¶¶ 7–51.

examples of what applicants might propose, and contemplate that applicants retain discretion to propose a transaction-specific approach (including here the Committed Gateway Pricing program, together with the competitive benefits inherent in the transaction itself) to satisfy the Board’s expectation of a special offering to enhance competition. Again, NGFA may disagree with the sufficiency of Applicants’ offering—and Applicants will engage with NGFA on their concerns—but such disagreement concerns the merits of the proposals.

Second, NGFA’s objections to the Service Assurance Plan also reflect merits disagreements rather than an absence of required information. NGFA focuses on Applicants’ proposed alternative dispute resolution (“ADR”) framework for service-related claims and contends that it does not meet the standards NGFA believes should apply. The 2001 Rules, however, do not require applicants to include any arbitration mechanism. They instead encourage applicants to consider such approaches as one possible means of addressing service issues. Applicants followed that guidance and proposed an ADR framework fully described in their Amended Application.⁶⁹ NGFA’s disagreement with the contours of that proposal involves substantive questions, not questions of completeness.

NGFA’s complaints about the specificity of Applicants’ plans for ensuring adequate service and providing for improved service are similarly issues for the merits stage. NGFA mistakenly blends two different rules: (i) the requirement that

⁶⁹ See Am. App., Vol. 2 at 1139–43, Verified Statement of John W. Turner (“Turner VS”), App. B.

Applicants identify precisely how they will ensure adequate service, which Applicants meet through their detailed Operating Plan and Service Assurance Plan, and (ii) the requirement that Applicants commit to working with other railroads to overcome service disruptions, which Applicants meet by describing the cooperative processes they have used and will continue to use to address serious disruptions. NGFA's complaints do not demonstrate that the Amended Application lacks the information required to be accepted as complete under the Board's rules.

Applicants appreciate NGFA's participation in this proceeding and its interest in the effects of the transaction on agricultural shippers and the broader economy. Applicants look forward to a constructive dialogue with NGFA and its members as this proceeding moves forward. However, none of the issues raised by NGFA bear on the completeness of the Amended Application.

XI. The Amended Application Appropriately Addresses Blocked Crossings.

Two commentators argue that the Amended Application is incomplete because it does not address blocked crossings.⁷⁰ The Amended Application addresses blocked crossings in the same way as the original Application, and the Board did not regard the treatment of blocked crossings as a completeness issue in Decision No. 9.

The Board's rules for merger applications address blocked crossings in Section 1180.8(a)(2). Those rules require Applicants to submit information on measures they will take to address potentially blocked crossings as a result of merger-related

⁷⁰ See Eastwood Civic Association Comments on Completeness (filed May 8, 2026); Lindsay Williams Comments on Completeness (filed May 8, 2026).

changes in operations or increases in rail traffic as part of the environmental review process.⁷¹ Applicants are meeting that requirement by submitting the requisite information as part of their active participation in the Board's environmental review process.

XII. The Amended Application Appropriately Addresses The Merger's Effect On Fixed Charges.

One commentator argues the Amended Application is incomplete because it does not address the merger's potential effect on fixed charges if projected traffic growth is not achieved.⁷² The Amended Application addresses the merger's effect on fixed charges in the same way as the original Application, and the Board did not regard the treatment of fixed charges as a completeness issue in Decision No. 9.

The Amended Application explains that any new debt used to fund the cash portion of the consideration of NSC common stock would add only modestly to UPC's fixed charges and that UPC will have no difficulty absorbing the additional fixed charges.⁷³ The Amended Application also provides extensive pro forma financial statements, as required by Board rules, demonstrating that the merged system will have no difficulty in financing either the new debt used to fund the cash portion of the consideration for NSC's common stock or the investments needed to accommodate the traffic that Applicants anticipate will be attracted to the merged company.⁷⁴ To

⁷¹ See 49 C.F.R. § 1180.8(a)(2).

⁷² See Comments of Supply Chain Acumen, LLC Regarding Completeness of Revised Application (filed May 8, 2026).

⁷³ See Am. App., Vol. 1 at 36–37.

⁷⁴ See Am. App., Vol. 1 at 59.

the extent that commentators wish to challenge those conclusions, such challenges belong in the merits phase of the proceeding.

XIII. Comments by Certain Public Agencies Do Not Implicate The Completeness of the Application.

The New York State Department of Transportation (“NYDOT”), New Jersey Transit Corporation (“New Jersey Transit”), and New York City Department of Sanitation (“NYC Sanitation”) each submitted comments addressing particular issues of local or regional interest.⁷⁵ Applicants appreciate the input of these agencies and address their comments below, including by providing some additional information and certain technical corrections. None constitutes a reason to question the completeness of the Amended Application.

A. NS Trackage Rights on the Southern Route

NYDOT claims that the Amended Application is incomplete because Applicants omitted information regarding NS’s use of the “Southern Route”—which extends between Voorheesville, New York, and Ayer, Massachusetts.⁷⁶ NS obtained overhead trackage rights on that line in 2024 pursuant to a Board order.⁷⁷ NYDOT

⁷⁵ See NYS Comment on Completeness of UP-NS Amended Application (“NYDOT Comments”) at 4 (filed May 7, 2026); New Jersey Transit Corporation Letter Regarding Completeness (filed May 8, 2026); New York City Department of Sanitation Comments on the Completeness of UP-NS Amended Application (filed May 8, 2026).

⁷⁶ See NYDOT Comments at 2.

⁷⁷ The rights were granted as part of the CSX-Pan Am merger. *CSX Corp. and CSX Transp., Inc., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, FD 36472, at 42 (STB served April 14, 2022).

claims that NS's rights on the Southern Route were omitted from the Operating Plan and the system map.

With respect to the Operating Plan, Applicants discussed the Southern Route trackage rights on CSX in both the original Application and the Amended Application.⁷⁸ But the Southern Route is not reflected in the Base Plan, for good reason. The Base Plan incorporates UP and NS 2023 pre-merger traffic and UP and NS 2025 pre-merger operational design (*i.e.*, blocking and train plans), and NS commenced operations on the Southern Route only in 2026.

It similarly makes sense that the Southern Route was not included in the Growth Plan. The Growth Plan reflects how UP/NS would accommodate merger-related traffic growth, and the Southern Route will not accommodate any of that growth. The daily pair of intermodal and automotive trackage rights trains that NS began to move earlier this year is the maximum permissible NS traffic on the CSX line.⁷⁹ NYDOT's concern that NS's rights on the CSX-owned Southern Route could see significant increases in traffic due to the merger is thus unfounded.⁸⁰ The proposed transaction *cannot* increase the volume of trains running on the CSX-owned Southern Route because NS is already operating at the daily cap for trains that can utilize the trackage rights.

⁷⁸ See App., Vol. 2 at 564, Verified Statement of Eric Gehringer and John F. Orr ¶ 148; Am. App., Vol. 2 at 667, Gehringer/Orr VS ¶ 148.

⁷⁹ *CSX Corp. and CSX Transp., Inc., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, FD 36472, Letter from W. Mullins to C. Brown, Trackage Rights Agreement Between CSX Transp., Inc. and Norfolk Southern Ry. Co., at 1 (Attachment) (filed May 17, 2024).

⁸⁰ *Id.*

NYDOT also faults the Operating Plan for failing to discuss the Southern Route in the context of Amtrak’s Lake Shore Limited service, a portion of which runs on the CSX-owned Southern Route.⁸¹ Applicants address the Lake Shore Limited service in the Operating Plan and describe both the overall route and the NS portion of the route, consistent with the regulations at 49 C.F.R. § 1180.8(b)(2), which require a discussion of impacts where “passenger services are operated over the lines of applicant carriers.”⁸² On the Southern Route, the Lake Shore Limited is a CSX-hosted service because CSX is the railroad that owns and dispatches the line. There is thus no basis to suggest that the Amended Application omits required information from the Operating Plan.

Nor is there a basis to reject the Amended Application for failure to include the Southern Route trackage rights on the system map pursuant to 49 C.F.R. § 1180.6(a)(6). Applicants regret the omission of these overhead trackage rights from the system map that they provided and will file a corrected Exhibit 1.⁸³ But minor map issues do not make the Amended Application incomplete. The mapping issue has no impact on the substance of the Amended Application or any of the analysis in it. The existence of these trackage rights is publicly known and is acknowledged in the Amended Application. When some commenters raised minor mapping issues regarding the original Application, Applicants promptly corrected them, and the

⁸¹ NYDOT Comments at 4.

⁸² Am. App., Vol. 2 at 769–70, Gehringer/Orr VS ¶¶ 331–32.

⁸³ Applicants will also be providing updated GIS workpapers to reflect these rights.

Board did not identify mapping issues as a basis for incompleteness in Decision No. 9.⁸⁴ A similar result is warranted here.

B. New Jersey Transit Service

New Jersey Transit claims that the Amended Application does not address impacts to New Jersey Transit's Raritan Valley Line service on Conrail's Lehigh Line. The Raritan Valley Line passenger service operates over approximately six miles of Conrail's Lehigh Line between CP-Newark in Newark, New Jersey and CP-Aldene in Roselle Park, New Jersey. The line is owned, operated, and dispatched by Conrail, but NS and CSX have operating rights over the line as well.

The Board's regulations require Applicants to address the impacts of passenger services operated over the lines of applicant carriers. 49 C.F.R. § 1180.8(b)(2); § 1180.3(b). It is Conrail that owns, operates, and dispatches this line. Nevertheless, Applicants did include the Lehigh line and other Conrail lines over which NS has operating rights in the Operating Plan.

However, because Applicants do not have access to how non-NS trains operate on a line that Applicants neither own nor dispatch, the MultiRail model includes only NS overhead trains and local Conrail trains that interchange with NS. That is consistent with the approach that Applicants used in both the original Application and the Amended Application where NS is a tenant using a line that is owned and dispatched by a foreign freight carrier. *Cf.* 49 C.F.R. § 1180.8(b)(2).

⁸⁴ *Cf.* 49 C.F.R. § 1180.4(c)(7)(ii) ("The decision [rejecting an incomplete application] shall explain specifically why the application was incomplete.").

New Jersey Transit also raises concerns about various New Jersey Transit lines where NS holds operating rights, including the Pascack Valley Line, Bergen Line, Main Line,⁸⁵ Montclair-Boonton Line, Morristown Line, Gladstone Branch, and Raritan Valley Line⁸⁶ services run by New Jersey Transit. For each of these referenced services, New Jersey Transit is either the owner of the line or leaseholder of the line from another foreign carrier. NS does not own the rail lines for any of these services. As described above, Applicants' approach to such lines in both the original Application and the Amended Application is appropriate. Applicants nevertheless included these lines in the Operating Plan. As shown in the Electronic Appendices, none of these rail lines will see an increase in the number of trains as a result of the transaction and thus there are no projected impacts.⁸⁷

Finally, and as New Jersey Transit acknowledges, Applicants did address New Jersey Transit in the Service Assurance Plan, acknowledging that NS operates over certain New Jersey Transit lines, describing how coordination of those operations is conducted, and describing Applicants' plans for the combined company. Any comments New Jersey Transit has on those aspects of the Service Assurance Plan and Operating Plan are appropriately addressed in the merits phase.

⁸⁵ The Bergen Line and the Main Line connect to the Port Jervis line, which is discussed below.

⁸⁶ Applicants understand New Jersey Transit to be referring to the other portions of the Raritan Valley Line, as they address the Lehigh line separately.

⁸⁷ Am. App., Electronic Appendix S, Row 1594 (Pascack Valley Line); Rows 1382 and 1592 (Bergen Line); Rows 1374, 1382, 1385, and 1572 (Maine Line); Row 1595 (Montclair-Boonton Line); Row 1595 (Morristown Line); Row 1595 (Gladstone Branch); and Rows 1200, 1313, 1638, 1639, and 1596 (other portions of Raritan Valley Line).

C. Metro-North Service on Port Jervis Line

NYDOT also asserts that the Amended Application is incomplete because it does not address Metro-North commuter service on a rail line between Port Jervis and Suffern, New York (“the Port Jervis line”).⁸⁸

Metro-North operates commuter rail service on the Port Jervis line pursuant to a February 28, 2003, sublease and operations agreement between Metro-North, Pennsylvania Lines LLC, and NS.⁸⁹ Under that agreement, Metro-North has responsibility for dispatching, maintenance, inspections, and constructing capital improvements.⁹⁰ NS has retained the right to operate freight service over the line, and for that reason, the line is reflected in Applicants’ system map at Exhibit 1. Although NS has retained freight rights, local freight operations are conducted by the short line Middletown & New Jersey Railroad between Port Jervis and Campbell Hall, New York.⁹¹ NS conducts local operations on the portion of the line between Campbell Hall and Suffern. The New York, Susquehanna & Western Railway also has overhead trackage rights between Port Jervis and Campbell Hall, New York.

⁸⁸ NYDOT Comments at 6.

⁸⁹ Motion of Metro-North Commuter R.R. Co. to Dismiss Notice of Exemption, Ex. A (Sublease) & Ex. B (Operations Agreement), FD 34293, at 5 (filed Mar. 5, 2003); *see also Metro-North Commuter R.R.—Sublease & Operation Exemption—Line of Norfolk S. Ry. & Pennsylvania Lines, LLC*, FD 34293 (STB served May 13, 2003).

⁹⁰ *Id.*, Exhibit B, Article 5.

⁹¹ *See Middletown & New Jersey R.R.—Lease Exemption Containing Interchange Commitment—Norfolk S. Ry.*, FD 36253 (STB served Dec. 14, 2018). Middletown & New Jersey Railroad also has overhead trackage rights between Port Jervis and Campbell Hall, New Jersey. *Middletown & New Jersey R.R.—Lease and Operation Exemption—Norfolk S. Ry.*, FD 35412 (STB served Sept. 16, 2010).

The Amended Application's Operating Plan accounts for the Port Jervis line,⁹² but no additional trains are projected as a result of the transaction. The Operating Plan projects only 50 additional cars on the line annually, all of which can be absorbed by the existing pre-merger train. Because the line is controlled and dispatched by Metro-North for New Jersey Transit, NS functions as a tenant on the line, and thus the Operating Plan treats this line in the same fashion as other lines controlled by passenger carriers where Applicants are tenants. Regardless, as reflected in the Operating Plan, there will be no impacts to Metro-North commuter trains on this line because there is no projected increase in the number of freight trains for the line.

The commuter service on the Port Jervis line is like other situations where NS operates as a tenant on lines of passenger carriers. Because NS functions as a tenant on the line, it neither receives performance data nor discusses on-time performance with New Jersey Transit (who dispatches the line for Metro-North) or Metro-North itself. Applicants described NS's coordination with New Jersey Transit and other similarly situated services in the Service Assurance Plan,⁹³ and that is consistent with NS's coordination for the Port Jervis line.

⁹² The Operating Plan models traffic between Suffern and Campbell Hall. Any traffic west of Campbell Hall would be handed to the Middletown & New Jersey Railroad at Campbell Hall. *See* Am. App., Electronic Appendix S, Row 1384.

NYDOT also notes in a footnote a concern that a certain rail line that connects the Port Jervis Line to Binghamton, New York, is not reflected in the Electronic Appendices. That segment is operated and dispatched by the Central New York Railroad, and thus was not modeled in the Operating Plan. *Central New York R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 34643 (STB served Jan. 21, 2005).

⁹³ *See* Am. App., Vol. 2 at 1066, Turner VS ¶ 490.

Applicants are filing an erratum to formally incorporate the information provided above into the Amended Application. Applicants regret the oversight but submit that the omission of one commuter service that will not be impacted by the merger is not a reason to reject the Amended Application. *Cf.* Decision No. 9 at 14.

D. New York City Department of Sanitation

NYC Sanitation filed comments in its role as a rail customer moving volumes of municipal solid waste in rail. It expresses concern over potential service in the Conrail Shared Asset Area and on interchanges with CSX, and suggests that the Service Assurance Plan should have included more discussion of Conrail and of municipal solid waste shipments. Applicants take seriously the service concerns described by NYC Sanitation, but they do not undermine the completeness of the Amended Application.

The Operating Plan and Service Assurance Plan explained that, other than certain changes in Chicago and St. Louis, “Applicants’ plans do not include any operational changes to connections with UP’s and NS’s many current short line and terminal area switching partners,” like Conrail.⁹⁴ Conrail is not an applicant carrier and is not controlled by Norfolk Southern, and the proposed Transaction will not alter Conrail’s status in any way. There is no regulatory requirement for the Service Assurance Plan to specifically discuss municipal solid waste shipments. Moreover, NYC Sanitation’s expressed concern about preserving interchanges with CSX is

⁹⁴ Am. App., Vol. 2 at 876, Turner VS ¶ 59; *see also id.* at 743, Gehringer/Orr VS ¶ 267.

addressed by Applicants' gateway commitment. If NYC Sanitation views that commitment as insufficient, or has concerns about the Service Assurance Plan or other aspects of the proposed merger, these are appropriately addressed in the merits phase.

XIV. Discovery Disputes and Temporary Workpaper Access Issues Have No Bearing On Completeness.

BNSF and CPKC complain about the pace of Applicants' responses to discovery requests and temporary issues accessing certain workpapers.⁹⁵ These issues have no bearing on the completeness of the Amended Application. Further the Board did not open the party discovery phase of this proceeding until Decision No. 17. After the Board opened the party discovery phase, Applicants submitted proposed discovery guidelines on May 5 (and voluntarily amended their submission in response to feedback from interested parties on May 7). Moreover, on May 7 and 8, Applicants submitted proposals to conduct custodial searches of company witnesses who submitted Verified Statements in the Amended Application.

With regard to workpapers, in Decision No. 9, and again in Decision No. 18, the Board appropriately recognized that some temporary workpaper issues are inevitable in a proceeding of this scale and scope. Applicants have diligently addressed workpaper issues as they have arisen. When CN raised issues on Thursday, April 30 after 6:00 p.m., the issues were resolved by 9:00 a.m. on Sunday, May 3. When BNSF raised questions about 181 workpapers on Tuesday, May 5 after

⁹⁵ See BNSF-24 at 8; CPKC-19 at 16–20.

9:00 p.m., Applicants systematically reviewed the questions and responded on Thursday, May 7—explaining that in many cases, there were no issues, and uploading certain replacement workpapers on Friday, May 8 as needed. When CPKC raised questions about certain workpapers on Thursday May 7, just before 7:00 p.m., Applicants uploaded several replacement workpapers Friday, May 8, and provided complete responses by Tuesday, May 12.

XV. Applicants' Compliance With Decision No. 13 Has No Bearing on Completeness.

CPKC and CSX argue that the Board should not treat the Amended Application as complete until Applicants comply with Decision No. 13.⁹⁶ Applicants' compliance with Decision No. 13 has no bearing on the completeness of the Amended Application. Regardless, Applicants fully complied with Decision No. 13, as established in their pleadings filed May 8.

⁹⁶ See CPKC-19 at 14–15; CSXT-7 at 8–9.

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May 12, 2026

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CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of May, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Michael L. Rosenthal