

Peter W. Denton
+1 202 429 6445
pdenton@Step toe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.step toe.com

Step toe

311603

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VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: ***BNSF Railway Company—Petition For Enforcement— Interchange With Savage
Tooele Railroad Company, STB Docket FD 32760 (Sub-No. 50)***

Dear Chief of Case Administration:

Enclosed for e-filing in the above-referenced proceeding is a public version of BNSF's Rebuttal Statement, with appropriate redactions that the Board can place on its docket. We are concurrently filing a highly confidential version of the Rebuttal Statement under seal.

Respectfully submitted,

/s/ Peter W. Denton
Peter W. Denton

Attorney for BNSF Railway Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

BNSF’S REBUTTAL STATEMENT

Kevin Baldwin
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

Peter W. Denton
Tara Woods
Steptoe LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-3000

Alex Wolf
Steptoe LLP
717 Texas Ave., Suite 2800
Houston, TX 77002
(713) 221-2300

Adrian L. Steel, Jr.
Attorney at Law
7720 Timon Dr.
McLean, VA 22102
(202) 468-9008

Counsel for BNSF Railway Company

Dated: June 11, 2026

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Exhibit

Exhibit 1	April 8, 2019 email from BNSF's Travis Thowe (BNSF-STR000398)
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BNSF’S REBUTTAL STATEMENT

1 Introduction

In its April 28, 2025 order in this proceeding, the Board granted BNSF’s request to obtain discovery regarding UP’s “intent and purpose” in structuring its transaction with STR. (*BNSF Ry. Co.—Pet. for Enforcement—Interchange with Savage Tooele R.R. Co. (BNSF Enforcement Proceeding)*, FD 32760 (Sub-No. 50), slip op. at 6 n.7 (STB served Apr. 28, 2025).)¹ The Board noted that such information “may aid [the Board’s] decision-making later in this proceeding.” (*Id.*)

Now, more than a year later, UP openly admits to the entire premise of BNSF’s discovery efforts: UP intentionally structured its transaction with STR with the purpose of preventing BNSF from interchanging with STR. In its Reply, UP rests its case on its purported ability to evade its UP/SP merger responsibilities by strong-arming STR into a transaction structure designed to avoid a direct

¹ Unless otherwise defined in this Rebuttal, the acronyms and defined terms used in this filing are the same as those used in BNSF’s Opening Statement.

connection between STR’s new rail line and UP’s Shafter Subdivision. In doing so, UP seeks to monopolize line-haul service to shippers located on STR’s line and deny those customers the ability to receive competitive service from BNSF.

This proceeding turns on a straightforward question: whether UP may structure a transaction to defeat the competition-preserving purposes of Section 8(k)² of the RASA and the UP/SP merger conditions. UP believes that Section 8(k) does not apply, and thus that BNSF has no right to interchange with STR, because STR did not construct its line directly “to” UP’s Shafter Subdivision where BNSF has trackage rights. But UP openly admits to structuring its transaction with STR to preclude a direct BNSF/STR connection and to retain exclusive ownership and control of the Connecting Line (also referred to as the “first mile”) between the Shafter Subdivision and STR’s new line. The Board should not allow UP to rely on a self-created steel barrier to defeat the competition-preserving purposes of the merger conditions.

UP argues, with no citation, that evidence regarding its “intent [has] no actual bearing on the legal analysis” (UP Reply at 1). But the Board has indicated otherwise,³ including in this proceeding, where the Board allowed discovery into

² Section 8(k) of the RASA ensured that “BNSF [has] the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line,” subject to limited restrictions not relevant here. (*See* BNSF Opening Ex. 1, RASA § 8(k).)

³ *See, e.g., TGS Cedar Port R.R. LLC—Operation Exemption—In Chambers Cnty., Tex. (Cedar Port)*, FD 36627 (STB served Apr. 1, 2024); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Mission Rail) (Decision No. 109)*, FD 32760 (STB served Jan. 31, 2018).

UP's intent because of its likely relevance to the legal issues in this proceeding.

UP's stated intent and conduct here are consistent with its repeated attempts to find legalistic pretenses to shirk its competition-preserving obligations under the UP/SP merger conditions. BNSF has documented many of these efforts in recent enforcement actions.

Now, UP is asking the Board to approve its proposed merger with Norfolk Southern, under the familiar premise that certain conditions offered by UP would preserve any competition that may be lost by this unprecedented combination. But this and other similar cases show that UP will make every effort to deny its customers the ability to receive competitive rail service following approval of its merger if UP sees any opportunity to do so.

The Board should make clear in this and other similar cases that UP must abide by its commitments to the Board and the public in connection with the UP/SP merger.

2 Rebuttal Argument

2.1 The Parties understood that STR's goal was to connect to the Shafter Subdivision Trackage Rights Line and to interchange with both BNSF and UP.

2.1.1 From the outset, STR intended to interchange with both BNSF and UP.

STR's early outreach to BNSF confirms that, from the outset, STR intended the shortline project to connect the Lakeview Business Park to the national rail network via the Shafter Subdivision and to permit interchange with both UP and BNSF. This makes sense, given that BNSF has trackage rights over the Shafter

Subdivision and the right under Section 8(k) of the RASA to interchange with new shortline railroads connecting to that UP line.

The discovery record, together with STR’s filings before the Board, confirms this understanding. As early as April 8, 2019, Romney Group (the owner and developer of the Lakeview Business Park) and Savage Industrial Group {{ [REDACTED]

[REDACTED] }} (See Rebuttal Exhibit 1, BNSF-STR000398). STR’s subsequent Board filings reflect the same understanding. As the Board noted, STR framed its project as a rail line connecting the “Shafter Subdivision mainline . . . near Burmester, Utah, to the Lakeview Business Park,” and as reestablishing “the former Warner Branch connection to UP’s Shafter Subdivision at Burmester.”⁴

STR was explicit in its intent, stating in its petition: “STR expects that the park tenants will have access to rail service from both BNSF and UP.” (STR Pet. at 10, June 30, 2022, *STR Exemption Proceeding*, FD 36616.) STR likewise explained in its petition that “the proposed project will enable rail traffic to and from the park **to be interchanged with UP and BNSF Railway Company (‘BNSF’) at Burmester**, thereby providing [among other things] . . . competitive freight optionality.” (*Id.* at 3-4 (emphasis added).) **Tellingly, UP did not object to, or**

⁴ (*Savage Tooele R.R.—Constr. & Operation Exemption—Line of R.R. in Tooele Cnty., Utah (STR Exemption Proceeding)*, FD 36616, slip op. at 1 (STB served Mar. 30, 2023); *STR Exemption Proceeding*, FD 36616, slip op. at 1 (STB served Apr. 1, 2024).)

otherwise dispute, STR’s stated intent to interchange with both carriers in the *STR Exemption Proceeding*.

UP’s Reply now attempts to recast STR’s objective as interchange with UP alone, pointing to the fact that STR at one time explored alternative routings, including a possible connection to UP’s {{ [REDACTED] }} to the south of the Park. (UP Reply at 15.) But that does not alter the record. STR’s chosen and approved project was presented to the Board as a direct connection to the Shafter Subdivision near Burmester over which BNSF has trackage rights and the ability to interchange with new shortline railroads.

Despite this context, UP asks the Board to disregard how the project was conceived, presented for approval, and authorized, and instead asks the Board to treat UP’s retention and reinstatement of the 1.04-mile Connecting Line as a dispositive steel barrier that defeats the competitive interchange that the parties and others—including the Lakeview Business Park’s owners and customers—understood to be part of the project’s connection to the national rail network.

2.1.2 UP manufactured the structural impediment on which its defense depends.

UP’s argument rests on a simple premise: Section 8(k) is not triggered because STR connected only “to” UP’s Connecting Line at MP 1.04—not “to” the Shafter Subdivision Trackage Rights Line—and therefore BNSF has no interchange rights. But UP cannot rely on a condition it unilaterally created and controls—a steel barrier that separates STR from the Trackage Rights Line—to defeat the competition that the merger conditions were designed to preserve. *See, e.g., Mission*

Rail (Decision No. 109), FD 32760, slip op. at 11 (stating that changes that are “wholly within UP’s control—should not affect whether the new facility should have access to dual-carrier service under the UP/SP merger conditions”).

UP declined to sell the Connecting Line or grant operating rights over it, even though STR sought both forms of access. Instead, UP insisted on an {{ [REDACTED] }} *See, e.g.*, BNSF Opening at 3. Although STR repeatedly tried to {{ [REDACTED] }} {{ [REDACTED] }}, UP {{ [REDACTED] }}. (*See, e.g.*, BNSF Opening at 21-23.) UP also {{ [REDACTED] }} {{ [REDACTED] }}. (*See id.*)

UP’s refusal to sell or grant operating rights over the first mile left STR with no meaningful alternative. STR could not access the national rail network other than through UP’s controlled connection. As STR’s witness testified, {{ [REDACTED] }} {{ [REDACTED] }} (*See* BNSF Opening Ex. 8, Hoskins Dep. Tr. 97:15-22.) UP asserts that STR “decided to construct a connection to the Warner Branch with full knowledge” that BNSF would lack interchange rights (UP Reply at 11), but that characterization ignores record evidence that STR sought to acquire or operate over the segment and repeatedly attempted to preserve BNSF access, only for UP to reject those efforts.

2.2 UP’s self-serving structuring of the PSA is inconsistent with the UP/SP merger conditions.

2.2.1 UP’s position conflicts with the Board’s merger policy.

In its Reply, UP expressly claims that “the RASA permits Union Pacific to structure its dealings so BNSF could not interchange with STR,” and admits that UP “pursued its own commercial and operational interests here without regard to the consequences for BNSF.” (UP Reply at 12.) UP also states that “the RASA does not require Union Pacific to structure its business arrangements to maximize access opportunities for BNSF.” (UP Reply at 9.) UP’s admissions make it clear that UP believes that it can intentionally structure a transaction to evade its merger condition obligations. However, UP’s acceptance of the merger conditions constituted a voluntary restriction on its ability to pursue its commercial and operational interests without regard to the consequences for BNSF and merger condition beneficiaries. The Board should flatly and definitively reject UP’s unprecedented position.

As the Board noted, this dispute presents “questions about whether the merger conditions are being implemented in a way that is consistent with the policies underlying them,” and that it is the Board’s responsibility to ensure that those conditions are implemented consistent with their public-policy purposes. (*BNSF Enforcement Proceeding*, FD 32760 (Sub-No. 50), slip op. at 6.) This proceeding does not turn on whether UP must “maximize” BNSF’s opportunities. It turns on whether UP may ***eliminate competition*** by structuring a transaction in a manner that evades its obligations under merger conditions. The Board need not

view this dispute solely as a technical dispute over the wording of Section 8(k). The UP/SP merger conditions independently require UP to implement the RASA in a manner consistent with the competitive-access purposes for which those conditions were imposed. That same principle should apply here: UP should not be allowed to use an overly-narrow, technical reading of the RASA to undermine the purposes of the merger conditions.

The Board should take a hard stand against UP's anticompetitive actions in this case. Similarly, the Board should take note of UP's brazen approach here when considering UP's actions in other UP/SP-related disputes and when assessing UP's commitments in connection with its next proposed transformative merger.

2.2.2 UP cannot rely on a self-created steel barrier to defeat merger conditions.

UP's position also conflicts with the Board's clarification in the related exemption proceeding authorizing UP to reinstitute common carrier service over the Connecting Track. As the Board noted, "the *UP Exemption Decision* did 'not affect BNSF's rights under RASA Section 8(k) and the UP/SP merger conditions.'" (*BNSF Enforcement Proceeding*, FD 32760 (Sub-No. 50), slip op. at 3.) The Board explained that "in any future proceeding, whether before an arbitrator or the Board,' the decision shall not be construed as permitting UP to defeat any rights that BNSF may have had to interchange with STR or serve shippers at Lakeview Business Park had the exemption not become effective." *Id.* That statement would be meaningless if UP could achieve the same result through the structuring it engaged in and now seeks to defend.

The UP exemption created a one-mile UP rail line standing between BNSF's rights over the Shafter Subdivision and the STR line.⁵ UP argues that its creation of this Connecting Line allows UP to avoid its obligation under Section 8(k) to allow BNSF and STR to interchange. But the Board was clear that its decision authorizing UP's exemption should not be read to have that effect. That should be the end of the issue. The Board should rule now that UP cannot "defeat any rights that BNSF may have had to interchange with STR or serve shippers at Lakeview Business Park had the exemption not become effective." (*BNSF Enforcement Proceeding*, FD 32760 (Sub-No. 50), slip op. at 3.)

Indeed, in other similar circumstances, the Board has repeatedly rejected attempts to interpret or apply the RASA in a way that "side-steps" the competition-preserving "critical precepts" that "underlie and inform the merger conditions." *Cedar Port*, FD 36627, slip op. at 7. In *Mission Rail*, the Board held that changes "wholly within UP's control" cannot be used to impair competitive access rights that the merger conditions were designed to preserve.⁶ *Mission Rail (Decision No. 109)*, FD 32760, slip op. at 11. Those same principles apply here.

⁵ The UP exemption converted the one-mile connecting segment from track that UP could physically remove at any time (*see* 49 U.S.C. § 10906) to a "line of railroad" subject to the Board's entry/exit licensing authority (*see* 49 U.S.C. §§ 10901, 10903). This allowed the new STR rail line to fully connect to the national rail network. Board policy would not have allowed STR to construct a rail line separated from the national rail network by "ancillary" track that UP could remove without Board authority. (*STR Exemption Proceeding*, FD 36616, slip op. at 1 (STB served Apr. 1, 2024).)

⁶ UP's reliance on *Tri-City* does not change that result. *Tri-City* addressed whether a proposed shortline operation satisfied the Board's exemption procedures

UP attempts to distinguish *Mission Rail* and *Cedar Port* by arguing that, here, Section 8(k) rights “never accrued” and that these precedents involved either already-existing competitive access or rights that had already arisen. (See UP Reply at 10-12.) However, the Board’s reasoning in those cases does not turn on UP’s proffered narrow framing.

In *Mission Rail*, the Board held that UP’s later “reclassification” of connecting trackage to a § 10901 rail line and other changes “wholly within UP’s control” could not defeat competitive access under the merger conditions. *Mission Rail* (Decision No. 109), FD 32760, slip op. at 11. In *Cedar Port*, the Board rejected UP’s reliance on RASA text and service structure to deny BNSF competitive access, holding that such interpretation improperly “side-steps these critical precepts” of the merger conditions. *Cedar Port*, FD 36627, slip op. at 7.

Moreover, the right of new shortlines to interchange with BNSF accrued with the adoption of the RASA. Section 8(k) preserved the pre-merger siting competition relevant here as to future shortlines connecting to BNSF on a Trackage Rights Line. But for the UP/SP merger, the developers of the Lakeview Business Park could have located the Park on either a UP line or an SP line and benefited from the negotiating lever that provided. Section 8(k) preserves that competitive choice for future connections, including STR.

and whether the connecting track was properly classified for regulatory purposes. *Tri-City R.R.—Lease & Operation Exemption—N. Pac. Dev., LLC*, FD 36170, slip op. at 1-2 (STB served Mar. 21, 2018). The decision does not address the UP/SP merger conditions, Section 8(k), or the preservation of competitive access.

UP also argues that Section 8(k) does not apply because UP reinstated common carrier service over the Connecting Line before STR finished constructing its line. (UP Reply at 10-12.) But the relevant question is not simply which regulatory step occurred first. UP pursued reinstatement as part of the STR transaction, chose to retain the Connecting Line, controlled when it sought reinstatement, and structured its agreement with STR to { [REDACTED] }. This is not a case in which UP independently reinstated a line to serve other shippers and STR later connected to the line as a matter of convenience. Rather, UP used the Connecting Line as a way to defeat competitive access that otherwise would have attached. UP should not be allowed to rely on that timing to avoid the competitive access protections of the merger conditions. *See Mission Rail (Decision No. 109)*, FD 32760, slip op. at 11.

Here, UP purposefully manufactured the very condition on which its argument depends by obtaining an exemption to convert its one-mile of track to a rail line and by { [REDACTED] } over that line. If accepted, UP's theory would allow it to nullify Section 8(k). UP could insert or retain a short segment of track under its control and then assert that the shortline was "constructed" only "to" the end of that segment rather than to the Trackage Rights Line. And UP's position in this proceeding, if successful, would give it a roadmap to evade similar obligations in the future, both with respect to the UP/SP merger and with respect to the pending UP/NS merger. That would directly undercut and effectively nullify the competition-preserving purposes the Board recognized as central to this

enforcement proceeding.⁷ The Board should therefore reject UP's interpretation as inconsistent with both the text and purpose of Section 8(k).

2.2.3 UP's intent is relevant and was properly subject to discovery.

UP's contention that evidence of its intent has "no actual bearing" in this proceeding likewise cannot be squared with the Board's own orders. UP asserts that "BNSF's arguments and evidence regarding Union Pacific's intent have no actual bearing on the legal analysis," and that discovery "demonstrated that Union Pacific acted in good faith" because UP initially assumed BNSF might have access but later concluded otherwise after a "formal legal and operational review." (UP Reply at 1, 12-13.) UP cannot have it both ways: if evidence of intent has "no actual bearing" on the legal analysis, then UP's assertion that it acted in "good faith" has no bearing either.

In its April 28, 2025 order in this proceeding, the Board specifically granted discovery regarding UP's "intent and purpose" in structuring the transaction, confirming the relevance of such information by stating that "obtaining additional details about the structuring of the transaction may aid [the Board's] decision-making later in this proceeding." (*BNSF Enforcement Proceeding*, FD 32760 (Sub-No. 50), slip op. at 6 n.7.) UP's attempt to render that inquiry irrelevant is inconsistent with the Board's own explanation for authorizing discovery.

⁷ Moreover, if UP's gambit were to prevail here, UP could similarly attempt to require that New Shipper Facilities locating on Trackage Rights Lines be connected by trackage over which UP has exclusive operating rights, thus purportedly excluding BNSF access.

Likewise, UP's attempt to exclude evidence of its intent cannot be reconciled with the Board's consistent emphasis that merger conditions must preserve replacement competition. As the Board recently observed in *Cedar Port*, "the preservation of competition at points that would otherwise become captive to UP was a foundational premise of the UP/SP merger conditions." *Cedar Port*, FD 36627, slip op. at 7. UP's attempt to disregard its intent is inconsistent with the Board's framework for evaluating whether merger conditions are being implemented in accordance with policy.

2.2.4 The record disproves UP's good-faith narrative.

UP's claim of "good faith" is further belied by its negotiating conduct once UP decided to retain the intervening segment and { [REDACTED] }. UP argues that it acted "in good faith," emphasizing that it proceeded even when it initially assumed BNSF might have access and later changed course following a "formal legal and operational review." (UP Reply at 12.) The record, however, reflects a different story. From the outset, UP's project planning {{ [REDACTED] }} were premised on STR interchanging with both UP and BNSF at Burmester.⁸ Only later, after the legal department became involved, did UP decide to retain the Connecting Track and seek to reinstitute common carrier authority over it,

⁸ See, e.g., September 24, 2020 email from UP's Chris Sanford to UP's Melissa Meier, in which Mr. Sanford stated that {{ [REDACTED] }} (BNSF Opening Ex. 4 at UP-STRC-003670 (emphasis added).)

deliberately changing the structure of the transaction to preclude BNSF access. (*See* BNSF Opening at 15-17.)

After making that decision, UP rejected STR's efforts to purchase the segment or obtain operating rights over it { [REDACTED] }.

Contemporaneous evidence confirms this shift: STR repeatedly attempted to remove

{{ [REDACTED]
[REDACTED]
[REDACTED] }}

}}. (*See* BNSF Opening at 21-23; BNSF Opening Ex. 11, Final PSA Section 4(g).)

UP restructured the transaction to produce { [REDACTED] } and then relied on that self-created condition as the basis for its legal argument. UP's internal communications likewise confirm that {{ [REDACTED] }} was the intended result of its actions, including its acknowledgment that reinstating service over the first mile would keep {{ [REDACTED] }} (BNSF Opening Ex. 2 at UP-STRC-003205.)

Any doubt as to UP's intent is resolved by UP's failure to acknowledge or rebut in any way the critical May 24, 2024 statement by its regional manager, Michelle Zemeckis, celebrating the STB's decision, which confirms UP's objective: {

[REDACTED]
[REDACTED] } (*See* BNSF Opening at 4 n.1, citing Ex. 2

at UP-STRC-003205 (emphasis added).)⁹ Ms. Zemeckis’s statement candidly describes the result UP sought: { [REDACTED]

[REDACTED] } UP

cannot simultaneously (i) defend its right to structure the transaction “so BNSF could not interchange,” (ii) claim it can pursue its own interests “without regard to the consequences for BNSF,” and (iii) ask the Board to disregard contemporaneous evidence confirming that { [REDACTED] } was not incidental, but the intended outcome of UP’s structuring decisions.

2.3 UP’s actions would foreclose the rights of STR and its underlying shippers under Section 8(k).

The Board has made clear that the rights established by the UP/SP merger conditions are not limited to the signatory carriers. In Decision No. 44, the Board explicitly recognized that “the BNSF [settlement] agreement does provide rights and claims (and, by implication, remedies) to persons other than the signatories.” (*Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 44)*, 1 S.T.B. 233, 247 n.15 (1996); *see also Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1178 (2001).) Those “persons” include shortline railroads like STR and the shippers they serve.

As a new shortline constructing a connection to a Trackage Rights Line, STR falls squarely within the class of entities contemplated by Section 8(k). The Park

⁹ Ms. Zemeckis’s phrasing is notable because it suggests UP did not regard reinstatement of the first mile as a foregone conclusion. Rather, UP appears to have understood that { [REDACTED] }.

developer and STR were entitled to locate the Park and structure its connection in a manner that would permit interchange with both UP and BNSF, thereby providing competitive service options to their customers. Even if the Board credited UP's claim that STR "decided to construct a connection to the Warner Branch with full knowledge that it would not have a right to interchange with BNSF" (UP Reply at 11), Section 8(k) also preserves competition for the current and future shippers who locate at the Lakeview Business Park, and those competitive rights should not be waived through an arrangement made between UP and STR.

The Lakeview Business Park shippers are shippers that the merger conditions were designed to protect, and their entitlement to competitive rail service should not depend on STR's ability to push back on UP's demands. UP's conduct does not merely narrow BNSF's asserted rights, but it also deprives STR and the Lakeview Business Park shippers of the competitive options that Section 8(k) was intended to preserve at newly-connected points to the Trackage Rights Line.

UP's insistence on retaining the Connecting Track and { [REDACTED] } directly impairs that right. By denying STR the ability to connect to the Shafter Subdivision on terms that allow dual-carrier interchange, UP has not only limited BNSF's access, but it has also curtailed STR's ability to offer the competitive service that Section 8(k) was designed to enable. The PSA compounds this harm {{ [REDACTED] }}.

(See BNSF Opening at 21-23.)

2.4 UP’s claimed operational justification is unsupported by the record and cannot justify exclusivity.

UP also asserts that it was necessary to retain the Connecting Track for “operational purposes.” (UP Reply at 14.) The record, however, does not support that claim. There is no evidence of meaningful traffic on the segment. Nor are there any studies evaluating the operational impacts of allowing STR to own or operate over the segment. Further, there is no analysis of alternative arrangements, such as granting operating rights as STR proposed, that would have preserved UP’s operational flexibility while still allowing competitive access.

To the contrary, UP’s own internal data undermines its position. When UP investigated historical usage of the segment in July 2024, it found no reliable evidence of meaningful traffic. In the prior four years, UP could identify { [REDACTED] [REDACTED] [REDACTED] } (See BNSF Opening at 20 n.7, citing BNSF Opening Ex. 12 UP-STRC-002594.) UP’s investigation further noted: { [REDACTED] [REDACTED] } (*Id.* (emphasis added).) STR’s witness Philip Hoskins testified that, if STR had owned or operated the Connecting Line, it would have granted UP operating rights and allowed UP to continue running trains over it. (See BNSF Opening Ex. 8, Hoskins Dep. Tr. 55:1-5 ({ [REDACTED] [REDACTED] [REDACTED] }))) Any

legitimate operational concerns could have been addressed without { [REDACTED] } or denying BNSF access.

UP's asserted operational justification is thus pretextual. It does not explain why less restrictive alternatives were not considered. Nor does it justify the { [REDACTED] } that extends far beyond any legitimate operational need.

3 Conclusion

For the foregoing reasons, BNSF respectfully requests that the Board issue an order enforcing the UP/SP merger conditions by requiring UP to allow BNSF to interchange with STR—and rejecting UP's attempt to evade those conditions through structuring of transactions.

An order granting BNSF access would give shippers at the Lakeview Business Park the competitive service options that they desire, planned for, and are entitled to, as intended under the RASA. It would also give the Lakeview Business Park's owners the competitive service that they counted on when financing the Park, advertising it, and securing tenant shippers. Doing so would confirm the consistent opinion of UP's joint facilities personnel that BNSF would have access to the Park. It would also make clear that UP cannot structure transactions with new shortline railroads connecting to Trackage Rights Lines to deprive shippers of the rights guaranteed them under RASA Section 8(k) by inserting steel barriers between the Trackage Rights Line and the new shortline railroad. Accepting UP's position would invite carriers to structure around merger conditions in future proceedings.

Dated: June 11, 2026

Respectfully submitted,

Kevin Baldwin
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

/s/ Peter W. Denton
Peter W. Denton
Tara Woods
Steptoe LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-3000

Alex Wolf
Steptoe LLP
717 Texas Ave., Suite 2800
Houston, TX 77002
(713) 221-2300

Adrian L. Steel, Jr.
Attorney at Law
7720 Timon Dr.
McLean, VA 22102
(202) 468-9008

Counsel for BNSF Railway Company

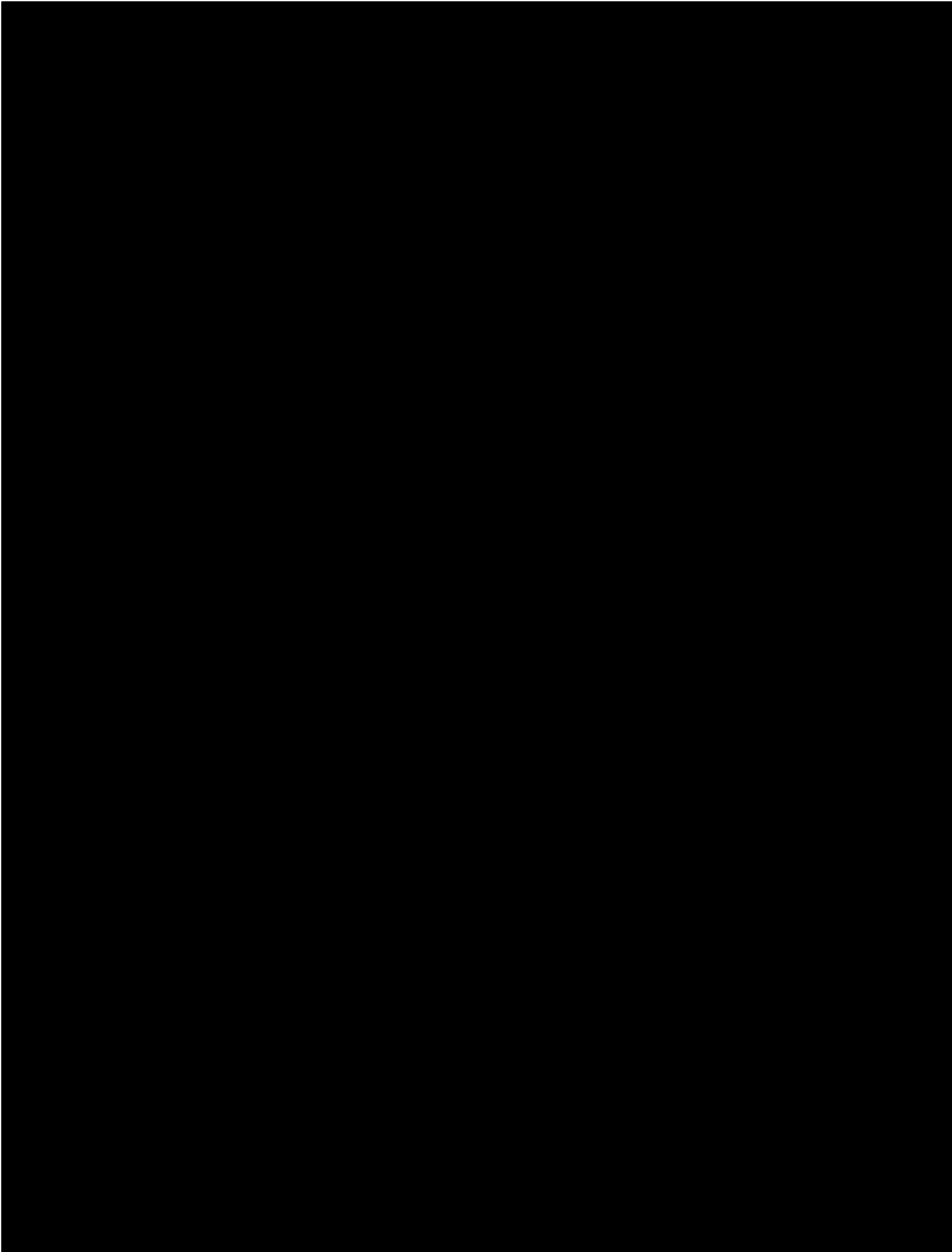
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REBUTTAL EXHIBIT 1

April 8, 2019 email from BNSF's Travis Thowe
(BNSF-STR000398)



CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF's Rebuttal Statement* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Tara Woods
Tara Woods

Counsel for BNSF Railway Company

June 11, 2026