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July 7, 2026

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

Re: Docket No. FD 36873, *Union Pacific Corp., et al. - Control - Norfolk Southern Corp., et al.*

Dear Chief of Case Administration:

Enclosed for e-filing by Union Pacific Corporation, Union Pacific Railroad Company, Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively, "Applicants"), in the referenced proceeding is Applicants' first submission in response to the Board's Decision No. 21, served May 28, 2026, and accompanying workpapers, as well as an index identifying the workpapers' confidentiality designations.

Applicants are filing "HIGHLY CONFIDENTIAL," "CONFIDENTIAL," and "PUBLIC" versions of their submission. The "HIGHLY CONFIDENTIAL" AND "CONFIDENTIAL" versions and workpapers have also been made available via Covington's Kiteworks FTP site to individuals who have executed the appropriate undertakings to the Protective Order. Other individuals may obtain copies by contacting Caroline Harrison at charrison@cov.com and Charlotte Krovoza at ckrovoza@cov.com.

Please contact me with any questions.

Sincerely,

/s/ Michael L. Rosenthal

Michael L. Rosenthal

Attorney for Union Pacific Corporation and Union Pacific Railroad Company

cc: ALJ Soulikias
All Parties of Record

REDACTED VERSION – TO BE PLACED ON PUBLIC RECORD

UP-68/NS-66

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

APPLICANTS' FIRST SUBMISSION IN RESPONSE TO DECISION NO. 21

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July 7, 2026

TABLE OF CONTENTS

I. TRRA 2

A. Introduction 2

B. Specific Responses 6

TRRA-1 6

TRRA-2 13

TRRA-3 33

II. KCT 38

A. Introduction 38

B. Specific Responses 42

KCT-1 42

KCT-2 43

KCT-3 46

III. TTX 47

A. Introduction 47

B. Specific Responses 52

TTX-1 52

TTX-2 59

TTX-3 60

In this document, Highly Confidential material is enclosed in double braces, and Confidential material is enclosed in single braces. Highly Confidential and Confidential material is redacted from the public version of document filed at the Board.

Applicants make this initial submission in response to the Board's Decision No. 21, served on May 28, 2026. Applicants are committed to responding fully to the Board's requests for supplemental information in Decision No. 21 on a rolling basis, and they welcome a transparent, good faith, and fact-based process that a proceeding of this importance demands.

In this initial submission, Applicants address the Board's requests related to the Terminal Railroad Association of St. Louis ("TRRA"); Kansas City Terminal Railway ("KCT"); and TTX Company ("TTX"). The proposed transaction will not lead to competitive or operational concerns with respect to any of these entities, each of which has long-standing, independent governance structures in place to ensure that they will continue to operate in an efficient and non-discriminatory manner. As a result, even if Applicants were to control any of these entities, they would continue to provide their fundamentally pro-competitive services to all of their customers.

Nevertheless, Applicants have provided multiple alternative concessions for ensuring the combined company will not control these entities. Regarding TRRA, Applicants have included alternatives that do not depend upon the cooperation of any other TRRA owner. Applicants also provide a proposed procedural schedule for a public review of those alternatives. With respect to KCT, Applicants would not acquire control of KCT in an unconditioned merger, but they confirm there would be no impediment to a divestiture condition, should the Board conclude a divestiture remedy is necessary. With respect to TTX, Applicants have identified practical

solutions for implementing their commitment to divest the combined company's ownership of TTX to 49 percent.

Finally, Applicants describe below why neither the proposed transaction nor their potential divestment options would affect their financial obligations to, or the continued viability of, TRRA, KCT, or TTX.

Applicants intend to provide the remainder of their responses to Decision No. 21 on or before July 27, 2026. Those responses will address the Board's remaining requests for supplemental information, including those bearing directly on the substantial public benefits of the proposed transaction and why the merger satisfies the statutory public-interest standard.

I. TRRA

A. Introduction

In the Amended Application, Applicants offered, as a concession, to condition consummation of the UP/NS merger on their divesting or otherwise relinquishing control of sufficient ownership and governance rights in TRRA such that UP/NS will not control TRRA (the "TRRA Commitment").[1] Given TRRA's structure and objectives as described more fully below, ensuring Applicants will not control TRRA would be a straightforward matter if TRRA's other owners would cooperate. Unfortunately, the other owners are using TRRA as a pawn in their efforts to defeat the proposed UP/NS merger. Applicants are not seeking a windfall—or even remuneration—in connection with their TRRA Commitment; as described below, they are proposing to divest the

[1] *See* Amended App., Vol. 1 at 30–32, 77–79.

NS shares for no consideration (or nominal consideration, such as $1), and to retain NS's obligations related to a guaranty regarding certain financing for repairs to TRRA's Merchants Bridge. The Board cannot credit claims by the other owners that UP/NS's control of TRRA would create competitive harm while they simultaneously seek to stymie Applicants' efforts to avoid such control. If any of these other owners were actually concerned about the competitive effects of increased ownership, they would welcome proposals to address those concerns.

The Board should be aware of the measures that the other TRRA owners have taken to thwart resolution of TRRA ownership while simultaneously criticizing that ownership. Over six months ago, in January 2026, Applicants started their efforts to cooperatively address the other owners' purported concerns. UP's designated board members asked TRRA's corporate secretary to call a special meeting of TRRA's board to discuss UP's proposal that TRRA's other owners acquire NS's shares subject to Board approval of the proposed transaction. TRRA's corporate secretary issued a notice on February 4, 2026, for a meeting to be held on February 17, 2026.[2] Notwithstanding that TRRA's independent, outside counsel confirmed that both the notice and the purpose were proper, none of the other owners showed up to the meeting.[3]

[2] *See* Workpaper "TRRA Notice of Special Meeting of Shareholders & Directors (UP) 02.4.2026.pdf."

[3] *See* Workpaper "Hirsh (TRRA counsel) Letter to Bowling (BNSF counsel) 02.14.2026.pdf."

In the months since that initial proposed meeting, Applicants have discussed TRRA-related issues with some of the other owners as part of confidential and privileged settlement communications. Applicants also engaged with TRRA's independent management and its outside counsel to discuss potential modifications to TRRA's governance structure that would ensure UP/NS would not control TRRA.

In the Amended Application, Applicants described the mechanics of several potential means of fulfilling their TRRA Commitment, including the specific proposal discussed with TRRA's management.[4] Applicants would welcome a decision by the Board to immediately institute a proceeding to address the sufficiency of their proposals, including the additional proposals contained herein, for ensuring that UP/NS will not control TRRA.

Applicants have a strong interest in TRRA's viability, and they will continue to have a strong interest in TRRA's viability post-merger. Even after UP/NS improves service to customers by rerouting certain UP-NS traffic that historically has been interchanged with TRRA, the combined railroad will depend on TRRA to service significant needs.

TRRA, a Missouri corporation, is an independently managed and operated terminal railroad company. TRRA was created in 1889. Its basic purpose is to furnish terminal facilities and services in the St. Louis area to its owners and other users on a non-discriminatory basis. All six Class I railroads can use TRRA to interchange

[4] Amended App., Vol. 1 at 30–32; *id.* at 402, Verified Statement of Katherine N. Novak, ¶¶ 71–72.

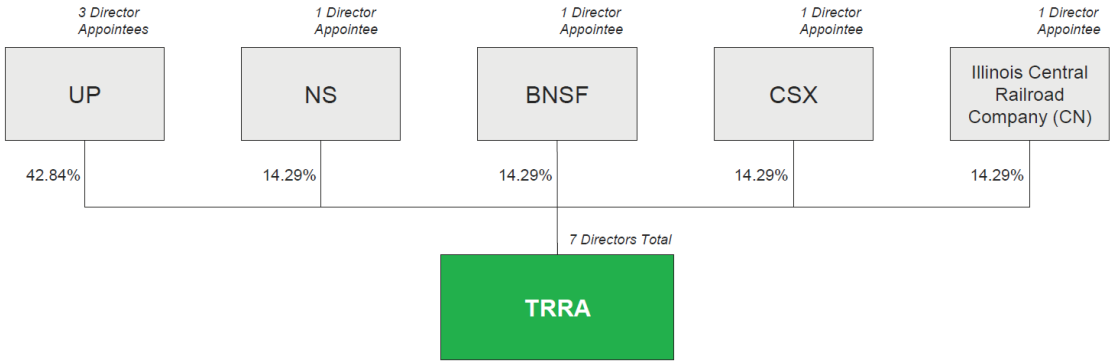
traffic in the St. Louis area. TRRA also performs switching to provide access to certain shippers in the St. Louis area. TRRA owns and operates the Merchants Bridge, the MacArthur Bridge, a rail switching facility in Madison, Illinois, and railroad lines that run through St. Louis and through Madison and St. Clair Counties in Illinois.

TRRA is based in St. Louis, and it is subject to Missouri corporate law. TRRA maintains its own headquarters and has approximately 215 employees. It has an independent management team that runs the company's day-to-day operations. TRRA's management team includes a president (Brent Wood), treasurer (Charles Cioffi), corporate secretary (Kelly Gibbons), general manager (Adam Mahlandt), chief of infrastructure and business development (Eric Fields), director of labor relations (Brad Ragland), and director of human resources (Jessica Kasten). It has outside legal representation in connection with the proposed transaction, and it is not beholden to Applicants or to any other subset of its owners. Indeed, TRRA is bound by the terms of its governance documents to treat not only each of its owners equally, but also any other railroad seeking to use its services.[5]

UP currently owns 42.84 percent of TRRA's shares. NS, BNSF, CSX, and Illinois Central Railroad (which is owned and operated by CN) each own approximately 14.29 percent of TRRA's shares. TRRA's board currently consists of seven voting directors, with three appointed by UP and one each appointed by NS, BNSF, CSX, and CN. In addition, TRRA's president serves as an ex-officio, non-voting director.

[5] *See* Workpaper "TRRA Operating Agreement.pdf," ¶¶ XVI, XIX(2).

Current Ownership Structure



In the sections below, Applicants respond to the Board's specific requests in Decision No. 21 with respect to Requests TRRA-1, TRRA-2 and TRRA-3.

B. Specific Responses

TRRA-1 Explain Applicants' proposal for receiving Board review and confirmation that any divestiture has been sufficient to avoid legal control requiring Board authority, such that any express condition requiring divestiture before consummation has been satisfied.

Applicants would welcome a decision by the Board to immediately institute a proceeding to address the sufficiency of Applicants' proposals for satisfying their TRRA Commitment. In the Amended Application, Applicants described three main options for divesting shares and board seats sufficient to avoid control of TRRA:

a. Divesting NS's shares and the attendant NS board seat to one or more existing owners of TRRA;

b. Transferring NS's shares plus one UP share to TRRA and amending the TRRA governing documents to modify the composition of the board of directors; and

c. Divesting NS's shares and the attendant NS board seat to a railroad organized under the laws of the United States or Canada that is not an existing owner of TRRA.

These options, as well as two additional options that Applicants have developed, are discussed below in TRRA-2.

Applicants believe a Board declaration in advance of a decision on the merits of the primary transaction that Applicants' divestiture proposals, or certain of them, if carried out, would satisfy any express divestiture condition would increase the likelihood that Applicants and TRRA's other owners cooperatively resolve the control issue.

The Board can readily evaluate the sufficiency of Applicants' proposals for satisfying their TRRA Commitment. "The kind of control contemplated by the statute is the power to manage the day to day affairs of the entity assertedly controlled."[6] No one has ever asserted (or could assert) that UP, with its minority ownership (42.84 percent) and board representation rights (3 of 7 director positions), has legal control over TRRA requiring Board authority. None of Applicants' proposals would give UP/NS greater rights with respect to TRRA than UP currently has. The Board should thus be able to conclude that divestiture consistent with any of Applicants' proposals would be sufficient to prevent UP/NS from obtaining legal control of TRRA requiring Board authority.[7]

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[6] *Declaratory Order—Control—Rio Grande Indus., Inc.*, FD 31243, at 3 (ICC served Aug. 25, 1998); *see also Canadian Nat'l Ry., et al.—Control—Illinois Cent. Corp., et al.*, 4 S.T.B. 122, 146 (1999).

[7] That determination also would comport with general corporate law principles, which do not impute control to a shareholder with only minority ownership and board representation rights absent "actual control of corporation conduct." *Kahn v. Lynch Communication Systems, Inc.*, 638 A.2d 1110 (Del. 1994); *see also, e.g.*, *In re Cysive, Inc. S'holders Litig.,* 836 A.2d 531, 551–53 (Del. Ch. 2003) (stockholder had controlling interest where he dominated the board and directed its decision-making

As discussed above, TRRA is an independent company with an independent management team that runs the company's day-to-day operations. Although TRRA's management team is appointed by and reports to TRRA's board of directors, who are in turn appointed by TRRA's owners, the management team has broad discretion to manage the company's day-to-day affairs.[8] None of Applicants' proposals would affect the TRRA management team's management of TRRA's day-to-day affairs.

In addition, none of Applicants' proposals would provide UP/NS more rights, as a shareholder or through board representation, than UP currently possesses. Under Missouri corporate law, shareholders play only a limited role in directing a company's day-to-day affairs: they are generally involved in corporate approvals only with respect to extraordinary transactions, such as amending the articles of incorporation, approving the sale of substantially all of the corporation's assets, or dissolving a corporation.[9] Such transactions generally require the approval of a majority of the shareholders.

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process). It also would comport with how the Securities and Exchange Commission defines control: "the power to direct or cause the direction of the management and policies of [the company]." 17 C.F.R. § 240.12b-2.

[8] *See* Workpaper "Policy Governing the Authority Granted to TRRA Management.pdf."

[9] *See* 25 Philip G. Louis, Jr, *Mo. Prac., Business Organizations* § 18.7 (2d ed.) (explaining that "shareholders are normally involved only in extraordinary type transactions such as amending the articles of incorporation, approving the sale of substantially all of the property and assets of the corporation, approving a merger or consolidation or dissolving the corporation"); *see also id.* § 18.8 (providing a list of actions for which shareholders are granted powers to approve or disapprove with citations to relevant Missouri statutes).

Similarly, while the property and business of a corporation are controlled and managed by the board of directors,[10] under Missouri law[11] and TRRA's By-Laws,[12] board actions generally require the approval of a majority of TRRA's board of directors. As a result, UP cannot unilaterally approve or block any action requiring majority shareholder or board approval. For board matters, UP can block actions requiring a three-fourths supermajority approval (e.g., calling capital from owners and capital expenditures over certain designated thresholds),[13] and UP (and all other TRRA owners) can block actions requiring unanimous approval (e.g., changing rates or fees).[14] As discussed below in response to Request TRRA-2, none of the Applicants' proposals would give UP/NS greater rights regarding shareholder or board actions, and UP/NS will simply maintain UP's existing rights regarding board actions requiring a three-fourths supermajority approval or unanimous approval. Particularly in the context of a terminal railroad, these voting provisions do not create

[10] *See* 25 Philip G. Louis, Jr, *Mo. Prac., Business Organizations* § 18.7 (2d ed.) (explaining that "The Corporation Act provides that '[t]he property and business of a corporation shall be controlled and managed by a board of directors.'").

[11] Mo. Ann. Stat. § 351.325 (West) ("A majority of the full board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.").

[12] *See* Workpaper "TRRA By-Laws.pdf," Section VI.

[13] *See* Workpaper " TRRA Operating Agreement.pdf," ¶ IX; Workpaper "TRRA By-Laws.pdf," Section VI.

[14] *See* Workpaper "TRRA Merchants Bridge Rehabilitation Agreement.pdf," Section 5.

control that requires Board authority; rather, they reflect the terms of the business arrangement that allowed multiple railroads, including competitors, to conclude their independent interests were sufficiently protected that they could join together to create TRRA.[15]

Furthermore, TRRA's basic governance documents contain provisions that would preclude UP/NS, or any other railroad, from exercising their ownership or governance rights to disadvantage TRRA's other owners[16]—or even non-owners who

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[15] Although older agency precedent discusses the concept of "negative control," more recent cases recognize that the right to veto certain matters that joint owners have agreed to make subject to a supermajority requirement does not constitute control over a company's day-to-day affairs. *See, e.g.*, *Declaratory Order—Control—Rio Grande Indus.*, FD 31243, 1988 WL 224606, at *3 (ICC served Aug. 11, 1988). That is also consistent with general principles of corporate law, which do not impute control to minority owners notwithstanding that such owners typically have such protections. *See supra* n. 7.

Indeed, the Board and its predecessor have frequently found that 50% owners of terminal railroads and similar cooperative ventures between railroads do not have legal control over the jointly owned entity, even though the owners can effectively veto any transaction requiring a majority vote. *See, e.g.*, *Burlington Northern*, 366 I.C.C.2d at 866; *Grupo Mexico, S.A.B. de C.V—Acquis. of Control Exemption—CG Ry.*, FD 36780, at 2 n.3 (STB served Aug. 13, 2024); *cf.*, *Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R.,* FD 36836 at 24 n.20 (STB served Apr. 6, 2026) ("Under a traditional approach that maintains the status quo, a denial of control here, with NS divesting sufficient stock so that it no longer controls NPBL, would result in two owners with veto power to refuse changes to NPBL switching rates and would leave CSXT in the same situation it is in now.").

[16] *See* Workpaper "TRRA Operating Agreement.pdf," ¶ XVI, which precludes TRRA from discriminating in favor of any of the owners:

{

use services provided by TRRA[17]. As a result, Applicants' post-merger (minority) interest and board representation in TRRA will not have adverse competitive impacts.

None of Applicants' proposals would allow UP/NS to alter these basic protections in TRRA's Operating Agreement that ensure TRRA serves a neutral, pro-competitive function.[18]

Applicants expect the Board will solicit comments from other parties regarding the sufficiency of Applicants' proposals. Applicants urge the Board to establish a procedural schedule that allows it to address the sufficiency of the proposals substantially before ruling on the merits of the primary application. Applicants believe such timing will: encourage parties to reach a negotiated resolution; allow Applicants time to adjust their proposals (if necessary) and prepare any required

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See also id., ¶ XVII (providing for arbitration of disputes regarding the rights and duties of companies using TRRA using a panel of three disinterested persons).

[17] *See id.,* ¶ XIX(2), which requires TRRA to provide equal treatment to non-owners:

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[18] Indeed, TRRA's Operating Agreement is specifically structured to ensure TRRA serves a neutral, pro-competitive function. *See United States v. Terminal R.R. Ass'n of St. Louis*, 224 U.S. 383, 411–12 (1912) (ordering changes to operating agreement).

documentation for the transaction; and allow Applicants to notify the Board which proposal they intend to adopt before the Board serves its decision on the merits, so such decision can incorporate any merger conditions necessary to effectuate the selected approach.

Applicants suggest an appropriate schedule would begin on the date the Board establishes a schedule for consideration of the primary application (Day 1) and proceed as follows:

Day 1	Board seeks comments on proposals described below in Applicants' response to Request TRRA-2.
Day 20	Comments due.
Day 35	Applicants' reply to comments due.
Day 90	Board determination due.

Applicants would notify the Board of their selected approach at least 30 days before the scheduled due date for the Board's decision on the merits of the primary application. In its merits decision, the Board should require Applicants to file a notice that the divestiture has been completed in accordance with the selected proposal when Applicants file their notice of consummation of the primary transaction.[19]

[19] The Board could also require Applicants to file other specific documentation regarding the divestiture, depending on which divestiture approach is selected.

TRRA-2 Provide additional details regarding TRRA-related corporate documents that may affect the implementation of Applicants' proposal to divest shares and Board seats sufficient to avoid majority control by Applicants. For each such document, explain what changes would be required, and whether in Applicants' view such changes must be pursued under state law or whether preemption under 49 U.S.C. 11321(a) may apply.

In the Amended Application, Applicants described three main options for divesting shares and board seats sufficient to avoid control of TRRA:

a. Divesting NS's shares and the attendant NS board seat to one or more existing owners of TRRA ("Option A");

b. Transferring NS's shares plus one UP share to TRRA and amending the TRRA governing documents to modify the composition of the board of directors ("Option B");

c. Divesting NS's shares and the attendant NS board seat to a railroad organized under the laws of the United States or Canada that is not an existing owner of TRRA ("Option C"); and

Applicants have developed two additional options:

d. Transferring NS's shares to a separate, special purpose entity designed specifically to hold the NS shares in a manner that would ensure Applicants do not increase their share voting rights or board representation at TRRA ("Option D").

e. Agreeing to a condition requiring UP/NS to (i) vote a number of UP/NS shares equal to the number of former-NS shares in accordance with the majority of the other TRRA owners, and (ii) appoint a director to the former NS board seat who is obligated to vote in accordance with the majority of the other directors (excluding UP/NS's other directors). ("Option E").

Each of these options presents a viable path forward to avoid UP/NS obtaining control of TRRA. Applicants intend to structure their divestiture so it occurs simultaneously with the consummation of the merger so Applicants would never, for practical purposes, control TRRA.

Applicants' preferred alternatives are Options A, B, or C. Applicants are focused on implementing one of those options. However, if Applicants cannot implement one of those options, Applicants would implement Option D or E.

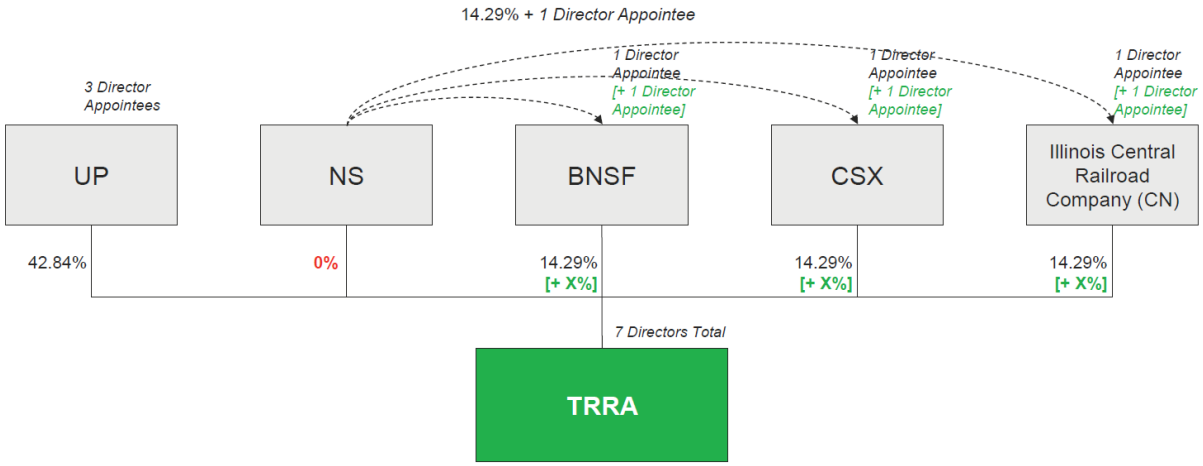
In the sections below, Applicants describe the corporate documents that may affect the implementation of Applicants' proposals and any changes to those documents that would be required.[20] Applicants also describe whether such changes must be pursued under state law or whether preemption under 49 U.S.C. § 11321(a) ("11321 Preemption") may apply.

Before addressing each of the outlined options separately, Applicants note that they all are consistent with the following TRRA-related corporate documents: TRRA's Articles of Incorporation, By-Laws, and Operating Agreement—no changes to any of these documents would be required, except as specifically noted below when discussing a specific option. None of the documents precludes transfers of shares (as described more fully with respect to Option A, below, but applicable to Options B, C, and D, as well); the Operating Agreement provides that other railroad companies

[20] Applicants describe the substantive changes, if any, that would be required to the relevant corporate documents. Applicants do not describe each and every conforming change (e.g., removing references to NS) that would be addressed in connection with such changes or in the ordinary course. UP/NS would ask the Board to impose a merger condition requiring the current UP-appointed directors and NS-appointed director to call a special meeting of the directors and vote in favor of any such conforming changes that may be necessary.

may become members of TRRA;[21] and the By-Laws' provision regarding election of directors contemplates that the right to elect directors is based on share ownership.[22]

1. Option A: Divesting NS shares and attendant NS Board seat to an existing owner of TRRA



Option A would be the most preferable option, but requires an existing TRRA owner agree to acquire the NS TRRA shares. As part of the arrangement, UP/NS would transfer the NS shares to the acquiring railroad for no consideration (or nominal consideration, such as $1), and would indemnify the acquiring railroad for assuming NS's performance and observance of the covenants and conditions of the Merchants Bridge Guarantee (the "Bridge Indemnity"), which is discussed below. If

[21] *See* Workpaper "TRRA Operating Agreement.pdf," ¶ XIX(1).

[22] *See* Workpaper "TRRA By-Laws.pdf," Section VIII. Applicants additionally note, for completeness, that under the By-Laws, directors are elected at the annual meeting of shareholders. However, if a vacancy occurs from any cause, the shareholder who elected the departed director has the right to name a director to fill the vacancy. To the extent necessary to implement an option (Options A, C, and D), UP/NS would ask the Board to impose a merger condition requiring the NS-appointed director to resign and requiring UP/NS to appoint an individual selected by the party acquiring NS's shares as a director to fill the vacancy until the next annual meeting of shareholders.

Applicants adopt Option A, UP/NS would ask the Board to impose a merger condition requiring UP/NS to provide the Bridge Indemnity. Under Option A, UP/NS's share ownership and board representation would remain unchanged in relationship to UP's current share ownership and board representation.

NS's TRRA Stock Certificate. Applicants note that NS's Stock Certificates contain language (the "Certificate Legend") stating shares are "not transferable except back to [TRRA]."[23] However, Applicants do not view such language as a restriction on transfer, so no change to the language would be required. Properly understood, the language requires only that TRRA be used as a clearinghouse for transfers. When TRRA was originally created in 1889, "[o]wnership of securities was traditionally evidenced by possession of the certificates, and changes were accomplished by delivery of the certificates."[24] Prior to the advent of the modern depository system in the 1970s, the transfer of securities was "a complicated, labor-intensive process" in which "[e]ach time securities were traded, the physical certificates had to be delivered from the seller to the buyer, and in the case of registered securities the certificates had to be surrendered to the issuer or its transfer

[23] *See, e.g.*, Workpaper "Norfolk Southern TRRA Stock Certificate.pdf."

[24] 4 William D. Hawkland et al., *Uniform Commercial Code Series* art. 8 note, prefatory note pt. I.A; *see also Brinkerhoff-Farris Tr. & Sav. Co. v. Home Lumber Co.*, 24 S.W. 129, 132 (Mo. 1893) (stating that, absent a contrary legislative restriction, "the transfer is complete on delivery of the certificate with power to transfer, and the payment of the purchase money"); *Mitchell v. Newton Cnty. Bank*, 282 S.W. 729, 732 (Mo. Ct. App. 1926) (holding that "plaintiff became vested with the absolute, legal title to the stock upon receipt of the certificates properly indorsed").

agent for registration of transfer."[25] In short, the transferability language is properly construed simply to require that any transfer take place through TRRA.

In addition, if the Certificate Legend was intended as a transfer restriction, such restriction would be per se invalid because absolute restraints on alienation are invalid under Missouri law.[26] In *Witte v. Beverly Lakes Investment Company*, the Missouri Court of Appeals considered a less onerous set of restraints on the transfer of shares, which permitted transfers if the other shareholders and the company consented.[27] Yet, the Court found even those less onerous restraints to be suspect because they "reduce[d] a shareholder to a corporate captive."[28] The restrictions would be even more severe here, if the Certificate Legend were interpreted to prohibit all transfers to any party but TRRA. Applicants therefore believe they would be free to enter into an agreement with any other TRRA owner that would effectuate a transfer of the NS TRRA shares to them, properly facilitated by the TRRA.

Although Applicants do not believe the Certificate Legend would preclude the transfer of NS's shares to another TRRA owner, if the Board conditions consummation of the UP/NS merger on Applicants' divestiture of NS's TRRA shares

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[25] Hawkland, *supra*, prefatory note pt. I.A.

[26] *Witte v. Beverly Lakes Inv. Co.*, 715 S.W.2d 286, 293 n.4 (Mo. Ct. App. 1986) ("Only reasonable restrictions on transfer of corporate shares are valid, however; absolute restrictions are per se invalid.") (emphasis added); *State, at Inf. of Huffman v. Sho-Me Power Co-op.*, 204 S.W.2d 276, 280 (Mo. 1947) (stating that restrictions on the transfer of shares "cannot completely restrain a transfer").

[27] *Witte*, 715 S.W.2d at 293 n.4.

[28] *Id.* In consideration of concerns regarding restrictions on free alienability, the court ultimately construed the restrictive language not to apply to the transfer at issue. *See id.* at 293–94.

to another TRRA owner, then 11321 Preemption would exempt Applicants from the operation of state law—including a contractual anti-transfer provision—that might otherwise prevent them from consummating the approved merger.[29]

Merchants Bridge Guarantee. The final TRRA-related corporate document that may affect the implementation of Option A is the Railroad Guarantee Agreement, dated as of November 21, 2023, relating to the financing of certain repairs to the Merchants Bridge (the "Merchants Bridge Guarantee").[30] The arrangement is discussed in more detail below in response to Request TRRA-3. For purposes of responding to Request TRRA-2, the arrangement is relevant because Sections 5.03 and 7.04 of the Merchants Bridge Guarantee contain restrictions on transfers of TRRA shares without bondholder consent unless any such transfer is considered a "Railroad Permitted Transfer."[31]

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[29] *See, e.g.*, *Norfolk & Western R.R. v. Train Dispatchers*, 499 U.S. 117 (1991) (the immunity provision extends not only to laws but also to contracts); *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147, at 19 (STB served Mar. 10, 2009) ("This agency has interpreted section 11321 as giving carriers the right to abrogate existing contractual terms if necessary."); *CSX Corp.—Control & Merger—Conrail Inc.*, FD 33220, at 5 (STB served Jan. 9, 1997) ("A person cannot effectively preclude our approval from going forward simply by entering into a contract that purports to prevent all alternatives to its own preferred outcome.").

[30] *See* Workpaper "TRRA Merchants Bridge Guaranty Agreement.pdf."

[31] Under the Merchants Bridge Guarantee, a "Railroad Permitted Transfer" means:

{

The transaction contemplated by Option A fits squarely into the definition of a "Railroad Permitted Transfer," and no changes to the Merchants Bridge Guarantee would be required, because {

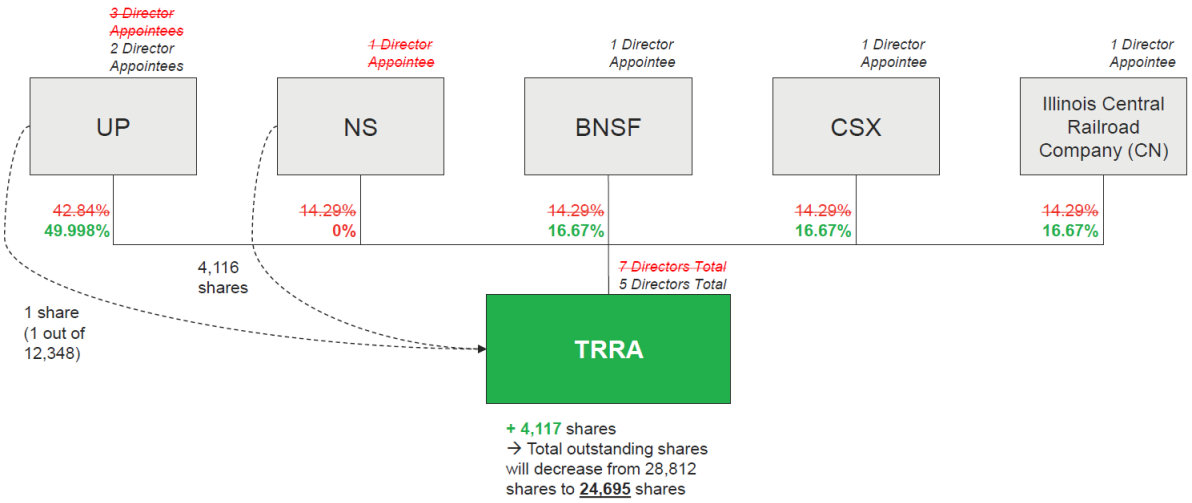
}

Id. at 4.

[32] As noted above, UP/NS would provide the Bridge Indemnity.

}

2. Option B: Transferring NS and UP shares to TRRA with amendments to governing documents



Option B is a proposal developed through negotiations between TRRA management and UP, each with the assistance of independent outside counsel. TRRA management believes that this proposal, if implemented, would result in the combined UP/NS not controlling TRRA and would not affect TRRA's status as an impartial and neutral agent of all TRRA's owners and users.[33] The core of the proposal includes:

- 4,117 UP/NS shares to be transferred back to TRRA for no consideration (or nominal consideration, such as $1), so UP/NS's ownership is under 50 percent.[34]

[33] TRRA has made clear that TRRA's management reserves all rights and takes no position at this time on the merits of the proposed transaction.

[34] This transfer would encompass 4,116 legacy NS shares and one legacy UP share.

- Reform of TRRA's board composition so UP/NS has 2 voting directors, and each of BNSF, CN, and CSX has 1 voting director (with TRRA's president remaining the presiding, non-voting director); and
- Governing documents to be amended to provide that no owner may:
  - own 50 percent or more of TRRA's outstanding stock, except that if there are only two owners of TRRA stock each may hold exactly 50 percent;
  - appoint 50 percent or more of TRRA's voting directors, except that if there are only two owners of TRRA each may appoint exactly 50 percent of voting directors.

Under Option B, UP/NS's share ownership would increase (to 49.998 percent) and its board representation would decrease (to 40 percent) relative to UP's current share ownership and board representation. The changes would not increase UP/NS's ability to cause or block shareholder or board actions as compared to UP's current non-controlling position. UP/NS would also commit to guaranteeing NS's obligations under the Merchants Bridge Guarantee.

TRRA's By-Laws. Option B would require changes to TRRA's By-Laws, which provide for seven voting directors with UP having three directors and NS having one director.[35] TRRA's By-Laws would also require amendment to establish a 50 percent limitation on an owner's ownership of TRRA's outstanding stock and right to appoint voting directors.

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[35] TRRA's Articles of Incorporation, as amended, provide that the { } Workpaper "TRRA Amendment of Articles of Incorporation.pdf." TRRA's Operating Agreement, as amended, { } provides that { } Workpaper "TRRA Amendment to Operating Agreement.pdf."

If Applicants adopt Option B, UP/NS would ask the Board to impose a merger condition requiring the current UP-appointed directors and NS-appointed director to call a special meeting of the directors[36] and vote in favor of amendments of the By-Laws necessary to implement the changes to the By-Laws described above and to approve TRRA's redemption of the 4,117 TRRA shares.[37] Applicants believe the UP- and NS-appointed directors could permissibly participate in the vote because the Board's approval of Option B in connection with its authorization of the UP/NS merger, in combination with UP/NS giving up voting rights while continuing to guarantee NS's obligations under the Merchants Bridge Guarantee, would establish the fairness of the transaction to TRRA.[38] Applicants further believe that 11321

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[36] *See* Workpaper "TRRA By-Laws.pdf," § IV ("Special Meetings").

[37] *See id.* § X ("By-Laws, Amendments").

[38] *See* Mo. Ann. Stat. § 351.327 (West):

> 1. No contract or transaction between ... a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:
>
> ...
>
> > (3) The contract or transaction is fair as to the corporation as of the time it is authorized or approved by the board of directors, a committee thereof, or the shareholders.
>
> 2. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee which authorizes the contract or transaction.
>
> ...
>
> 4. The intent of this section is not only to provide against the voiding or voidability of a contract or transaction, but rather to set forth as well the

Preemption would exempt Applicants from the operation of state law as needed to effectuate this condition of the Board's approval.

NS and UP TRRA Stock Certificates. A transfer of NS's and UP's shares back to TRRA is expressly permitted by the Certificate Legend.[39]

Merchants Bridge Guarantee. Although a transfer of shares to TRRA would not fit squarely within the "Railroad Permitted Transfer" definition, UP/NS would commit to guaranteeing NS's obligations under the Merchants Bridge Guarantee[40] (and UP would retain its own obligations notwithstanding its transfer of one share), and Applicants would ask the Board to impose a merger condition holding them to that commitment. Applicants believe the bondholder beneficiaries of the guarantee could not reasonably refuse to consent to the transfer of NS's shares to TRRA under these circumstances.[41] However, if the Board conditions consummation of the UP/NS merger on Applicants' divestiture of TRRA shares to TRRA, then 11321 Preemption would exempt Applicants from the operation of state law—including the Merchants

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substantive law on the methods by which a conflict transaction may be regularized to become an arms length transaction.

[39] *See* Workpapers "Norfolk Southern TRRA Stock Certificate.pdf;" "Union Pacific TRRA Stock Certificate.pdf."

[40] *See* Workpaper "TRRA Merchants Bridge Guaranty Agreement.pdf," Art. II.

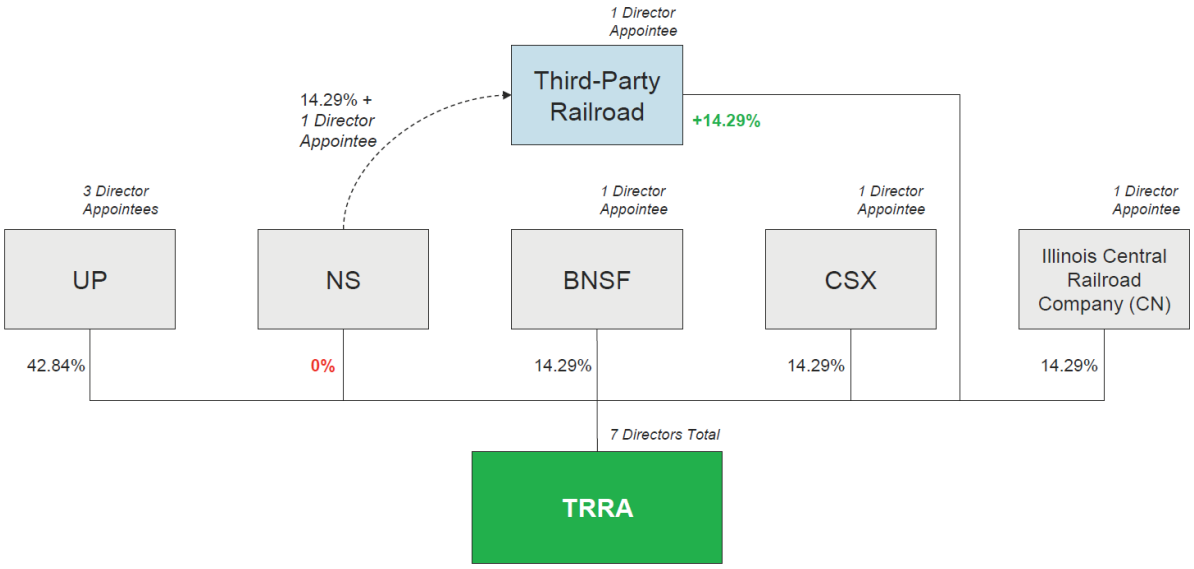
[41] *See id.* Art. VII § 7.04 {

} Further, § 5.03 of the Merchants Bridge Guarantee {

} *Id.* Art. V § 5.03.

Bridge Guarantee's contractual anti-transfer provisions—that might otherwise prevent them from consummating the approved merger.[42]

3. Option C: Divesting NS shares and attendant NS board seat to another railroad that is not an owner of TRRA



Option C would involve divesting NS's shares and attendant board seat to a railroad that is not currently an owner of TRRA. Option C would have the same impact on UP/NS's share ownership and board representation as Option A—that is, UP/NS's share ownership and board representation would remain unchanged in relationship to UP's current share ownership and board representation. Once again, UP/NS would transfer the NS shares to the acquiring railroad for no consideration

[42] *See, e.g.*, *Train Dispatchers*, 499 U.S. at 129–130; *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, at 19; *CSX Corp.—Control & Merger—Conrail Inc.*, at 5.

(or nominal consideration, such as $1), and commit to guaranteeing NS's obligations under the Merchants Bridge Guarantee.[43]

NS's TRRA Stock Certificate. As discussed in connection with Option A, Applicants do not view the Certificate Legend[44] as a restriction on transfer. Any such restriction would be invalid under Missouri law, and in any event, if the Board conditions consummation of the UP/NS merger on Applicants' divestiture of NS's shares to a railroad that is not currently an owner of TRRA, then 11321 Preemption would exempt Applicants from the operation of state law—including a contractual anti-transfer provision—that would prevent them from consummating the approved merger.[45]

Merchants Bridge Guarantee. The transaction contemplated by Option C would fit squarely into the definition of a "Railroad Permitted Transfer" in the same way as the transaction contemplated by Option A, except that the recipient of the NS TRRA shares would need to {

[43] That is, UP would indemnify the acquiring railroad for assuming NS's performance and observance of the covenants and conditions of the Merchants Bridge Guarantee. If Applicants adopt Option C, UP/NS would ask the Board to impose a merger condition requiring UP/NS to provide such an indemnification.

[44] *See, e.g.*, Workpaper "Norfolk Southern TRRA Stock Certificate.pdf."

[45] *See, e.g.*, *Train Dispatchers*, 499 U.S. at 129–130; *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, at 19; *CSX Corp.—Control & Merger—Conrail Inc.*, at 5.

[46] Workpaper "TRRA Merchants Bridge Guaranty Agreement.pdf," at 4 (definition of "Railroad Permitted Transfer").

} Applicants do not foresee any obstacles in complying {

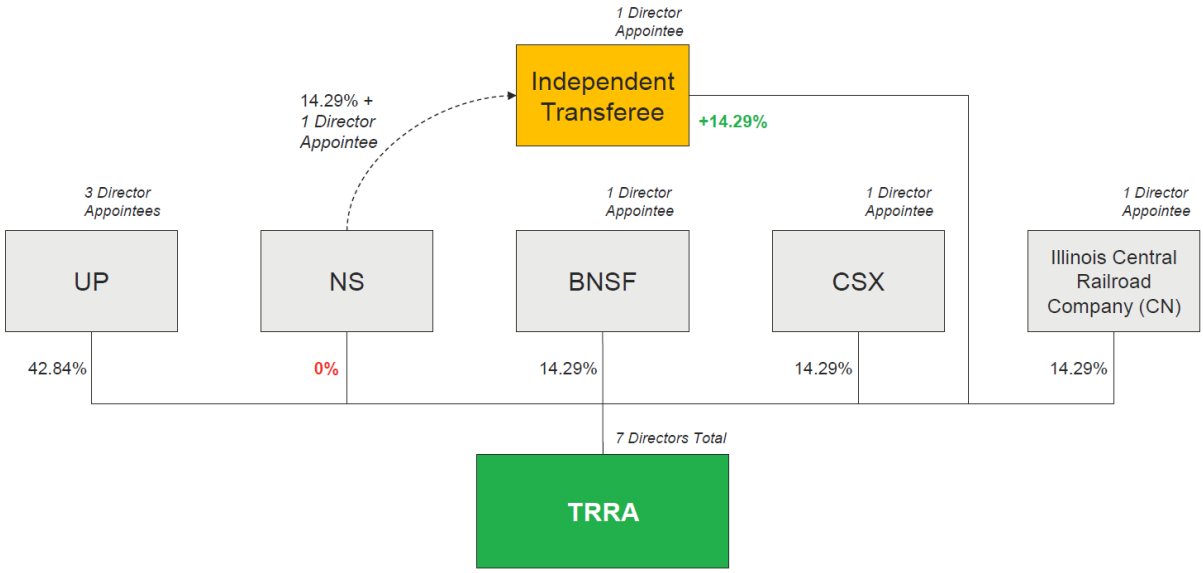
}

However, if the Board conditions consummation of the UP/NS merger on Applicants' divestiture of NS's TRRA shares to a railroad that is not a current TRRA owner, then 11321 Preemption would exempt Applicants from the operation of state law—including the Merchants Bridge Guarantee's contractual anti-transfer provisions—that might otherwise prevent them from consummating the approved merger.[48]

[47] *See id.* The term Required Holders is defined in the Note Purchase Agreement dated as of November 21, 2023. *See* Workpaper "TRRA Note Purchase Agreement.pdf."

[48] *See, e.g., Train Dispatchers*, 499 U.S. at 129–130; *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, at 19; *CSX Corp.—Control & Merger—Conrail Inc.*, at 5.

4. Option D: Divesting NS's shares to an independent transferee



Applicants developed Option D in the event that no other railroad is willing to acquire NS's shares of TRRA or the Board finds some fault with Options A, B, or C. Under Option D, NS's shares would be transferred to a special purpose entity authorized under applicable state law and designed to hold NS's shares of TRRA in a manner that ensures UP/NS's share ownership and board representation would not increase in relationship to UP's current share ownership and board representation (the "Independent TRRA Transferee").[49] Under Option D, UP/NS would also commit to guaranteeing NS's obligations under the Merchants Bridge Guarantee via the Bridge Indemnity.

[49] Neither the Independent TRRA Transferee nor any affiliate of the Independent TRRA Transferee would have any officer or board member in common or direct business arrangement with UP/NS. Applicants would submit the name(s) of any individuals on the Independent TRRA Transferee's governing body to the Board when they notify the Board of the divestiture approach they intend to adopt, if they adopt Option D.

While the Independent TRRA Transferee does not need to be formed under Missouri law just because TRRA is a Missouri corporation, Applicants note that Missouri law specifically allows for the creation of these types of special purpose entities. By way of example, the General Business Corporation Law of Missouri provides that "shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for any period, without regard to the rule against perpetuities or similar rules."[50] As Missouri corporate treatises note, "the voting trust can be useful in a number of situations."[51] While decision-making here would be left to one or more trustees, their discretion on how to vote would be limited and constrained as described in more detail below. While a voting trust is one of many forms the special purpose entity under this Option D could take and "[s]tatutes governing the voting trust present the most uniform pattern of regulation,"[52] other entity forms, such as a corporation or limited liability company, could be used to accomplish these same objectives, too.[53]

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[50] Mo. Ann. Stat. § 351.246 (West).

[51] 25 Philip G. Louis, Jr, *Mo. Prac., Business Organizations* § 17.10 (2d ed.). *See also*, *e.g.*, https://www.patagonia.com/ownership/ (describing how Patagonia's founder transferred "100% of the company's voting stock to the Patagonia Purpose Trust, created to protect the company's values[.]"); *Is There a Place For a "Purpose Trust" In Ohio, Lee M. Stautberg,* 33 No. 4 Ohio Prob. L.J. NL 7.

[52] 1 *O'Neal and Thompson's Close Corporations and LLCs: Law and Practice* § 4:5 (Rev. 3d ed.).

[53] *See also*, *e.g.*, Del. Code Ann. tit. 12, § 3556 (relating to trusts for noncharitable purposes, i.e., "purpose trusts"); Mo. Ann. Stat. § 456.4-409 (West) (Missouri's "purpose trust" statute).

To ensure UP/NS's influence as a TRRA shareholder does not increase relative to UP's current influence, in any shareholder votes, the Independent TRRA Transferee would be obligated to vote its shares in accordance with the majority of TRRA's other owners, excluding UP/NS. To ensure UP/NS's influence over TRRA's board of directors does not increase relative to UP's current influence, the Independent TRRA Transferee would be obligated to appoint a director who is, in turn, obligated to vote in accordance with the majority of directors appointed by TRRA's other owners, excluding UP/NS. The other owners of TRRA would have rights to enforce the terms of the Independent TRRA Transferee's voting obligations. This arrangement would be irrevocable, except if NS's TRRA shares are subsequently divested to another railroad or transferred back to TRRA, or if a subsequent transaction occurs in which this arrangement could affect control of TRRA.[54]

NS's TRRA Stock Certificate. As discussed in connection with Option A, Applicants do not view the Certificate Legend[55] as a restriction on transfer. Any such restriction would be invalid under Missouri law, and in any event, if the Board conditions consummation of the UP/NS merger on Applicants' divestiture of NS's shares to an Independent TRRA Transferee, then 11321 Preemption would exempt

[54] For example, in a future transaction, this arrangement might need to be altered to ensure a different railroad would not be able to determine the outcome of shareholder or board votes. The governing agreement would contain provisions to ensure that no violation of 49 U.S.C. § 11323 would result from termination of the arrangement.

[55] *See, e.g.*, Workpaper "Norfolk Southern TRRA Stock Certificate.pdf."

Applicants from the operation of state law—including a contractual anti-transfer provision—that would prevent them from consummating the approved merger.[56]

Merchants Bridge Guarantee. Option D raises essentially the same readily surmountable issue under the Merchants Bridge Guarantee as Option B. Although the transfer of NS's shares to an Independent TRRA Transferee would not fit squarely within the definition of a "Railroad Permitted Transfer," UP/NS would commit to guaranteeing NS's obligations under the Merchants Bridge Guarantee via the Bridge Indemnity and would ask the Board to impose a merger condition holding them to that commitment. Applicants believe the bondholder beneficiaries of the guarantee could not reasonably refuse to consent to the transfer of shares to the Independent TRRA Transferee under those circumstances.[57] However, if the Board conditions consummation of the UP/NS merger on Applicants' divestiture of NS's TRRA shares to an Independent TRRA Transferee, then 11321 Preemption would exempt Applicants from the operation of state law—including the Merchants Bridge

[56] *See, e.g.*, *Train Dispatchers*, 499 U.S. at 129–130; *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, at 19; *CSX Corp.—Control & Merger—Conrail Inc.*, at 5.

[57] *See* "TRRA Merchants Bridge Guaranty Agreement.pdf," Art VII § 7.04 {

}

Guarantee's contractual anti-transfer provisions—that would prevent them from consummating the approved merger.[58]

5. Option E: Agreeing to merger conditions imposing voting and director appointment requirements

Applicants developed Option E as a simplified version of Option D—an option that would not require creation of an Independent TRRA Transferee or present any potential issues under any TRRA-related corporate document, including no potential issues under the Certificate Legend or Merchants Bridge Guarantee because there would be no transfer of TRRA shares.

Under Option E, Applicants would ask the Board to condition the merger on Applicants' agreement that UP/NS will (i) vote a number of UP/NS shares equal to the number of former-NS shares in accordance with the majority of other TRRA owners in any future shareholder vote, and (ii) appoint as one of the four directors to which it would be entitled a director who agrees to vote in accordance with the majority of the directors appointed by TRRA's other owners.[59] Although UP/NS's share ownership and board representation would increase relative to UP's current share ownership and board representation, UP/NS's ability to affect the outcome of shareholder or board votes would not increase. The Board condition would apply until and unless UP/NS divests the number of former NS shares to another railroad or

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[58] *See, e.g.*, *Train Dispatchers*, 499 U.S. at 129–130; *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, at 19; *CSX Corp.—Control & Merger—Conrail Inc.*, at 5.

[59] Applicants would be equally willing to adopt an alternative under which UP/NS would be required to appoint a director who is selected by a majority vote of TRRA's other owners, excluding UP/NS.

transfers them to TRRA, or until a subsequent transaction occurs in which this arrangement could affect control of TRRA.[60]

Option E is analogous to a common, well-accepted practice under corporate law in which economic rights are separated from voting rights to preclude a majority shareholder from exercising control of a company.[61] Typically, such arrangements are

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[60] For example, in a future transaction, this arrangement might need to be altered to ensure a different railroad would not be able to determine the outcome of shareholder or board votes.

[61] *See* 1 *O'Neal and Thompson's Close Corporations and LLCs: Law and Practice* § 4:14 (Rev. 3d ed.) ("Shareholders may desire to give voting power to a shareholder disproportionate to ownership, often to provide equal control between two shareholders who own different amounts of shares."); *see also id.* at § 4:23 (Rev. 3d ed.) ("An alternative to a supermajority vote requirement for giving minority shareholders a veto over shareholder action is an arrangement which gives some shares more votes than other shares, either on a particular issue or on all issues to be voted on by shareholders."); *id.* at § 4:2 ("Majority Shareholder Investor Seeking to Assure a Minority of Equal Say or Participation. In many shareholders' agreements a primary objective is to protect the minority shareholder against the power vested in the majority by the principles of centralized control and majority rule and to permit the minority shareholder to obtain membership on the board of directors or some other voice in the management of the corporation."); i*d. at* § 4:3:

> A "pooling" agreement is a simple contract providing that the shareholders will vote their shares as a unit in the election of directors and perhaps on other matters. Under such an arrangement, each shareholder retains title to the shares and the right to vote them; the shareholders merely bind themselves contractually to vote in accordance with a prearranged plan. A shareholders' agreement, however, may do more than merely cover how the shareholders will vote their shares. It may create irrevocable proxies which take away the shareholders' power to vote their shares and vest that power in one or more of the shareholders or in other persons. Further, an agreement may establish a trust or voting trust pursuant to which the shareholders transfer legal title to their shares to trustees, who vote the shares in accordance with the terms of the trust instrument.

established through agreements between the majority shareholder and other shareholders, but a Board-imposed merger condition would have the same binding force as such an agreement.

TRRA-3 Given Applicants' proposed operational changes at the St. Louis Gateway, which include re-routing traffic that historically has been interchanged with TRRA (see, e.g., Rev. Appl. 2-874 (Service Assurance Plan)), provide additional details regarding Applicants' plans and incentives to invest in, and assume the liabilities of, TRRA.

Applicants' proposed operational changes at the St. Louis Gateway have no bearing on Applicants' plans and incentives to invest in, and assume the liabilities of, TRRA. TRRA and its railroad owners have plans and agreements involving repairs to TRRA's Merchants Bridge and TRRA's MacArthur Bridge. The merger will have no effect on those plans and agreements.

At the same time, UP and NS have a strong interest in the viability of the terminal facilities and services provided by TRRA, and UP/NS will continue to have a strong interest in the viability of those facilities and services after the merger. In fact, by most measures, UP/NS will be a significant consumer of TRRA's facilities and services.

As described in the Amended Application, Applicants' most significant operational change in St. Louis involves the interchange of manifest traffic between UP and NS. Currently, UP routes manifest traffic to NS via Alton & Southern Railway ("A&S"). Three times a day, A&S transfers NS-bound traffic to TRRA, which builds trains for NS. In other words, the traffic is handled twice in St. Louis, once by

A&S and once by TRRA.[62] After the merger, rather than route traffic through TRRA, UP/NS will build blocks for north and eastbound traffic using A&S or the UP/NS yard in North Little Rock.[63]

The main beneficiaries of the more efficient post-merger service will be shippers moving traffic from legacy UP-served points in Texas, Louisiana, and Arkansas to legacy NS-served points in the Ohio Valley and the Northeast, who will experience reduced transit times and increased service. Other users of TRRA's terminal facilities will also benefit from increased terminal capacity as these switching and transfer moves are eliminated, and UP/NS builds blocks in North Little Rock and places them on trains that bypass the St. Louis Gateway.[64]

Even with the elimination of inefficient intermediate switching between UP and NS, TRRA will continue to play a critical role in the St. Louis area for UP/NS. UP/NS could not operate through St. Louis or cross the Mississippi River in St. Louis without using TRRA's lines and bridges. UP/NS will also continue to use TRRA's terminal facilities and services to access customer facilities in St. Louis. And UP/NS will continue to use TRRA's facilities and services to interchange traffic with other carriers in St. Louis.[65]

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[62] *See* Amended App., Vol. 2 at 682, Verified Statement of Eric Gehringer and John F. Orr ¶ 165. NS routes UP-bound manifest traffic via A&S, which builds trains for UP. *See id.*

[63] *See id.* at 712.

[64] *See id.* at 701–03.

[65] *See id.* at 713.

In fact, UP/NS would still be a significant consumer of TRRA's facilities and services:[66]

- UP/NS would still be the primary user of TRRA's intermediate switching service. Based on 2023 data, Applicants' Optimized Plan projects UP/NS would use TRRA to perform intermediate switching for approximately {{ }}, as compared with TRRA 2023 data showing intermediate switching of {{ }} for BNSF,{{ }} for CSX, {{ }} for CN, and {{ }} for others.

- UP/NS, and A&S, UP/NS's wholly owned subsidiary, would still be the primary user of TRRA's MacArthur Bridge. In 2023, UP and A&S were the only freight users of TRRA's MacArthur Bridge, using the bridge to cross approximately {{ }}. Applicants' Optimized Plan projects UP/NS traffic over the MacArthur Bridge will initially decrease by approximately {{ }} but Applicants' Growth Plan projects UP/NS traffic over the MacArthur Bridge will ultimately increase compared with pre-merger levels by approximately {{ }}.

- UP/NS would also increase their combined use of TRRA's Merchants Bridge. In 2023, UP and NS used the bridge to cross approximately {{ }}. Applicants' Optimized Plan projects UP/NS traffic over Merchants Bridge will initially decrease by approximately {{ }}, but Applicants' Growth Plan projects UP/NS traffic over Merchants Bridge will ultimately increase compared with pre-merger levels by approximately {{ }}.

- UP/NS would be the second largest user of TRRA's industry switching service. Based on 2023 data, TRRA switching {{ }} for UP and NS combined, compared with {{ }} for BNSF, {{ }} for CSX, {{ }} for CN, and {{ }} for others. Applicants do not expect those numbers would change significantly as a result of the merger.

While UP/NS will continue to have a strong interest in TRRA's viability, Applicants have no plan to invest in or assume the liabilities of TRRA, nor would they

[66] *See* Workpapers "TRRA Financial Statements December 2023.pdf;" "TRRA Post Merger Traffic TRRA-3.xlsx."

be expected to do so. Under well-established corporate law principles, an owner is not responsible for the debts or liabilities of corporations in which it has an ownership stake.[67] Nothing in the proposed transaction would affect those responsibilities, either for Applicants or for any other TRRA owner.

Further, there is no need for any TRRA owner to make plans to invest in TRRA because TRRA's Operating Agreement itself prescribes the mechanism for funding the company's activities, including paying its liabilities and meeting its capital needs. Specifically, the Operating Agreement provides

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[67] *See* Mo. Ann. Stat. § 351.275.1 (West):

> Limitation of shareholder's obligation to corporation or its creditors. — 1. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

[68] *See* Workpaper "TRRA Operating Agreement.pdf," ¶¶ V, VI.

[69] The Operating Agreement includes a provision for requiring owners {

} *See id.*, ¶ VI.

} Consistent with the fiduciary duties of their TRRA board designees, Applicants would support increases to rates and fees that TRRA management established were necessary to cover TRRA's fixed costs and operating and maintenance expenses.[70]

UP, NS, and TRRA's other owners have taken on additional TRRA-related financial obligations in one respect: assisting TRRA to finance certain repairs to the Merchants Bridge. In 2016, TRRA management {

} As discussed in response to Request TRRA-2, Applicants have committed to retaining NS's obligation under the guarantee even if they divest NS's shares of TRRA. In addition, by operation of law, NS, and therefore, the merged UP/NS, would remain responsible for NS's obligations to pay the special usage fee.

[70] Applicants make this point because TRRA's owners agreed, as part of the Merchants Bridge Rehabilitation Agreement (discussed below), {

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Applicants want to be clear that they will not stand in the way of TRRA's ability to cover its fixed costs and operating and maintenance expenses.

[71] *See* Workpaper "TRRA Merchants Bridge Rehabilitation Agreement.pdf." As part of the Merchants Bridge agreement, {

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II. KCT

A. Introduction

As a result of the UP/NS merger, UP/NS will own 50 percent of KCT and elect half of the directors on KCT's board of directors. There has been no suggestion that this ownership stake will harm competition, shippers, or other railroads. To the contrary, BNSF and CPKC—which each addressed KCT in their May 2026 comments on completeness—argued only that this ownership interest constituted control and thus required Applicants to seek Board approval. *See* BNSF-24 at 5; CPKC-19 at 13. Indeed, rather than pointing to any potential harm stemming from the UP/NS 50 percent ownership, CPKC asserted only that UP/NS would have control "even if it does not mean that the controlling entity can dictate every aspect of the organization's day-to-day operations." CPKC-19 at 13.

In any event, UP/NS will not control KCT; rather, KCT will continue to operate "as a joint and cooperative venture."[72] Board precedent establishes that a 50 percent interest in a terminal company does not constitute control when the company's operating agreement assures complete impartiality and the party with the 50 percent interest does not hold a majority on the board of directors, which would be the case here.[73] If the Board were to conclude that control authority is required, it could grant,

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[72] *Burlington Northern, Inc.—Control & Merger—St. Louis-San Francisco Ry. Co.*, 366 I.C.C.2d 862, 866 (1983), *aff'd sub nom. Bhd. of Ry. & Airline Clerks v. Burlington Northern, Inc.*, 722 F.2d 380 (8th Cir. 1983).

[73] *See* Amended App. Vol. 1 at 84 (citing *Burlington Northern*, 366 I.C.C.2d at 866–67 & Apps. B & D); *see also id.* at 85–86 (citing additional cases); *id.* at 85 n.86 (citing additional cases).

sua sponte, an exemption from those prior approval requirements.[74] Alternatively, Applicants would be willing to divest NS's shares in KCT to either or both of KCT's other owners or to another railroad that is not currently an owner, if the Board were to impose such a requirement as a merger condition.

KCT, a Missouri corporation, is an independently managed and operated terminal railroad company. KCT was created in 1906. Its basic purpose is to furnish terminal facilities and services in the Kansas City area to its owners on a non-discriminatory basis. KCT is based in Kansas City, Missouri, and it is subject to Missouri corporate law. KCT maintains its own headquarters and has approximately 19 employees. It has an independent management team that runs the company's day-to-day operations. This team includes a general manager (Brad Peek), a director of finance (Paula Fields), a director of safety and administration (Shawn Lauby), and a director of transportation (Jamie Tanner). While this management team is appointed by and reports to the KCT board of directors, the team has broad discretion to manage the day-to-day affairs of KCT. Currently, KCT's switching operations are performed by Kaw River Railroad under a contract with Kansas City Transportation Company ("KCTL"), a subsidiary of KCT.[75] BNSF maintains most of KCT's tracks under a long-standing arrangement.[76]

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[74] *See id.* at 86 n.87 (citing *Borealis Infrastructure Trust Management, Inc.—Acquis. Exemption—Detroit River Tunnel Co.*, FD 33985, at 6 (STB served Dec. 19, 2001)).

[75] *See generally Kansas City Transp. Co. LLC—Lease and Assignment of Lease Exemption—Kansas City Term. Ry.*, FD 34830 (STB served May 23, 2007).

[76] *See* Workpaper "KCT BNSF Lease & Maintenance Agreement.pdf."

KCT's governing documents ensure that KCT will remain a cooperative venture structured to operate on a non-discriminatory basis and to prevent domination and control by any single owner. In 1909, the founding railroad owners of KCT entered into an operating agreement which, as supplemented and amended, controls the operations of KCT. Under KCT's Operating Agreement, {

[77] Workpaper "KCT Operating Agreement 6.12.1909.pdf," Art. I, § 4.

[78] *Id.*, Art. I, § 5.

[79] *Id.*, Art. III, § 1.

[80] *Id.*

[81] *Id.*

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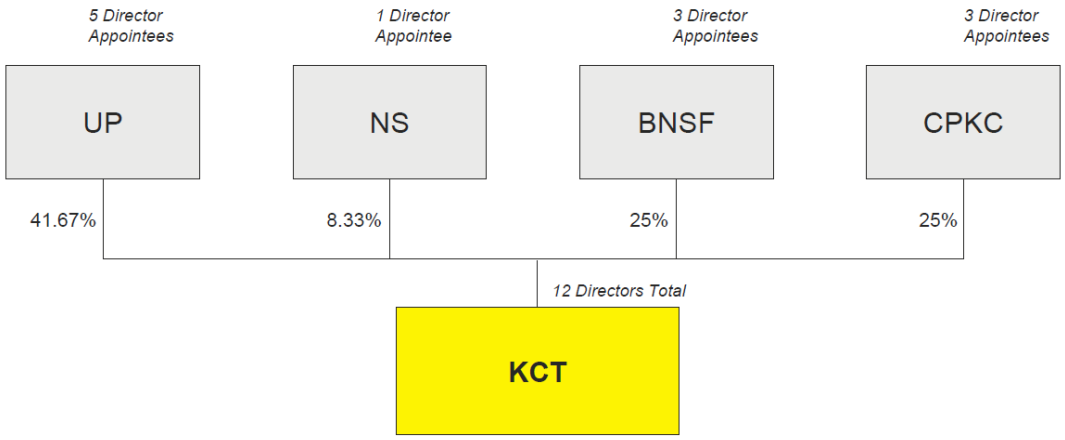
UP currently owns 41.67 percent of KCT's shares, NS owns 8.33 percent, and BNSF and CPKC each own 25 percent. KCT's board consists of twelve directors, with five appointed by UP, one appointed by NS, three appointed by BNSF, and three appointed by CPKC.[83] After UP and NS merge, UP/NS would own 50 percent of KCT's shares, and UP/NS directors would occupy six of the twelve seats on KCT's board.[84]

Current Ownership Structure

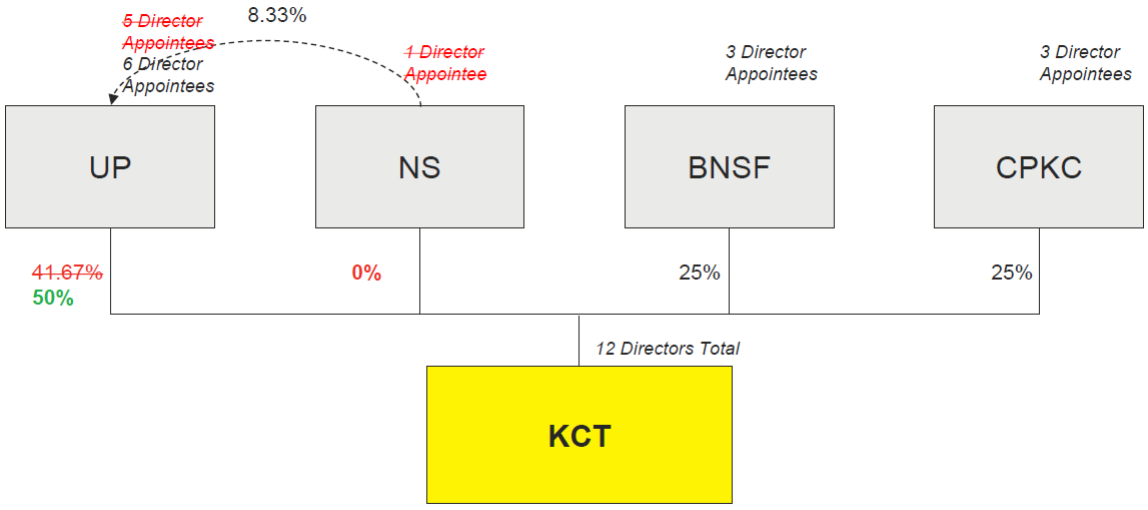


[82] *Id.*, Art. III, § 6.

[83] KCT's By-Laws provide for thirteen directors. *See* Workpaper "KCT By-Laws.pdf," Art. IV, § 4.2. Historically, the thirteenth director had been the President of KCT. However, in 2012, the KCT board combined the functions of the KCT's Chair and KCT's President, which eliminated the board seat. *See* Workpaper "KCT Record of Minutes excerpt 6.14.2012.pdf."

[84] The method of electing directors established in KCT's By-Laws essentially guarantees that shareholders will be able to elect a number of directors proportional to the shares of stock they own. *See* Workpaper "KCT By-Laws.pdf," Art. III, § 3.4.

Post-Transaction Ownership Structure



In the sections below, Applicants respond to the Board's specific requests in Decision No. 21 relating to KCT.

B. Specific Responses

KCT-1 Identify any decision-making mechanism, including in KCT's governance documents, that would resolve any deadlock on KCT decisions, including investment decisions.

KCT's governance documents do not provide a mechanism for resolving a deadlock on decisions subject to a vote by shareholders or the board of directors. In general, a deadlock would mean a continuation of the status quo. However, if a deadlock were to occur and some of the owners were unwilling to continue with the status quo, UP, NS, BNSF, and CPKC would rely on resolution mechanisms provided by Missouri state law. UP/NS, BNSF, and CPKC would be in the same position after the UP/NS merger: a deadlock between owners would have to be resolved using mechanisms provided by state law.

Missouri law specifically addresses the possibility of such a deadlock, and provides that deadlocks may be resolved by a local circuit court's appointment of a provisional director at the request of one-half of the directors or the holders of not less than thirty-three and one-third percent of the outstanding shares.[85]

Applicants note that the mathematical possibility of a deadlock is not unusual but instead has been and continues to be a feature of terminal railroad companies and similar cooperative ventures between railroads.[86]

KCT-2 Given Applicants' proposed operational changes at the Kansas City Gateway, which include adjusting current interchanges with KCT (see, e.g., Rev. Appl. 2-874 to 2-875 (Service Assurance Plan)), provide additional details regarding Applicants' plans and incentives to invest in, and assume the liabilities of, KCT.

Applicants' proposed operational changes at the Kansas City Gateway will increase the merged company's use of KCT's services and its incentive to ensure the viability of KCT. UP/NS will continue to rely on KCT to serve local customers in Kansas City, and Applicants plan to increase UP/NS's use of KCT's main line through Kansas City.

Applicants' reference in the Amended Application to adjusting current interchanges with KCT refers to adjustments resulting from the consolidation of UP and NS yard operations in Kansas City. Today, UP and NS each interchange traffic

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[85] *See* Mo. Ann. Stat. § 351.323 (West).

[86] *See, e.g.*, *Burlington Northern*, 366 I.C.C.2d at 866 (discussing joint ownership of Camas Prairie Railroad Company); *Grupo Mexico, S.A.B. de C.V.—Acquis. of Control Exemption—CG Ry.*, FD 36780, at 2 n.3 (STB served Aug. 13, 2024); *cf. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R.*, FD 36836, at 24 (STB served Apr. 6, 2026) ("Even without Board approval of NS's control of NPBL, CSXT would still have the same limitation—the inability to change the rate structure it is charged for switching by NPBL.").

moving to and from KCT-served customers in Kansas City with KCT's wholly owned subsidiary KCTL.[87] KCTL delivers and pulls traffic from UP's Neff Yard three times per week and NS's North Kansas City Yard twice per week. As discussed in the Amended Application, Applicants plan to consolidate NS's North Kansas City Yard operations into UP's Eighteenth Street Yard. Applicants' Operating Plan contemplates that post-merger interchanges between UP/NS and KCTL will occur in Eighteenth Street Yard, but specific arrangements are subject to negotiation with KCTL. Regardless of the post-merger interchange location, Applicants will have the same incentives they currently have to ensure the viability of KCT, because they will have the same need to interchange traffic to reach KCT-served customers in Kansas City. In addition, KCT should benefit from UP's and NS's consolidation of operations because it would be handling the same volume of local traffic without incurring the costs of delivering and pulling cars separately from UP and NS yards.

Applicants also plan to increase the amount of traffic moving over KCT's main line through Kansas City. KCT has the most efficient route for traffic traversing the Kansas City metropolitan complex. UP currently routes five scheduled trains per day and approximately two or three unscheduled bulk trains per day via KCT's main line through Kansas City.[88] After the merger, UP/NS is projected to increase the volume

[87] As noted above, KCT's switching operations are performed by Kaw River Railroad under a contract with KCTL.

[88] Today, traffic interchanged in Kansas City between UP and NS moves over UP- and NS-owned lines in Kansas City. Applicants plan to continue using those lines for similar traffic after the merger.

of traffic moving over the KCT main line by as many as seven trains per day.[89] Applicants thus have a strong incentive to ensure the viability of KCT.

Regarding Applicants' plans to invest in and assume the liabilities of KCT, Applicants had no plans to invest in KCT and have no post-merger plans to invest in KCT beyond their responsibilities as outlined in KCT's governance and operating documents, nor would they be expected to do so. As noted in Applicants' response to Request TRRA-3, an owner is not responsible under general corporate law principles for the debts or liabilities of a corporation in which it has an ownership stake.[90]

There is also no need for KCT's owners (either Applicants or the other owners) to plan to invest in KCT or assume its liabilities because the Operating Agreement already addresses those issues. Specifically, KCT's owners agreed to take on certain KCT liabilities pursuant to KCT's Operating Agreement, and the Agreement sets forth the owners' financial responsibilities with respect to KCT. {

} Applicants will

[89] *See* Workpaper "C-Line Segment Tables vFinal.xlsx," Tab "Train Change," Cells U1463:U1465, U1815.

[90] *See* Mo. Ann. Stat. § 351.275.1 (West).

[91] *See* Workpaper "KCT Operating Agreement 6.12.1909.pdf," Art. II, § 6.

[92] *See* Workpaper "KCT Eighth Supplemental Op Agreement.pdf."

continue to honor their obligations under these documents in accordance with their terms. Further, by operation of law, and under KCT's Operating Agreement, the NS would continue to be and, therefore, UP/NS would become, responsible for NS's obligations under the Operating Agreement.[93]

KCT-3 Should the Board identify competitive impacts resulting from Applicants' 50% ownership interest in KCT that must be remedied by divestiture, provide any additional details regarding KCT-related corporate documents that may affect the implementation of any divestiture condition, and explain what changes would be required, and whether in Applicants' view such changes must be pursued under state law or whether preemption under 49 U.S.C. 11321(a) may apply.

After a careful review of the KCT-related corporate documents, Applicants are not aware of any provisions that would affect the implementation of any divestiture condition. However, to the extent any corporate document contains a restriction that would prevent Applicants from complying with a divestiture condition and thus consummating an authorized consolidation of UP and NS, then 11321 Preemption would exempt Applicants from the application of such a provision.[94]

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[93] *See* Workpaper "KCT Operating Agreement 6.12.1909.pdf," Art. III, § 12 {

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[94] *See, e.g.*, *Train Dispatchers*, 499 U.S. at 129–130 (the immunity provision extends not only to laws but also to contracts); *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S.*, FD 35147, at 19 (STB served Mar. 10, 2009) ("This agency has interpreted section 11321 as giving carriers the right to abrogate existing contractual terms if necessary."); *CSX Corp.—Control & Merger—Conrail Inc. & Consol. Rail Corp.*, FD 33220, at 5 (STB served Jan. 9, 1997) ("A person cannot effectively preclude our approval of a transaction from going forward simply by entering into a contract that purports to prevent all alternatives to its own preferred outcome.").

As stated above, Applicants would be willing to divest NS's shares in KCT to either or both of KCT's other owners or another railroad, if the Board were to impose such a requirement as a merger condition.

III. TTX

A. Introduction

In the Amended Application, Applicants affirmed their commitment to divest sufficient shares of TTX to reduce their post-merger ownership interest to 49 percent.[95] Applicants made this concession even though they do not need Board authority to retain their combined 56.81 percent ownership interests in TTX, and even though UP/NS control would not pose any competitive concerns given the nature of TTX and its operations. Furthermore, as discussed below, TTX and its owners have an established mechanism that Applicants can invoke, and plan to invoke, that allows TTX or the other TTX owners to acquire shares from Applicants at book value. Thus, if TTX's other owners believe Applicants' ownership of more than 49 percent of TTX's shares would create a competitive problem, they can solve the problem themselves.[96]

Before Applicants directly respond to the Board's requests in Decision No. 21 regarding their divestiture proposal and the potential impacts on competition, Applicants provide some additional background regarding TTX's ownership structure and operations, which gives important context for the potential mechanism for Applicants' effort to divest a portion of their combined ownership interest in TTX.

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[95] *See* Amended App., Vol. 1 at 32–33.

[96] Applicants would be willing to sell additional shares of TTX to one or more of the other owners of TTX pursuant to TTX's established procedures for such transfers.

TTX is an independently managed and operated company that is owned by a group of seven railroads that are its primary customers. TTX was founded in 1955, but its current operational paradigm dates back to 1974, when its rail car pooling operations were initially approved by the ICC pursuant to what is now 49 U.S.C. § 11322.[97] TTX is best known for its ownership and management of a fleet of flatcars that are used in rail transportation of containers, truck trailers, automobiles, lumber, extra-dimensional loads, and other commodities.[98] TTX also owns and manages pools of boxcars and gondolas.[99] In total, TTX owns and manages approximately 177,000 pooled railcars that are in constant circulation across the entire rail network. Thus, unlike the terminal railroads discussed elsewhere in this response, there is no single geographic focus of TTX's operations that could pose competitive or operational concerns. TTX railcars move freely among all railroads, including the hundreds of Class II and Class III railroads operating throughout the country, to support the individual competitive and operating plans of those individual railroads.

TTX is based in Charlotte, North Carolina. TTX maintains its own headquarters and has approximately 2,050 employees. It has an independent management team that runs the company's day-to-day operations. TTX's

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[97] *See American Rail Box Car Co. & Trailer Train Co.—Pooling*, 347 I.C.C. 862 (1974).

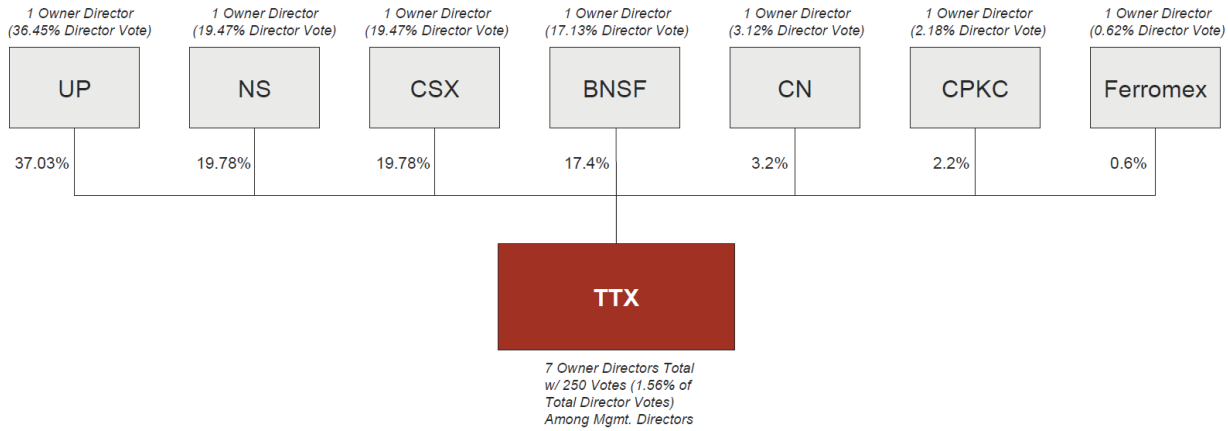
[98] *See TTX Company, et al.—Application for Approval of Pooling of Car Services with Respect to Flatcars*, FD 27590 (Sub-No. 4), at 2 (STB served Oct. 1, 2014).

[99] *See American Rail Box Car*, 347 I.C.C. 862 (approving boxcar pool); *Railgon Co. & Trailer Train Co.—Pooling of Car Service Regarding Gondola Cars*, FD 29121 (ICC served Mar. 17, 1980) (approving gondola pool). TTX also operates the national autorack reload pool and a pool of railroad-owned boxcars, and it provides railcar maintenance services.

management team includes a chief executive officer (Marty Thomas), vice president law, general counsel and corporate secretary (Shannon Bagato), vice president, chief human resources officer and assistant corporate secretary (Scott Howland), vice president and chief financial officer (Jonathan Perez), vice president of fleet management (William Sheehan), vice president and chief information officer (Bruce Schinelli), vice president of equipment (Chad Thompson), assistant vice president and corporate controller (Kevin Grisamore), treasurer (Todd Schanzlin), and assistant corporate secretary (Mary McCahill). While this management team is appointed by and reports to the TTX board of directors, it has broad discretion to manage the day-to-day affairs of TTX. TTX has outside legal representation in connection with the proposed transaction, and it is not beholden to Applicants or any other subset of its owners.

UP currently owns 37.03 percent of TTX's shares (5,850 shares); NS and CSX each own 19.78 percent (3,125 shares, each); BNSF owns 17.4 percent (2,750 shares); CN owns 3.2 percent (500 shares); CPKC owns 2.2 percent (350 shares); and Ferromex owns 0.6 percent (100 shares). Each owner appoints one director to TTX's board of directors, but each director has a number of votes equal to the number of shares owned by the railroad that appointed the director.

Current Ownership Structure



TTX's pooling operations are governed by Board- and ICC-approved agreements that require TTX to act as a pro-competitive force in the rail industry and operate without discrimination among its owners. TTX's Flatcar Pooling Agreement explicitly provides that the agreement's purpose is to create and maintain

> a pool or pools of such cars to be acquired, financed, managed, maintained, and accounted for by TTX so as to enlarge the flat car fleet and accomplish better service to the public and better utilization and economy.[100]

TTX also does not and cannot impose any restraints on its railroad owners. TTX's owners are free to meet any or all of their rail car requirements using sources other than TTX. TTX owners acknowledge that the pooling operation overseen by TTX

> will mutually benefit each of them and will enable them to improve car service to the members of the shipping public

[100] Workpaper "TTX Flatcar Pooling Agreement.pdf," Art. IV, § 4.1; *see also* Workpaper "TTX Boxcar Pooling Agreement.pdf," Art. IV, § 4.1; Workpaper "TTX Gondola Pooling Agreement.pdf," Art. IV, § 4.1.

> without any undue restraint on competition between them, or between them or any of them, and any other person.[101]

Applicants respectfully submit that maintaining UP/NS's post-merger 56.78 percent interest in TTX would not allow UP/NS to modify or undermine the long-standing pro-competitive, efficiency-enhancing nature of TTX's operations, particularly since TTX's pooling operations are governed by Board-authorized protocols and Board authorization is required for TTX's continued operation. Thus, while Applicants intend to divest a portion of their combined interest in TTX such that their interest shall not exceed 49 percent to avoid any perception they could unduly influence the operations of TTX, such divestiture is neither required to avoid anticompetitive effects nor to avoid an additional required Board authorization.

Further, although the Board did not ask about Applicants' plans regarding TTX, Applicants want to make clear their belief and expectation that TTX will continue to play a critical role in the railroad industry and in their own post-merger operations. In particular, Applicants' plans to attract intermodal traffic and other traffic from trucks and other rail carriers depend on the availability of high quality, well-maintained cars from TTX's efficiently managed free-running fleets. Applicants do not anticipate any changes resulting from their merger that would affect TTX's long history of providing the railroad industry pro-competitive pooling of services in the interest of better service to the public and economy of operation.

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[101] Workpaper "TTX Flatcar Pooling Agreement.pdf," Art V, § 5.3; *see also* Workpaper "TTX Boxcar Pooling Agreement.pdf," Art. V, § 5.3; Workpaper "TTX Gondola Pooling Agreement.pdf," Art. V, § 5.3.

B. Specific Responses

TTX-1 Confirm whether Applicants would consummate the Transaction without first divesting from TTX. If so, provide additional details regarding Applicants' commitment to divest "at such time as they are able to do so on commercially reasonable terms." (Id. at 1-89.) This response shall discuss Applicants' proposal for how the Board can evaluate, and confirm, whether TTX's divestment commitment has been satisfied, including what standards would govern the Board's adjudication of a claim that Applicants failed to divest after receiving a "commercially reasonable" offer and whether any deadlines or specific timing constraints apply to Applicants' commitment that they will divest "at such time as they are able."

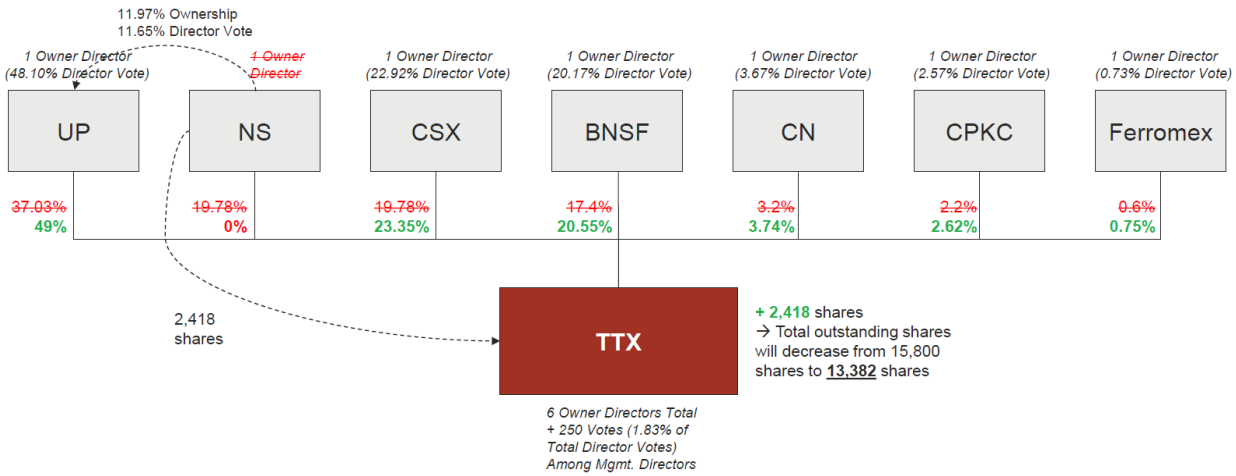
Applicants' preference and intent is to plan and structure the divestiture of TTX shares as described in the Amended Application so that the divestiture occurs simultaneously with consummating the UP/NS merger. If Applicants are unable to complete plans for a divestiture simultaneous with consummation of the UP/NS merger, Applicants would consummate the UP/NS merger while continuing to work toward divesting its ownership of TTX to 49 percent.

As explained below, TTX's existing owners (including Applicants) are subject to a contractual agreement that governs the sale of ownership interests by existing owners and by its terms will apply to future owners. Specifically, TTX and its owners have entered into a Restrictive Stock Transfer Agreement (the "TTX Buy/Sell Agreement")[102] that sets forth a mandatory process for the sale of shares. Pursuant to the TTX Buy/Sell Agreement, Applicants would effect the sale of shares in the following manner:

First, Applicants would issue a notice (the "TTX Transfer Notice") to TTX and the other TTX owners specifying the number of TTX shares it wishes to sell (the "TTX

[102] *See* Workpaper "TTX Restrictive Stock Transfer Agreement.pdf."

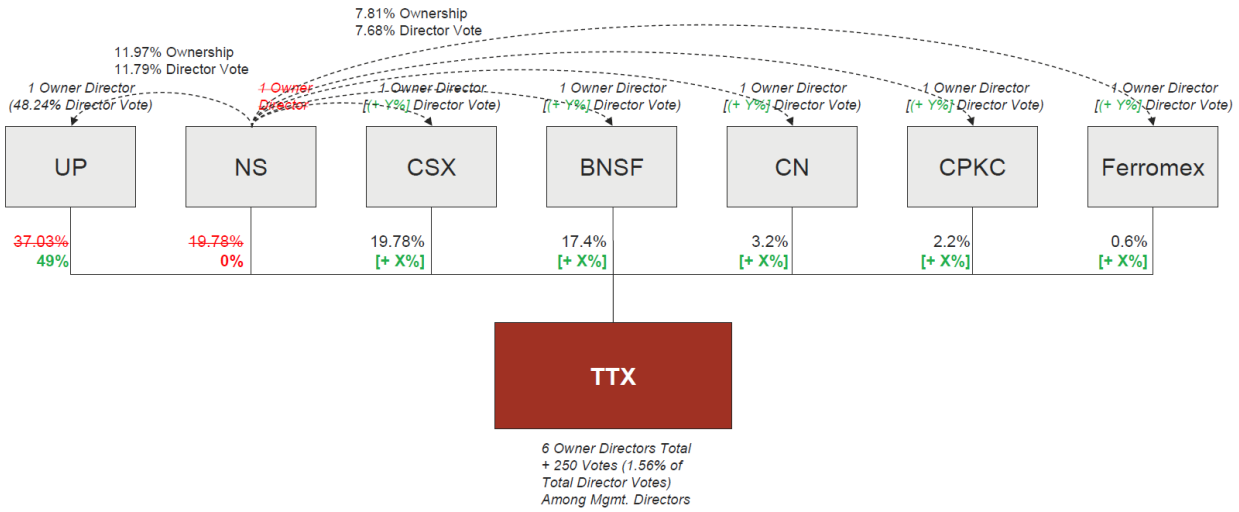
Subject Shares"). TTX then has the first right and option for a period of { } days after the effective date of the Transfer Notice (such { }-day period, the "TTX Exercise Period") to purchase all or some of the TTX Subject Shares.[103]



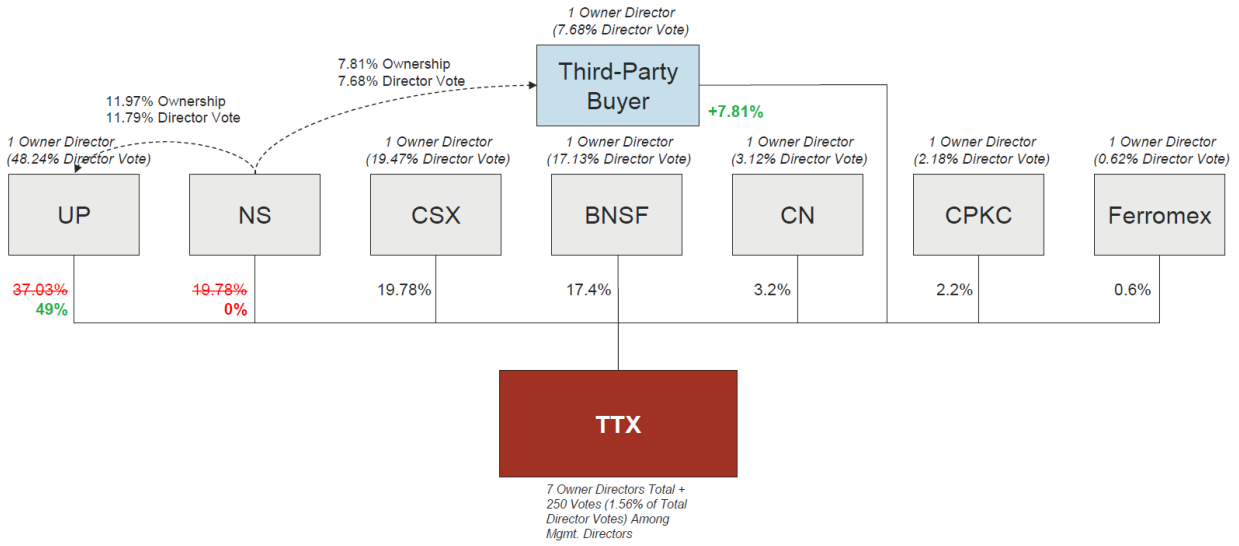
Second, if TTX does not exercise its right to buy the TTX Subject Shares with respect to all of the TTX Subject Shares, for a period of { } days following the expiration of the TTX Exercise Period (such { }-day period, the "TTX Owner Exercise Period") the other TTX owners have the right and option to purchase all or a portion of the unclaimed TTX Subject Shares. If the other TTX owners collectively desire to purchase shares in excess of the Subject Shares, the TTX Buy/Sell Agreement specifies that the Subject Shares will be equally allocated among those interested TTX owners.[104]

[103] If TTX were to acquire the shares and retire them, Applicants would have to divest 2,418 shares to reduce their combined ownership percentage to 49%.

[104] If one or more other railroads were to acquire the shares, Applicants would have to divest 1,223 shares to reduce their combined ownership percentage to 49%.



Third, if TTX and the other TTX owners do not exercise their rights to buy the TTX Subject Shares with respect to all of the TTX Subject Shares, then Applicants would have { } days following the expiration of the TTX Owner Exercise Period to sell all or any of the unsold TTX Subject Shares to any third party who agrees to become a party to and be bound by the terms of the TTX Buy/Sell Agreement.



Request TTX-1 also requires Applicants to provide additional background on the application of the term "commercially reasonable" as referenced in Applicants' commitment to divest TTX shares. The TTX Buy/Sell Agreement specifies a

contractually agreed upon share price for purchase of shares by TTX and the TTX owners: {

}

The question of whether the Applicants failed to divest after receiving a "commercially reasonable" offer would only become relevant if the first two sets of purchase rights set forth in the TTX Buy/Sell Agreement are not exercised. In that context, Applicants mean the term "commercially reasonable" to reflect a price in accordance with market standards, that is, an offer that provides reasonable market value to Applicants for the TTX shares.[106] Stated differently, Applicants believe "commercially reasonable terms" to be terms that a prudent railroad company would consider fair and workable under the circumstances, including with reference to the terms of the Buy/Sell Agreement. Although Applicants do not believe reference to the TTX Buy/Sell Agreement is necessarily the sole basis on which to judge the

[105] *See* Workpaper "TTX Restrictive Stock Transfer Agreement.pdf," § 2(b). Sections 2(b) and 2(c) specify that the per share price { } shall apply to any acquisitions by TTX or an existing Shareholder, but does not address the price for an acquisition by a third party.

[106] *See* UCC § 9-627 on the disposition of collateral: "A disposition of collateral is made in a commercially reasonable manner if the disposition is made: (1) in the usual manner on any recognized market; (2) at the price current in any recognized market at the time of the disposition; or (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition."

reasonableness of divestiture terms with respect to TTX, the Buy/Sell Agreement provides specific terms which could be used in the evaluation of an offer from a third party (in the event TTX and the other TTX owners do not exercise their contractual purchase rights first).

Request TTX-1 also asks about deadlines or specific timing constraints that would apply to Applicants' commitment to divest "at such time as they are able." Decision No. 21 at 29. As discussed above, Applicants' preference and intent is to structure the divestiture of TTX shares so that the divestiture occurs simultaneously with consummating the UP/NS merger.

However, Applicants recognize, in light of the timing provisions of the TTX Buy/Sell Agreement and the inherent uncertainties of a future sales process, they might not be able to complete the divestment process before consummating the merger. Although, as described in this section, Applicants have strong reasons to believe that holding a TTX ownership interest of 56 percent could not adversely impact competition, they nevertheless are willing, as a concession, to accept a merger condition that would preclude them from controlling TTX if they are unable to divest the shares to TTX, other TTX owners or a third party simultaneously with consummating the UP/NS merger. Specifically, the Board could impose a condition requiring Applicants to place sufficient TTX shares with a separate, special purpose entity designed specifically to hold the requisite shares required to reduce the UP/NS combined ownership interest to 49 percent until such time as those shares can be

divested (the "Independent TTX Transferee").[107] To ensure UP/NS's voting influence over TTX does not exceed 49 percent, in any matter before the TTX board of directors or shareholders, the Independent TTX Transferee would be obligated to vote its shares in accordance with the majority of TTX's other owners, excluding UP/NS.[108]

Alternatively, the Board could impose a condition, similar to Option E in Applicants' response to Request TRRA-2, requiring Applicants to vote shares representing more than a 49 percent ownership interest in any vote of TTX shareholders or the TTX board of directors in accordance with the majority of the other TTX owners in any matters put to a vote of the TTX board of directors or shareholders, with such condition remaining in place until a divestiture of TTX shares sufficient to lower UP/NS's ownership percentage to 49 percent is accomplished.[109]

Applicants are willing to accept either of these conditions as a concession notwithstanding the fact that they do not believe either condition would be required to guard against competitive harms (and do not believe either condition will prove

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[107] *Cf. Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1 (1964).

[108] As with Option D for the divestiture of TRRA shares, neither the Independent TTX Transferee nor any affiliate of the Independent TTX Transferee would have any officer or board member in common or direct business arrangement with UP/NS. Applicants would submit the name(s) of any individuals on the Independent TTX Transferee's governing body to the Board as part of its compliance with a merger condition requiring transfer of TTX shares to an Independent TTX Transferee.

[109] As discussed in connection with Option E for the divestiture of TRRA shares above, the proposed voting requirements would remain in place until UP/NS divest the required number of TTX shares.

necessary given the clear pathway for a sale to either TTX, existing TTX shareholders, or a third party under the Buy/Sell Agreement). As discussed below in response to Request TTX-3, TTX's pooling agreements and Board jurisdiction over those agreements would prevent Applicants from altering the fundamentally pro-competitive nature and operations of TTX. Further, the TTX Buy/Sell Agreement provides TTX's other owners the clear right and ability to purchase the shares that Applicants would divest if they are genuinely concerned about the impacts of Applicants' majority ownership of TTX.

For the avoidance of doubt, if Applicants do not divest the TTX shares prior to consummating the UP/NS merger, then Applicants' offer to divest the shares will remain open post-merger. If, during the Board oversight period, the other Class I owners of TTX desire to acquire those shares either directly or through TTX, UP/NS will take the steps necessary, consistent with the TTX Buy/Sell Agreement (including supporting TTX board resolutions) for TTX or the other Class I owners to acquire the shares, and Applicants would welcome the Board imposing a condition requiring the same.

Finally, to allow the Board to "evaluate, and confirm" that Applicants' TTX divestment commitment has been satisfied, the Board could impose a condition requiring Applicants to file corporate documents evidencing the actions taken to satisfy the commitment as part of the Board's oversight process.

TTX-2 Provide additional details regarding TTX-related corporate documents that may impact the implementation of Applicants' proposal to divest shares and Board seats sufficient to avoid majority control by Applicants. For each such document, explain what changes would be required, and whether in Applicants' view such changes must be pursued under state law or whether preemption under 49 U.S.C. 11321(a) may apply.

As discussed in response to Request TTX-1, the TTX Buy/Sell Agreement would impact the implementation of Applicants' proposal to divest TTX shares sufficient to avoid majority control by Applicants. No changes to the TTX Buy/Sell Agreement would be required to effectuate Applicants' proposal.[110] Nor would any changes to TTX-related corporate documents be required to implement Applicants' alternative proposals to reduce their voting influence to 49 percent in the event they are unable to divest sufficient shares to avoid majority control to TTX, other TTX owners or a third party simultaneously with consummating the UP/NS merger.

[110] Applicants also note the Certificate of Incorporation of TTX, as amended on May 4, 1989 (the "TTX Charter"). While it would not impact the implementation of Applicants' proposal and no change to the TTX Charter would be required to effectuate Applicants' proposal, Applicants highlight that the TTX Charter provides for the number of members of the board of directors and their voting rights. In particular, the TTX Charter specifies that each TTX owner has the right to designate one director (each such director, an "Owner Director"). After the merger, the NS Owner Director seat will be eliminated. However, as discussed above, the six remaining Owner Directors will not vote on a unitary basis, i.e. each director will not have a single vote. Rather, the TTX Charter provides that each Owner Director has a number of votes equal to the number of shares owned by the railroad that appointed the director. As a result, changing the composition of the board of directors does not impact an owner's TTX board voting rights. *See* Workpaper "TTX Charter.pdf."

TTX-3 Explain the potential impacts on competition of (a) Applicants' control interests if divestiture is not consummated and (b) Applicant's proposed 49% control of TTX, if implemented.

Competition would not be adversely affected if Applicants are unable to divest shares in TTX pursuant to the TTX Buy/Sell Agreement or if Applicants divest sufficient shares that they own a 49 percent interest in TTX. As discussed in the Amended Application, TTX's pooling operations are subject to agreements among TTX's owners and the Board's jurisdiction. Applicants could not use a majority interest in TTX to depart from the pro-competitive provisions of the Board-authorized pooling agreements to which they are parties.[111]

Applicants' divestiture of TTX shares concurrently with consummation of the UP/NS merger so that Applicants only own a 49 percent position in TTX would further dilute their ability to affect TTX's operations. At 49 percent ownership, Applicants do not have the ability to unilaterally approve, or even block, a matter submitted to the TTX board or to TTX shareholders.

However, and more important, irrespective of whether UP/NS owns 56.81 percent or 49 percent of TTX, UP/NS could not use TTX to harm competition (or other owners) because such actions would be directly contrary to the pro-competitive requirements of TTX's pooling agreements. These requirements include:

a. *Operate on a cost recovery basis*: "It shall be the policy of TTX to maintain per diem, mileage and other charges at the lowest level required to meet TTX's ordinary and necessary costs and expenses, including, as appropriate, return on investment, to maintain a financial

[111] As discussed in response to Request TTX-1, the Board could impose a condition that would reduce Applicants' voting power even if Applicants are unable to divest shares in TTX before they consummate the UP/NS merger.

position enabling it to finance flat car acquisitions on reasonable terms and to keep the cars in proper condition for operation at the highest point of efficiency and to accumulate retained earnings adequate to support continued reasonable enlargement of the number of cars in the pool, to that number found to be needed. It is the intention of the parties to the TTX Pooling Agreement that the total compensation paid to TTX by Railroad Participants shall be no greater than consistent with the foregoing policy."[112]

b. *No discrimination in rates*. "Rates and charges, orders and regulations shall be observed by all Railroad Participants in the flat car pooling plan."[113]

c. *No preferential access for particular railroads*. "No one Railroad Participant shall have any preferred right as compared with any other Railroad Participant to the use of any pool flat cars, except subject to special arrangements approved by TTX or as a consequence of car movement directives by TTX."[114]

d. *No discrimination against particular customers or geographic locations*. "Any Railroad Participant having possession of a pool flat car may use it for loading to any point on any line in the national rail system in the United States and such other points as may be approved by TTX."[115]

Because these core requirements of TTX's pooling agreements are subject to the Board's jurisdiction, Applicants could not currently or in the future use their

[112] Workpaper "TTX Flatcar Pooling Agreement.pdf," Art. VII, § 7.10(a); *see also* Workpaper "TTX Boxcar Pooling Agreement.pdf," Art. VII, § 7.9(a); Workpaper "TTX Gondola Pooling Agreement.pdf," Art. VII, § 7.9(a).

[113] Workpaper "TTX Flatcar Pooling Agreement.pdf," Art. VII, §7.10(b); *see also* Workpaper "TTX Boxcar Pooling Agreement.pdf," Art. VII, § 7.9(b); Workpaper "TTX Gondola Pooling Agreement.pdf," Art. VII, § 7.9(b).

[114] Workpaper "TTX Flatcar Pooling Agreement.pdf," Art. VII, § 7.11(a); *see also* Workpaper "TTX Boxcar Pooling Agreement.pdf," Art. VII, § 7.10(a); Workpaper "TTX Gondola Pooling Agreement.pdf," Art. VII, § 7.10(a).

[115] Workpaper "TTX Flatcar Pooling Agreement.pdf," Art. VII, § 7.11(b); *see also* Workpaper "TTX Boxcar Pooling Agreement.pdf," Art. VII, § 7.10(b); Workpaper "TTX Gondola Pooling Agreement.pdf," Art. VII, § 7.10(b).

ownership interest or governance rights to alter the terms of these agreements or impact how TTX operates without violating those legally-enforceable requirements.

Respectfully submitted,

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July 7, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 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/ Charlotte R. Krovoza