Surface Transportation Board
Washington, D.C. 20423-0001

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Office of Chief Counsel
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The Honorable Angela D. Alsobrooks
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The Honorable Tammy Baldwin
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The Honorable Charles E. Schumer
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The Honorable Mazie K. Hirono
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The Honorable Martin Heinrich
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The Honorable Elizabeth Warren
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The Honorable Ben Ray Luján
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The Honorable Jacky Rosen
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The Honorable Catherine Cortez Masto
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The Honorable Amy Klobuchar
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The Honorable Richard Blumenthal
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The Honorable Tina Smith
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The Honorable Tammy Duckworth
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The Honorable Angus S. King, Jr.
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The Honorable Ruben Gallego
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The Honorable Chris Van Hollen
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Washington, DC 20510

The Honorable Mark Kelly
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The Honorable Andy Kim
520 Hart Senate Office Building
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The Honorable Peter Welch
115 Russell Senate Office Building
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The Honorable Jeffrey A. Merkley
531 Hart Senate Office Building
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The Honorable Edward J. Markey
255 Dirksen Senate Office Building
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The Honorable Richard J. Durbin
711 Hart Senate Office Building
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Dear Senator Booker, Senator Klobuchar, Senator Alsobrooks, Senator Blumenthal, Senator Baldwin, Senator Smith, Senator Schumer, Senator Duckworth, Senator Hirono, Senator King, Senator Heinrich, Senator Gallego, Senator Warren, Senator Van Hollen, Senator Luján, Senator Kelly, Senator Rosen, Senator Kim, Senator Cortez Masto, Senator Welch, Senator Merkley, Senator Markey, and Senator Durbin,

Thank you for your recent letter regarding the proposed merger of Union Pacific (UP) and Norfolk Southern (NS) (together, Applicants). We appreciate hearing your views regarding the potential effects of the proposed transaction on competition, workers, safety, shippers, consumers, and the national transportation network. We want to assure you that the Surface Transportation Board (STB or Board) will continue to conduct a rigorous and comprehensive review of the transaction as required by law.

As you know, on May 28, 2026, the Board accepted for consideration the Applicants' revised major merger application and held the proceeding in abeyance, including the environmental review, while ordering Applicants to submit supplemental information, by July 27, 2026, concerning aspects of the revised application that the Board found were unclear or underdeveloped. The order helps ensure the Board has the necessary information to thoroughly evaluate, and the public has a meaningful opportunity to comment on, whether the transaction is in the public interest. Supplemental information was received from Applicants on July 7 and July 27, and is currently under review.

The Board's consideration of a major merger is governed by the public interest criteria prescribed in 49 U.S.C. § 11324[1] and the rail transportation policy set forth in 49 U.S.C. § 10101. In considering whether a major merger transaction is in the public interest, the Board also considers various goals, including effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. 49 C.F.R. § 1180.1(b).

<u>Competition.</u> In assessing a proposed merger, the Board must ensure that any approved transaction would promote a competitive, efficient, and reliable national rail system. 49 C.F.R. § 1180.1(b). The Board's regulations also require Applicants to a major merger to detail, among other things, the public interest justifications in support of the proposed transaction, including

[1] In accordance with 49 U.S.C. § 11324(b), the Board's assessment of a major merger must consider at least five nonexclusive factors: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

information on the effect of the proposed transaction on competition and on employees, and a calculation of public benefits. 49 C.F.R. § 1180.6. Applicants are expected to propose measures to mitigate and offset any merger-related harms, and these conditions should not simply preserve, but also enhance, competition. 49 C.F.R. § 1180.6(b)(10). Applicants are also required to submit to the Board "full system" competitive analyses and operating plans, including any operations in Canada and Mexico, from which the Board can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations within the United States. 49 C.F.R. § 1180.1(k).

The Board is conducting a comprehensive review of the evidence submitted by Applicants and other commenters, including Applicants' supplemental information, to ensure the record is sufficient to evaluate the transaction's competitive impacts. The Board will base its ultimate determination on the full administrative record developed during this proceeding.

Labor Impacts. Regarding the impacts of a proposed merger on employees, Applicants are required to submit an employee impact exhibit that details how the proposed transaction will affect employees by class or craft. This exhibit must specify the locations where the impacts will occur, the time frame of the impacts for at least three years following consolidation, and whether any employee protection agreements have been reached. 49 C.F.R. § 1180.6(a)(2)(v), (b)(9). Additionally, Applicants must provide a Service Assurance Plan (SAP). The SAP should include, among other things, a strategy for reaching necessary labor implementing agreements and a plan for providing necessary training to employees involved in fields including operations, safety, hazardous materials compliance, and other functions affected by the acquisition. 49 C.F.R. § 1180.10(g), (h).

The Board will carefully consider the labor-related issues raised in your letter, consistent with its responsibilities under 49 U.S.C. §§ 11324 and 11326, as well as the regulations governing major rail mergers in 49 C.F.R. part 1180. As part of that process, the Board has required Applicants to submit workforce-related information and has issued procedural orders, including a recent order on July 22 concerning the public release of employee data, to ensure a complete and transparent evidentiary record. Specifically, the July 22 decision directed Applicants to make public the employee impact exhibits submitted with their revised application. These exhibits contain detailed information about how the proposed merger would affect certain employees of UP and NS, including the number of positions that would be abolished, created, or designated as transferred, and the locations where job transfers would occur because of the proposed merger. Applicants submitted the redesignated versions of this information on July 27, 2026, as directed in the July 22 decision.

In addition, in the event the Board ultimately approves a proposed transaction, it would determine and apply the appropriate employee protective conditions required under applicable law.[2]

[2] See, e.g., Canadian Pacific Railway—Control—Kansas City Southern, FD 36500 et al., slip op. at 147 (STB served March 15, 2023) ("The basic framework for mitigating the labor impacts of major rail consolidations is embodied in the New York Dock conditions, which provide both substantive benefits for affected employees (up to six years of full wages, moving allowances, preferential hiring, and other benefits) and procedures (negotiation or, if necessary, arbitration) for resolving disputes regarding implementation of particular transactions.").

Safety. Applicants must submit a Safety Integration Plan (SIP) as part of the environmental review process. This plan, developed in consultation with the Federal Railroad Administration, is designed to ensure that safe operations would be maintained throughout the merger implementation process. 49 C.F.R. § 1180.8(a).

The SIP will be made available for public review and comment during the environmental review process, and the agency will carefully evaluate the Applicants' SIP. When making a final decision on the merits of a proposed transaction and any conditions, including environmental conditions, that must be imposed if the transaction is approved, the Board considers the entire record before the agency. This includes the transportation merits, all public comments filed, and the environmental review record, which contains recommended mitigation measures that the Board may choose to adopt and impose as conditions on the merger.

Service. Applicants' SAP, mentioned above, must identify the steps they will take to achieve the projected service levels and demonstrate how their operating plan will improve service. The SAP should explain how operating plan efficiencies will translate into benefits for the shipping public and describe how any service degradation that might result from operational changes will be mitigated. 49 C.F.R. § 1180.10. It must further include contingency plans for managing merger-related service disruptions. 49 C.F.R. § 1180.10(i). In its May 28 decision, the Board required Applicants to submit additional details about their proposed SAP so that both the Board and the public can fully evaluate the effectiveness of the proposed processes.

The May 28 decision also required Applicants to submit additional information on several issues that relate to the impacts of the transaction on shippers and consumers, including Applicants' enhanced competition claims; shipper facilities that may see a reduction in the number of railroads serving them from three to two or from two to one; and Applicants' analysis of the public benefits of the expected diversion of truck traffic to rail resulting from the transaction. This information is intended to help the Board and commenters assess how the proposed transaction will impact the public, including rail customers and consumers of goods shipped by rail.

Consolidation. Applicants must submit to the Board a discussion of potential downstream merger applications that could result from the proposed transaction. 49 C.F.R. § 1180.6(b)(12). In its May 28 decision, the Board directed Applicants to provide additional information related to downstream merger impacts. The Board will carefully consider this issue and the information submitted by Applicants and other commenters, consistent with its statutory and regulatory responsibilities.

In addition to the measures described above, the STB maintains ongoing oversight of the interstate rail network by regularly collecting employment and wage data from all Class I railroads. This allows the Board to monitor industry trends and respond to changes and developments as they arise. Employment and wage data are available on the Board's Economic Data page here. The Board also collects weekly rail service data from all Class I railroads, enabling the agency to track service performance and address any issues in the industry. This information can be accessed on the Board's Rail Service Data page here and via the Board's Open Data Portal (Beta) available on the Board's Reports & Data page here.

Because this is a pending matter, we cannot comment further; however, please be assured that the Board will conduct a thorough and fair review of the evidence and argument and consider whether the transaction serves the public interest, consistent with applicable law. The Board's review will include a rigorous examination of potential competitive effects, economic efficiencies, service effects, environmental impacts, and other critical considerations, including the impact on Applicants' employees and shippers.

While the Board has not established a procedural schedule for this proceeding at this time, any future schedule would include opportunities for public participation and comment. 49 C.F.R. § 1180.4. The Board strongly encourages input from all interested parties, including as it pertains to the merger's impact on rail customers, consumers of goods shipped by rail, and labor issues. 49 C.F.R. § 1180.1(m). As noted above, the Board's final decision will be based on a comprehensive review of the entire administrative record, including all filings and comments submitted. This approach ensures a thorough and robust evaluation of the proposed transaction.

A copy of your letter and this reply have been placed in the public docket. If you or your staff have any questions, please contact Ms. Janie Sheng, Director of the Board's Office of Public Assistance, Governmental Affairs, and Compliance, at 202-245-0238.

Sincerely,

Patrick J. Fuchs
Chairman

Michelle A. Schultz
Vice Chairman

Karen J. Hedlund
Member

Richard J. Kloster
Member