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Office of Chief Counsel
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Part of
Public Record

Hon. Patrick Fuchs
Chair
Surface Transportation Board
395 E Street, NW
Washington, DC 20423

Dear Chairman Fuchs, Vice Chair Schultz, Member Kloster, and Member Hedlund:

We are concerned that Union Pacific's (UP) and Norfolk Southern's (NS) Revised Application fails to present a *prima facie* case that the transaction is in the public interest, even after Applicants' supplemental submissions on July 7 and 27, 2026.

Attorneys general across the country have warned that this merger could reduce competitive options for shippers—a reduction that would ultimately increase costs for businesses and raise prices for consumers. At a time when the railroads are prospering financially, there is no reason to create a behemoth railroad that will take more money from farmers, shippers and ultimately consumers in our States and across the country. Under the Board's rules, a major merger is appropriate for approval only where the applicants show that the merger will produce new or enhanced rail-to-rail competition, or other competitive benefits, and that those benefits outweigh the merger's harms. *See* Decision No. 21 at 18-19.

This makes sense. Railroads exert market power over farmers and local businesses that rely on rail to move their products to market. The rail industry has already consolidated greatly in recent years, and Board-approved mergers receive immunity from antitrust challenges. Any additional mergers of large railroads should proceed only where they will enhance rail-to-rail competition and clearly benefit shippers and the American public. UP and NS's sole competitive-enhancement proposal is Committed Gateway Pricing ("CGP"). *See id.* at 21. Even as revised and expanded in UP and NS's July 27 supplement, CGP cannot satisfy the enhanced-competition standard.

CGP Inherently Cannot Enhance Competition – CGP does not give any shipper access to a new railroad—shippers gain nothing beyond what they already have today. It simply sets a formula for calculating rates for certain interline movements with BNSF and CSX that happen today, allowing some existing interlining to

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continue after the merger. That is not new or enhanced competition—at most, it partially preserves an option that already exists.

CGP Would Raise Rates for Many Eligible Shippers – UP and NS set the CGP rate (price) at the 70th percentile of UP/NS's own rates for comparable traffic, rather than at a median price or a below-average level. As a result, most eligible customers will receive a CGP price that is higher than what they pay today. UP and NS's own expert further acknowledges that CGP would create an incentive to ***raise*** rates on the routes used to calculate the CGP rate in the first place—a self-reinforcing dynamic. *See* UP-80/NS-78 at 251-52, 276-77. A proposal that raises rates for so much of the traffic it claims to help cannot be credited as a competitive enhancement.

UP and NS Acknowledge CGP Would Not Be Competitive – UP and NS concede "CGP would not be single-line service and would not be as fast or reliable as single-line service[]" and then clarify that "CGP was not intended to create competition with post-merger single-line traffic." *Id.* at 43. If UP and NS admit CGP would not create competitive service, we should take them at their word.

CGP Is *De Minimis* in Scope – Even as expanded, CGP would apply to only 0.9% of national rail traffic. It would have no impact on non-interline traffic and carries many exclusions: (i) CGP applies only to movements through four gateways—Chicago, St. Louis, Memphis, and New Orleans; (ii) CGP excludes CN and CPKC interline traffic; (iii) CGP excludes intermodal and automotive traffic; (iv) CGP excludes shipments to storage-in-transit and railroad-owned transload facilities and dimensional loads; and (v) CGP excludes *any* route that already has more than one rail option on both ends. *Id.* at 30-36. CGP is also temporary and terminates at the end of the Board's oversight period, likely in five years. A proposal this narrow, this exclusion-laden, and this temporary cannot offset the harm of combining two railroads into a single entity that would control more than 50% of the U.S. Class I rail market—let alone enhance rail-to-rail competition.

A merger that creates a 50%+ market share railroad cannot make a *prima facie* showing that it enhances competition without providing ***much*** more. Too much is at stake. Safe, efficient, cost-effective shipping is essential for the agriculture, mining, forestry, and manufacturing sectors, among many others. Competitive rail underlies the global competitiveness of the American economy. In the absence of real competitive enhancements, UP and NS are attempting to sell this deal with empty promises of efficiencies and lower costs. But history has consistently shown us that these rail mega-mergers deliver exactly the opposite to rural America: fewer routing options, higher captive freight costs, and catastrophic supply chain disruptions. A deal that shifts power away from shippers to a monopoly railroad should be rejected out of hand.

For these reasons, we respectfully request that the Board conclude that UP and NS have failed to present a *prima facie* case and deny the Revised Application on that basis. Thank you for your attention to this important matter.

Sincerely,

Austin Knudsen
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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing letter to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ *Christian B. Corrigan*

Christian B. Corrigan
Solicitor General
Office of Montana Attorney General Austin Knudsen
August 11, 2026