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

BNSF RAILWAY COMPANY'S
DESCRIPTION OF RESPONSIVE APPLICATION

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BNSF opposes the proposed merger between UP and NS, as do organizations representing nearly half of freight rail customers (measured by volume of rail cargo), labor unions representing more than half of all rail workers, seven state attorneys general, and many other stakeholders. The Board should say "no" to the proposed merger. It is bad for shippers, bad for the industry, bad for American businesses, and bad for American consumers. It does not come close to satisfying the strict public interest standard the law requires for proposed major rail mergers. A merger is not needed to save a struggling railroad like mergers of the past—UP and NS are posting historic profits. A merger is not needed to provide faster service or new routing—railroads already partner to provide customers with faster service and innovative new services. The merger is a plan to create a railroad far larger than its rivals that will exert market power and leverage to maximize prices on shippers to generate even higher profits. It is not in the public interest.

As a procedural step required by the STB process, BNSF files this submission now to provide a description of an anticipated responsive application that must be disclosed as part of the process. BNSF will detail its full opposition on November 18. To be absolutely clear, no combination of conditions and responsive applications can solve the intractable problems that this merger would create. BNSF opposes the merger—period.

<u>The Proposed Merger Should Be Rejected</u>

The proposed merger between UP and NS is not in the ***public*** interest. The proposed merger is in the ***private*** interests of UP/NS shareholders, UP/NS management, and certain Wall Street participants. Those private interests will profit when UP exports its strategy to "**maximize price**" to the NS network and leverages its increased pricing power to raise rates on customers via bundling and other means. This will be even more pronounced on the numerous captive shippers on their networks. And the harms of the proposed merger would be borne by the public: increased shipping costs, a less resilient freight-rail network, and fewer competitive options. All this makes life more difficult for farmers, chemical companies, and a wide swath of American businesses—in turn hurting American consumers and the American economy.

The problem for UP, NS, and their Wall Street supporters is that the law requires the merger to be in the public interest to be approved, not just their private financial interests. This proposed merger is plainly ***not*** in the public interest. Accordingly, the proposed merger should be rejected.

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To start, there are no defined public benefits in UP's application. UP's primary argument is that it will create "public benefits" by converting millions of truck containers to rail. That contention is based on a consultant-created report that generates hypothetical diversions and savings that cannot withstand initial scrutiny, much less the scrutiny it will receive during the merits review. The consultant's report (which he already needed to amend, repair, and change multiple times, including just last week) is fanciful, unsupported, and—most tellingly—inconsistent with UP's internal strategies and projections. For example, UP's consultant suggests that containers will convert from truck to rail even when rail is ***more expensive and slower*** than truck. That is not credible; no Class I railroad would actually invest capital on that kind of model. Moreover, UP's promise of millions of truck-to-rail conversions ignores the real-word test of the recent CPKC merger. In that merger, the merging parties made similar (albeit much more modest) promises to the Board, and those have not come close to being true.[1]

Of course, a merger is not required in order to convert truck containers to rail. Both UP and NS (and other railroads) have worked together for decades to offer services with minimal dwell/interchange time (when sufficient demand exists), and railroads have invested in better intermodal service capabilities. Today, the rail industry is thriving: "Intermodal keeps setting records. August [2026] volume reached a new monthly record, while year-to-date volume through August was also the highest ever."[2]

Next, the public harms will be real and substantial. Rail customers will face higher prices, fewer competitive options, and a less reliable freight network. Those costs would flow through to consumers: higher prices for energy, food, and other American staples. Everyone will feel the consequences of this merger. This is not just BNSF's view. The nation's largest shipper associations, seven state attorneys general, and six labor unions have all reached the same conclusion. And, even

[1] *See* Decision No. 21 at 25 n.29 (STB served May 28, 2026) (noting that prior mergers have "fallen short of truck-to-rail conversion projections[,]" like in CP/KCS, where "[t]hree years after consummation, that goal has not yet been realized").

[2] ASSOCIATION OF AMERICAN RAILROADS, *Rail Industry Overview (Sept. 2026)*, https://www.aar.org/rail-industry-overview/ (last visited Sept. 9, 2026).

individuals who previously signed UP's form letters of support are retracting their support now that the process has moved beyond UP's promotional pitches to the details of the proposed merger.

- Rail Customers. Five major shipper associations have warned that the merger "will deepen . . . captivity, eliminate what limited competitive options remain, and leave them exposed to service deterioration and rate increases with no recourse." *See* ACC-6/ACD-6/AFPM-6/NITL-3/TFI-6 at 3 (STB entered Aug. 6, 2026); *see also* NGFA-5 (STB entered Aug. 13, 2026).

- Sugar Cooperative. The country's largest farmer-owned sugar marketing cooperative has also come out against the merger. *See* Letter from M. Barth (STB entered Aug. 26, 2026). After the co-op spoke with a member of the UP-deal team, it became "clear" to the co-op that it "will have less competitive options and pay higher rates due to the merger." *Id.* at 2. This will hurt "the hardworking farmers who own [the co-op] and grow the sugar beets and cane that are refined into processed sugar," and the "[h]igher rates from the UP/NS merger will be passed on to businesses that use sugar to make their products or be borne by [the co-op's] farmer members, or both." *Id.*[3]

- State Attorneys General. The Republican Attorneys General of seven states—Montana, Iowa, Florida, North Dakota, South Dakota, Tennessee, and Kansas—also have urged denial. Representing the interests of farmers, industries, and other stakeholders, they warned that "history has consistently shown us that these rail mega-mergers deliver exactly the opposite [of benefits] to rural America: fewer routing options, higher captive freight costs, and catastrophic supply chain disruptions." *See* Letter from A. Knudsen, et al. at 1, 3 (STB entered Aug. 11, 2026). In a separate filing, the Attorney General of Texas evaluated potential competitive concerns and concluded "the Board should not approve a railroad merger that is likely to result in rate increases on any shippers" or that would "result in meaningful foreclosure of rival railroads." *See* Letter from J. Ciampi at 3, 9 (STB entered Aug. 28, 2026).

- Labor. Drawing on the lived experience of the 1990s mega-mergers, a group of six unions warned that "[t]he ultimate result of creation of the duopolies was reduced employment and reduced service (especially as finance

[3] *See also* Silica Services Letter to Chair Fuchs (STB entered Aug. 17, 2026) (explaining how the merger will harm a shipper and how the merger will "dull," not "sharpen," competition).

interests moved to exploit the market dominance of the lightly regulated duopolies by compelling adoption of the ruthless cost-cutting business model branded as PSR)." *See* ARU-4/BLET-3 at 4 (STB entered Aug. 19, 2026).

- Congress. More than 100 members of U.S. Congress – across both aisles – have either stated their opposition to the merger or raised concerns about it.

The Developing Discovery Record Reinforces That UP Will Maximize Price on the Backs of the Public

To the Board, UP claims that the merger will lower costs for shippers by making rail more competitive against truck. To its Wall Street investors, however, UP has promised that it will take as much price as it can, whenever it can:

- "The team has a ***hustle mentality***, and we are very ferocious about business development. ***We will maximi[z]e price.***"[4]
- "[W]e have always been very price disciplined. Meaning, you know, ***the last to lower, the first to increase*** here."[5]
- UP's "strong core pricing gains [are] a result of our ***deliberate focus on maximizing price.***"[6]
- "[W]e're going to gather the demand that's out there, ***maximize the price*** based on the service that we have, and we'll see where that lands us."[7]

What UP is willing to say in ***public*** should give everyone pause about handing UP even more market share and pricing power. What UP says behind closed doors—which we are beginning to understand through discovery—is even more concerning.

[4] *Transcript of Union Pacific Live Investor Roadshow*, at 34 (Sept. 19, 2024), https://investor.unionpacific.com/static-files/3b3e8a20-0fbd-4800-bb71-9182957af334 (emphasis added).
[5] *Id.* at 29 (emphasis added).
[6] *See* Earnings Call Transcript at 6 (Jan. 23, 2025) (emphasis added).
[7] *See* Earnings Call Transcript at 17 (Jan. 27, 2026) (emphasis added).

Those details are not yet available to the public due to UP/NS's overuse of "highly confidential" designations for most of their document productions. So for now, they can only be seen by certain outside lawyers and consultants. When those details eventually come out, all will see the true purpose of the UP/NS proposed merger—***maximize price, maximize price, maximize price.***

If the Merger Proceeds, Transformational
<u>Conditions Will Be Needed to At Least Partially Offset the Harm</u>

The proposed merger would result in one goliath railroad with substantial market power. A combined UP/NS would control 50% of all rail shipments originating in the United States on Class I railroads (and a much greater percentage in several specific commodity markets).

UP gives a wave of the hand to the requirement of addressing the downstream effects of the proposed merger. But let there be no doubt—the result of approving the proposed merger will be to transform the current competitive industry to a distorted industry structure with one dominant transcontinental railroad with substantial market power; it will create more captive shippers and more operational risk and a handful of railroads that will be squeezed on all sides by the combined UP/NS. By its own admission, UP/NS will be a monopolist of transcontinental single-line rail service. This is a dangerous, unnecessary transaction for the Board to approve—not to mention it does not satisfy the Board's regulations.

If the Board decides to go down the path of allowing this merger to fundamentally transform the industry, then it must also fundamentally transform the industry with commensurate conditions to lessen the blow to shippers and the

American public. To be clear, conditions can only mitigate some of the harm to competition caused by this merger. Put simply, the freight rail market would be most competitive if the proposed transaction is rejected outright, and UP is forced to compete on the merits with NS and the other Class Is, rather than gain market power by a merger.

While conditions cannot solve the intractable problems that this merger would create, the conditions summarized below would at least mitigate some of the competitive harm from the transaction. To be clear, BNSF believes that these conditions are ***necessary*** to reduce the scope of the merger harms, but they are ***not sufficient*** to fully mitigate the radical industry restructuring that UP envisions and certainly do not "enhance" competition as the law requires.[8]

- **Northeast Intermodal.** Today, BNSF and NS jointly move significant intermodal traffic from the West Coast to the Lehigh Valley in eastern Pennsylvania. BNSF moves the traffic to Chicago, where it interchanges with NS, which moves the traffic to eastern Pennsylvania. It is a successful interline product that benefits shippers and consumers with reliable and cost-effective transportation. BNSF and NS are currently aligned on working together to provide this intermodal service to customers. If the Board approves the proposed merger, however, UP/NS would have the ability and incentive to ensure that BNSF is not a competitive option from a pricing and service perspective. Once BNSF is eliminated or limited from

[8] In a recent filing, UP/NS argued that the governing statute "preclude[s] the Board from requiring applicants to *enhance* rail-to-rail competition to satisfy the public interest standard." *See* UP-94/NS-93 at 22 n.20 (STB entered Aug. 26, 2026). While it is understandable that parties who are unable to meet a standard will argue for a lower standard, UP and NS are simply wrong as a legal matter. *See* Decision 21 at 18-21 (STB served May 28, 2026). In any event, the veiled suggestion that UP/NS would appeal a ruling that requires rail-to-rail competition should leave everyone with one undeniable conclusion: this merger proposal is not about enhancing competition, and a merged UP/NS will do everything in its power to leverage its increased market power to impair rail-to-rail competition.

that market, UP/NS will be able to extract higher prices from its customers. To mitigate the loss of competition and degradation in service, BNSF anticipates submitting a responsive application seeking overhead trackage rights on certain NS lines between Chicago and eastern Pennsylvania.[9]

- **Gulf Coast Condition.** Today, there is a lack of effective rail competition in the Gulf Coast territory (from Corpus Christi, Texas to the west bank of the Mississippi River). Many Gulf Coast shippers are dependent on the UP network without competitive rail alternatives—a dependence that forces captive shippers to pay higher rates than shippers with access to multiple carriers—and the UP/NS merger would exacerbate these harms because Gulf customers ship significant volumes to eastern markets where CSX and NS compete today. Post-merger, UP would leverage its increased market power—and its practice of bundling rail service to customers with multiple facilities across its network—to impose still higher rates on these captive shippers. To mitigate this harm, BNSF anticipates asking the Board to require UP to install a neutral switching or terminal railroad that would directly serve all BNSF and UP rail-served facilities in the Gulf Coast. The neutral terminal railroad would haul, switch, or interchange traffic to UP and BNSF at nearby hand-off points. The railroad could be jointly owned and managed by UP and BNSF (although other railroads could participate depending on the geographic territory involved) or be a third-party shortline operator or switching railroad. The railroad would have a governance structure that gives participating Class Is equal voting power that would govern any action having a substantial effect on operations, maintenance, or administration via unanimous vote. This proposal would not require the transfer or divestiture of existing asset ownership, and the Board would evaluate any necessary operating authorizations when UP

[9] BNSF anticipates that it will request overhead trackage rights on five NS lines that together form a continuous route of approximately 824 route miles from Chicago, IL to Bethlehem, PA, including: the Chicago Line (extending approximately 341 route miles from Chicago, IL to Cleveland, OH); the Cleveland Line (extending approximately 56 route miles from Drawbridge (Cleveland), OH to Alliance, OH); the Fort Wayne Line (extending approximately 83 route miles from Alliance, OH to West Pitt, PA); the Pittsburgh Line (extending approximately 249 route miles from West Pitt, PA to Harrisburg, PA); and the Harrisburg Line (extending approximately 52 route miles from Harrisburg, PA to Wyomissing Junction, PA), together with segments of the Reading Line and the Lehigh Line east of Wyomissing Junction, PA (extending approximately 43 route miles). In connection with its request for trackage rights, BNSF anticipates that it will also request access to and use of certain intermodal terminals and yards and the right to serve new intermodal and/or automotive facilities that locate on NS lines over which BNSF is given trackage rights.

> presents the transaction to the Board for approval. Therefore, BNSF will not file a responsive application associated with this condition request.

In addition, shippers have raised with BNSF the need for other global conditions that may be the subject of further briefing and discussion—such as an open access framework that would provide direct commercial access to an origin or destination facility that is served by only the merged carrier post-transaction. BNSF will continue to listen to such proposals by customers and others and may support these conditions in its November submission. BNSF's position remains that the proposed merger should be rejected. But ***if*** the Board determines that Applicants have presented a *prima facie* case, ***if*** the process moves to the merits, and ***if*** the Board is inclined to approve the merger after consideration of the evidence, then transformational and self-executing conditions will be essential. If the Board approves such a flawed merger that would so fundamentally alter the freight rail industry and options to shippers, then it must create a fundamentally different structure to the industry.

* * * * *

The merger creates far too much market power and competitive harm to be saved by conditions. The Board should reject it, rather than try to formulate conditions that will fail to serve the public interest or enhance competition.

CONCLUSION

The merger is against the public interest. It would undermine competition, inflate costs for rail customers, destabilize the industry, and entrust an unprecedented concentration of market power to a company whose track record—and intentions, as shown through discovery—demands skepticism, not confidence. The merger would be a win for Wall Street and UP shareholders but a loss for everyone else. The Board should say "no" to the proposed merger.

[Signature page follows.]

Respectfully submitted,

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Dated: September 9, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing submission 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/ Onika Williams
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