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November 17, 2026

VIA E-FILING

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

Re: STB Docket No. FD 36873 *Union Pacific Corporation And Union Pacific Railroad Company—Control—Norfolk Southern Corporation And Norfolk Southern Railway Company*

Dear Sir or Madam:

Attached for e-filing is the Maryland Department of Transportation's ("MDOT") Comment and Request for Conditions in the above referenced proceeding.

If you have any questions please do not hesitate to contact me.

Sincerely,

Ayelet Hirschkorn
Attorney at Law

Counsel for Maryland Department of Transportation

Enclosures

CC: Parties of Record

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MARYLAND DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Wes Moore
Governor

Aruna Miller
Lieutenant Governor

Kathryn Thomson
Secretary

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. (FD): 36873

Application of Union Pacific Railroad Company to Acquire Control of Norfolk Southern Corporation

COMMENTS OF THE STATE OF MARYLAND

Filed: November 18, 2026

To the Honorable Members of the Surface Transportation Board:

The State of Maryland respectfully submits these comments regarding the proposed acquisition of Norfolk Southern ("NS") Corporation by Union Pacific ("UP") Railroad Company (combined "Applicants"). Maryland provides this submission to ensure that the Board's statutory review under 49 U.S.C. §§ 11323–11325 fully accounts for the substantial, direct, and statewide impacts that the proposed consolidation may have on Maryland's rail network, port operations, passenger rail services, public safety, workforce, and economic vitality.

The proposed transaction—if approved—would materially harm rail operations in Maryland, in several ways: Impacts to continuity of service through a preservation of existing or enhanced coordination with the merged company; new competitiveness risks introduced to the Port of Baltimore ("POB") operations, including protecting and expanding goods movement to existing or new markets; preserving opportunities to expand passenger rail service on existing lines; safeguarding low-density freight corridors and short-line stability for the State's existing operators; and protecting and stabilizing Maryland's railroad workforce.

The application presented to the Board does not take into account the public harms to the State of Maryland. The public interest is served when statewide railroad related workforce is robust; when the regional economy is strengthened by a high-performing port, with efficient reach to distant markets; when commuters are able to arrive at locations for necessary services, including to/from quality jobs, via public transportation such as commuter and intercity rail; when consumers in low density regions are able to efficiently and affordably receive goods; and when operations to deliver goods are optimally coordinated without interruption. On these grounds, the state believes no set of conditions can fully protect competition from a merger of this scale. Specifically, to the POB, once Baltimore's cargo base shifts to other gateways and other ports, no later order will bring it back. As the Board said when it accepted the application, the consequences of past mergers "cannot be ignored, assumed away, or overlooked based on vague intentions or promises."[1] The only remedy that fully protects the POB's competitive position is denial of the application. Maryland therefore urges the Board to undertake a rigorous, comprehensive evaluation of the merger's anticipated consequences and—should the proposed merger continue to move forward—consider imposing enforceable conditions and reparative terms necessary to protect the public interest and the State of Maryland.

[1] STB Decision, Docket No. FD 36873, May 28, 2026

I. BACKGROUND

The STB—through statute and promulgated regulations—is empowered by the United States Congress to "approve and authorize a transaction . . . when it finds the transaction is consistent with the public interest." 49 U.S.C. § 11324(c). In addition, STB regulatory policy provides that "mergers serve the public interest only when substantial and demonstratable gains in important public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms." 49 C.F.R. 1180.1(c).

The State of Maryland has a significant interest in this proceeding because the proposed transaction would harm rail infrastructure and transportation services that are critical to Maryland's economy, freight transportation network, and passenger rail system. An applicant in the proposed merger, NS, is one of Maryland's two Class I freight railroads and maintains operations central to POB, the State's freight distribution system, and multiple rail corridors used jointly with Maryland Area Regional Commuter ("MARC") service and the Northeast Corridor ("NEC"). As a result, the merger has the potential to affect freight rail capacity, service reliability, competitive transportation options, port-related commerce, and the performance and future development of passenger rail services within the State. Maryland therefore has a direct and substantial interest in ensuring that the Board fully evaluates the merger's effects on rail competition, freight service, passenger transportation, and economic activity within the State and impose any conditions necessary to protect the public interest.

On April 30, 2026, UP and NS filed their revised (amended) merger application with the STB seeking approval of UP's acquisition of control of NS in Docket No. FD 36873. The STB subsequently issued a decision on May 28, 2026, accepting the revised application for consideration, while placing the proceeding in abeyance and directing the Applicants to submit supplemental information. After the Applicants supplemented the record in July 2026, the STB issued a further decision on August 18, 2026, removing the proceeding from abeyance and establishing a procedural schedule governing consideration of the merger application on the merits. Under that procedural schedule, comments on the revised application, including protests, requests for conditions, and other evidence or argument in opposition, were required to be filed by November 18, 2026.

Accordingly, the State of Maryland provides the following comments.

II. PORT OF BALTIMORE: RISKS, EXPOSURE, OPERATIONAL NEEDS, AND PROTECTIVE MEASURES

The proposed merger reduces the competitiveness of the POB, thereby reducing competitive choice among Eastern Seaboard gateways, undermining shipper choice, and harming the broader economy of the region. The Board must, at the very least, impose protective measures to mitigate these harms. The POB delivers critical public benefits to the State of Maryland by anchoring tens of thousands of jobs, billions of dollars in income, and providing a resilient logistics base for shippers across the State. Economic impact analysis finds that POB activity generates about 51,365 jobs in Maryland, including 20,193 direct jobs tied to cargo and vessel operations, and supports $5.3 billion in personal income, $3.9 billion in business revenues, and $647 million in state and local tax revenues each year. Combining direct, induced, indirect, and related employment, more than 273,675 jobs are linked to

the POB, with an estimated $70.3 billion in economic value to Maryland's economy.[2] These figures translate into concrete public benefits: stable employment for longshore labor, trucking and rail workers; lower logistics costs for manufacturers, auto dealers, and distributors; and a competitive gateway that keeps Maryland firms from bearing the higher costs and longer transit times associated with routing freight through more distant ports.

Maryland shippers are particularly vulnerable because a large share of related jobs—about 222,310 positions—belong to firms that use the POB currently but will likely, in principle, shift their cargo to other ports if service or costs deteriorate. For auto imports, steel, and containerized retail goods, rail access is a decisive factor in choosing Baltimore over competing gateways; any degradation in rail reliability or pricing can quickly erode that market and consolidate discretionary cargo among a smaller number of other ports along the Eastern Seaboard. In practice, this means that even modest increases in dwell time, reductions in equipment availability, or rate hikes on key corridors can trigger cargo diversion, with knock on effects for Maryland employment, tax revenues, and highway congestion as shippers substitute longer truck hauls for lost rail capacity.

A Class I rail merger—such as the proposed Union Pacific–Norfolk Southern combination—therefore poses port-specific exposure for Maryland shippers that materially degrade the public benefits of any national scale benefits that the Applicants highlight. For Maryland, the risk lies in how network priorities and capacity allocations shift after the merger: if new premium intermodal lanes and long haul corridors are favored elsewhere, Baltimore-bound traffic will likely see relatively less investment, fewer train starts, or tighter equipment pools. In that scenario, the POB's 273,000 plus linked jobs and $70.3 billion in economic value become exposed to decisions made far from Maryland—decisions that could quietly redirect discretionary cargo, raise logistics costs for Maryland shippers, and erode the very public benefits the POB currently provides.[3]

A. Risks and Exposure

The POB is the nation's leading automobile—or roll-on/roll-off — gateway, a major bulk port, and a growing container hub, handling approximately 50 million tons in 2025[4] with roughly 25–30 percent of cargo dependent on rail. Any change in rail service quality, pricing, or routing flexibility could directly affect throughput, jobs, and revenues.

Importantly, the proposed merger threatens to undermine one of the most significant public infrastructure investments supporting the POB's long-term competitiveness: the Howard Street Tunnel project. After more than fifty years of planning and development, the tunnel improvement enables double-stack intermodal rail service to and from Baltimore, supported through substantial investments by the Federal Railroad Administration, Maryland, Pennsylvania, and private partners. That investment was predicated on the continued presence of a strong, competitive Class I railroad capable of growing double-stack traffic between the POB and inland markets over the long term. Yet the Applicants' own traffic study projects that CSX will lose approximately 244,000 carloads following the transaction, the largest projected loss of any Class I carrier.[5] A weakened CSX network

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[2] Economic Impacts Generated by the Port of Baltimore: https://mpa.maryland.gov/Documents/2023EconomicImpactSummaryADA326.pdf

[3] Railway Age. https://www.railwayage.com/wp-content/uploads/2026/05/UP-NS-STB-Filing-Get-the-Facts-final.pdf

[4] THE PORT OF BALTIMORE'S WATERBOURNE COMMERCE – 2025; https://mpa.maryland.gov/Documents/2025FCSRADA.pdf

[5] Applicant's Supplemental Merger Application, July 27, 2026, Supplemental Page 344

risks reducing traffic, future capital investment, and service growth on the very corridor the Howard Street Tunnel was modernized to support. At the same time, NS's route into Baltimore operates over Amtrak's Northeast Corridor, which cannot accommodate double-stack service, creating a powerful incentive for the merged carrier to direct intermodal traffic toward competing gateways that can be more efficiently served, including the Port of Virginia via the publicly funded Heartland Corridor. The Board should therefore consider conditioning any approval on the Applicants establishing and maintaining competitive double-stack intermodal service between the POB and key Midwest markets. Such a condition would not merely preserve existing service levels; it would advance the Board's requirement that major rail mergers enhance competition while ensuring that the transaction does not strand the substantial public investment made to secure Baltimore's ability to compete for discretionary cargo in the first place.

In addition, the Applicants' merger application proposes new blocking plans, which consider how railcars will be grouped by destination and assigned to trains. The appendix to the merger application lists new and revised blocks of cars by origin – destination pair, along with the anticipated number of railcars that will be shipped between these origins and destinations per day. The application compares car blocking under the "Optimized Plan" and the "Growth Plan." The Optimized Plan assumes that UP and NS merge and optimize the movements of existing traffic. The "Growth Plan" accounts for additional traffic that UP and NS would handle as a result of efficiency caused by the merger. Maryland's review of the Application's blocking plans indicates no new or modified Maryland railcar blocks under either the Optimized or Growth Plans, while a few jurisdictions along the Eastern Seaboard—New Jersey and Pennsylvania, in particular—receive substantial increases (e.g., +202 and +471 railcars per day, respectively).

Table 1. Blocks of Railcars Expected to Be Added or Modified as a Result of the UPNS Merger

STATE OF ORIGIN OR DESTINATION	OPTIMIZED PLAN CARS PER DAY	GROWTH PLAN CARS PER DAY
New Jersey	12	214
Pennsylvania	357	828
Virginia	0	15
Maryland	0	0

Source: Applicant's Merger Application[6]

Table compares the number of railcars processed per day under the Optimized Plan and the Growth Plan for those blocks with at least one endpoint in either New Jersey, Pennsylvania, Virginia, or Maryland. As shown, the growth benefits of the merger are one-dimensional and unbalanced, and will result in disproportionate consolidation of Eastern Seaboard gateway development, rather than dynamic and distributed growth that benefits both transcontinental and regional and local shippers. These numbers reflect that under the merger's logic, new blocks of transcontinental railcars will be funneled to a select few Eastern Seaboard port areas in northern New Jersey and Pennsylvania, rather than distributed among a more robust distribution of gateway destinations. The siloing of merger-related growth will drive further investment in fewer places, which in turn, will lead to poorer service for regional and local shippers that are not the focus of narrow transcontinental growth.

[6] Applicant's Amended Merger Application, April 30, 2026, 311221 Spreadsheet, Electronic Appendix K – Growth Plan Blocking Changes.

Additionally, depending on commodity and terminal, POB shippers can remain captive to a single railroad (e.g., NS exclusive access for Dundalk Marine Terminal (DMT) tracks; CSX handling most intermodal rail). Switching via Bayview or further down the NS network is often cost-prohibitive, limiting rate discipline and routing flexibility. In a post-merger environment, captive shipper exposure could intensify absent protective conditions.

B. Ways to Protect Goods Movement from the Port

Baltimore is the largest origin and destination of NS traffic in Maryland. NS serves automotive facilities at the POB, and until recently served intermodal facilities at Seagirt Marine Terminal. The public interest is served by a high performing port that delivers goods expeditiously to the local and regional market, preferably through a competitive shipping environment that combines accessibility and affordability. By far, the largest rail traffic base for NS in Maryland is export coal from Northern Appalachia to the Consol Marine Terminal in Baltimore. A concern consistent with the blocking plan is that the merger would divert and consolidate shipments away from POB and towards a smaller number of Eastern Seaboard ports, thereby harming the local and regional public by removing access and increasing costs. Ultimately, the transcontinental nature of the new company would reduce market share, particularly for those areas served westward.

To safeguard Baltimore's competitiveness and protect goods movement, Maryland requests the Board to impose the following port-specific protective measures as conditions of approval:

- Reciprocal switching and/or track usage rights for CSX at Dundalk Marine Terminal: Provide CSX a practical competitive access pathway to DMT with commercially reasonable rates, charges, and terms of service, including switching frequency and timing, car supply and car handling, yard and terminal access, interchange location and hours, and operating priority, that are no less favorable than those the Applicants provide to their own traffic, or that of any affiliate, moving to or from the same facility, and that are sufficient to permit CSX to offer shippers a competitively viable alternative to the Applicants' single-line service—including a reduction or elimination of switch fees under 49 U.S.C. § 11102 for competitors along lines into Dundalk Marine Terminal-- enabling shippers to obtain competitive pricing and service alternatives.

- Restoration and Expansion of NS Intermodal Service at Seagirt Marine Terminal: Direct the merged entity to evaluate and, where feasible, restore intermodal capabilities at Seagirt, coordinated with the Maryland Port Administration, to strengthen Baltimore's intermodal connectivity and reduce diversion risk.
- Gateway and Pricing Protections Beyond Oversight Period: Implement permanent gateway protections, transparent monthly reporting on Maryland gateway flows, and commercially reasonable rate divisions, with enforcement mechanisms that extend beyond the five-year oversight horizon.
- Interchange Performance Metrics at Bayview/DMT: Require public-facing performance metrics (e.g., interchange dwell, car cycle time, lift productivity) and corrective action plans when thresholds are breached, to ensure fluid goods movement through the Baltimore gateway.
- Marketing Parity and Balanced Deployment: Mandate that the merged railroad's national marketing programs, blocking plans, and asset assignments treat Baltimore as a priority gateway for Mid-Atlantic/Midwest lanes, avoiding systemic de-prioritization of East Coast ports.

For the State and broader region, the POB is indispensable for Mid-Atlantic/Midwest shippers — it relies on resilience, shorter inland distances, and competitive costs. The Board must impose conditions ensuring POB is not deprioritized in marketing or investment decisions by a coast-to-coast merged system. Practical solutions are required that introduce competition for captive shippers and offset the merged entity's transcontinental marketing advantage. Without this, the merger will not enhance the public interest as required under the STB's regulations.

III. PRESERVATION OF MARC SERVICE AND NORTHEAST CORRIDOR CAPACITY

The merger could limit the expansion of commuter rail service in Maryland by increasing congestion on jointly used rail lines, which would undermine the public interest. The Board should impose conditions to mitigate this potential harm.

Maryland's passenger rail service plans are ambitious, seeking to expand MARC operations that offer competitive travel times, attract a widening range of trip purposes, offer a seamless network, balance service levels with demand market, and spur economic growth and transit-oriented development—a key priority if the Moore-Miller Administration. The capital program—per the *MARC Growth and Transformation Plan*—features capital cost estimates for a series of projects that are required to deliver additional service, including new infrastructure, stations, rolling stock, and various expenses such as right-of-way acquisition, professional services for project development, and contingencies. The total estimated capital cost through the Unconstrained Phase is $13.7 billion in Year of Expenditure dollars. Future goals include providing more frequent, all-day, and all-week rail service (including on weekends) across the system to better serve existing, changing, and new travel markets. It also includes expansions into Virginia, Delaware, and Western Maryland to vastly expand the reach of the system, offering more frequent service to more people.

Maryland's Camden, Brunswick, and Penn Lines—together with Amtrak's NEC—are essential passenger rail assets shared with freight operations, including NS's. The agency's long-range transportation plan, the *MARC Growth and Transformation Plan*, anticipates several MARC extensions beyond these existing Lines, including on NS-owned lines. A key component of this future expansion involves the acquisition by the State of the NS-owned Claremont Branch, located in Baltimore, Maryland, between the Amtrak Northeast Corridor and the CSX Mt. Clare Yard. MTA is currently seeking a jurisdictional decision by the STB on the Claremont Branch to advance the potential acquisition. Acquiring this line is a key component of the Penn-Camden Connector, which will restore a historic rail line to connect the MARC Penn Line and Camden Line, enhancing rail connectivity and boosting accessibility and efficiency for passenger rail service in the region. Maryland's long-range planning specifically contemplates potential MARC Brunswick Line expansion to Hagerstown, which would require operating on the NS Crescent Corridor between Shenandoah Junction and Hagerstown.

Increased freight movements arising from the merger could impede MARC performance or constrain future service growth. The number of trains on the NS line that accesses Hagerstown is forecast to grow 20 percent as a result of the merger.[7] With train counts forecast to rise on relevant corridor segments, and with the merged company being new to coordination and contracting with the State, Maryland seeks assurances that the merged entity will participate in corridor-level capacity planning and will not impede future passenger rail access or expansion opportunities.

Furthermore, existing dependencies between MARC service and NS-owned infrastructure on the Northeast Corridor, including NS-controlled federally mandated Positive Train Control systems used by MARC trains on Northeast Corridor segments to reduce public risks, must be protected with binding conditions ensuring continued, reasonably priced access to these NS assets post-merger.

IV. SAFEGUARDING LOW-DENSITY FREIGHT CORRIDORS AND SHORT-LINE STABILITY

Maryland also emphasizes the importance of maintaining fluid interchange with Maryland short-line railroads—Canton Railroad, Delmarva Central Railroad, Maryland & Delaware Railroad, Tradepoint Rail, and Winchester & Western Railroad. Maryland's short line railroads are valuable resources that provide last-mile rail service to Maryland's shippers.

Under the proposed merger application, the Winchester & Western line is susceptible to congestion due to projected train volume growth— given that the number of trains on the NS rail line with which it interchanges is expected to grow by 20 percent— along the NS Crescent Corridor through Hagerstown.

The proposed merger raises valid concerns regarding whether the merged entity will handle Maryland rail traffic competitively. Rail transportation is most cost-effective over longer distances, and the application acknowledges that short-distance moves are less desirable. This dynamic is especially relevant for Maryland's short lines, which serve rural and less dense regions. The merger's emphasis on long-haul, intermodal service could reduce competitive pricing and service for Maryland's shorter, non-intermodal routes.[8]

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[7] 311221 Spreadsheet, Electronic Appendix T – UP/NS Train Counts.

Evidence for preference for longer hauls is further suggested by the overall industry increase in average length of haul, which grew from 990 miles in 2013 to 1,050 miles in 2025 per the Association of American Railroads, 2025 *Railroad Facts* publication.

Baltimore is by far Maryland's largest rail market, which is accessed by NS over the Amtrak Northeast Corridor . Already, Louis J. Grasmick Lumber Company, Inc. has filed comments in the Applicant's merger proceeding that NS has reduced service to its location in Baltimore from twice per week to once per week. NS has informed this shipper that, it is "currently unable to consistently support twice-per-week service given the challenges of Amtrak and its impact on crews,"[9] and encouraged this shipper to shift its freight to truck.[10] *Id.* at 1. This comment highlights the concern that post-merger the combined railroad would have a greater incentive to demarket similar small-scale Maryland shippers.

While the merger application may recognize these risks and generally commits to maintaining fair access and competitive rates, pursuant to STB's regulatory public interest policy under 49 U.S.C. §11324(c) to improve service,[11] Maryland's current rail traffic in low-density regions must be preserved, ensuring continued service via the state's short line railroad partners.

To observe and mitigate these concerns, Maryland requests interchange monitoring, capacity management, and rapid-response protocols to protect these last-mile rail services for over a period of 10 years in partnership with the Maryland Department of Transportation and short-line railroads, covered by costs borne by the Applicants.

Maryland's average rail haul lengths—approximately 405 miles for origins and 457 miles for destinations—are well below the national average of about 1,050 miles. The merged entity may prioritize long transcontinental moves. Maryland therefore seeks explicit protections against discriminatory pricing, demarketing of short-haul carload traffic, and loss of competitive access, including rate-division transparency and monitoring at key gateways.

V. PROTECTION AND STABILIZATION OF MARYLAND'S RAILROAD WORKFORCE

Maryland has experienced erosion in railroad employment in recent years. The Applicants project both reductions and net additions in craft positions. Historical workforce trends show combined employment declines under Precision Scheduled Railroading (PSR), with limited evidence of commensurate benefits to shippers or traffic growth. PSR is a set of operating practices that focus on improving asset utilization and reducing unnecessary costs. Among the elements of PSR is the practice of operating fewer, longer trains that require fewer train crews. In part because of PSR, UP and NS have been able to dramatically reduce their workforce headcount. As recently as 2015, UP and NS collectively employed over 80,000 employees. Between 2015 and 2021, the number of employees fell by about 38 percent to around 50,000.[12]

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[9] *See* Comments of Louis J. Grasmick Lumber Company, Inc., FD 36873, ID-311924 (STB filed Aug. 12, 2026).
[10] *Id at 1*
[11] 49 C.F.R. 1180.1(c). STB regulatory policy ensures that mergers serve the public interest "when substantial and demonstratable gains in important public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms."
[12] Surface Transportation Board, Employment Data: https://www.stb.gov/reports-data/economic-data/employment-data/

Unfortunately, this large reduction in headcount has not translated to savings to customers or potential customers that would induce a shift to rail.

The merger application claims that the merger would save $391 million in labor costs per year, of which $131 million would be in unionized labor. Efficiencies would reduce the number of positions by 1,156 jobs by the end of Year 3, about 2.8 percent of all "craft employees" of the merged company. However, the application projects that the combined company will grow as a result of traffic increases and will add a net of 1,229 craft jobs by the end of Year 3. Several unions have come out for the merger, including the Sheet Metal Air Rail Transportation (SMART-TD) union—but numerous rail unions oppose the merger publicly, citing skepticism around job assurances. Several claim that the Applicants each have poor safety records and will be distracted by the merger. Unions are concerned that previous mergers have resulted in "rationalization" of networks where railroads have abandoned some rail lines, have spun off others to non-unionized short line/regional railroads.

In light of these realities, Maryland urges the Board to render terms that require strict prohibitions around merger-related future rail line and facility abandonment and rail line asset sell offs, to at minimum preserve existing railroad related jobs in the State.

VI. COMPETITIVE GATEWAYS, PRICING PROTECTIONS, AND OVERSIGHT

Maryland remains concerned that the merged UP–NS could internalize interchange decisions and offer less favorable pricing for interline movements involving CSX or BNSF, thereby reducing competition. Whereas prior to the merger, NS would have been indifferent interchanging with UP or BNSF, or UP would have been indifferent interchanging with NS or CSX, post-merger, the combined company could exclude other railroads that had once competed for a portion of transcontinental rail moves. There will also be an incentive to carry freight as far as possible into competitors' territory. For example, for a move between the former NS and BNSF or UP and CSX, the Applicant's will have an incentive to move the interchange location so that it moves as far as possible on the merged system before interchanging with BNSF or CSX. The Applicants propose gateway protections analogous to those imposed in another merger proceeding, namely STB imposed conditions on the Canadian Pacific Railway (CP) and Kansas City Southern (KC) merger (CPKC). Specifically:

1. Commit to keep open on commercially reasonable terms any interline moves that were shorter using UP or NS premerger than the corresponding single line UP/NS route post-merger.
2. During oversight period, Applicants will provide any customer upon request a written justification for rate increases above inflation for interline movements subject to gateway condition.
3. Report monthly during the oversight period on traffic that is interchanged at key gateways analogous to CPKC merger.
4. Offer connecting carriers commercially reasonable rate divisions and negotiate in good faith to resolve any disagreements.

Such reassurances are promising, however one issue would be the enforcement duration of these commitments, particularly after the five-year oversight period.

By restricting the competitive landscape for shippers, costs will rise leading to cost increases to Marylanders. To protect Maryland shippers beyond that horizon, Maryland requests a minimum of 10 years of oversight with regular reporting on gateway flows and rate divisions to the STB and Maryland Department of Transportation. Costs associated with this reasonable condition will be borne by the Applicants throughout the oversight period ends.

VII. CONTINUITY OF OPERATIONS AND STATE-LEVEL COORDINATION

Maryland maintains multiple agreements with NS governing public safety coordination, grade-crossing project delivery, and transit operations, all of which are vulnerable to disruption during large-scale corporate integrations. This extends to concerns surrounding the risk that rail service could suffer as UP extends its own labor practices, operating systems, and information technology to the former NS territories. Major mergers have historically produced significant service degradations. These events demonstrate that even robust integration plans can fail to anticipate operational disruptions. For example, in 2025, CPKC converted computer systems on the former KC Railroad territory to the CP computer system that impacted the ability to track railcars, leading to longer times for yards to process railcars over a two-month period.

Similar impacts were experienced between 1997-1998 when the UP initially merged with the Southern Pacific. Congestion began in the Houston area and spread throughout the UP system, and shippers were required to scramble to find alternative transportation because UP was not delivering shipments within a reasonable amount of time. Conditions became so bad that the STB was forced to exercise its authority under 49 U.S.C. § 11123 to invoke an emergency service order. The STB determined that "failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States."[13] UP was required to grant trackage rights to other railroads, such as BNSF and Texas Mexican Railway access to Houston. The merger would be on a higher scale than any previous railroad mergers, suggesting the impact of major service problems could be even more severe.

More recently, even before attempting to merge with a 19,000-mile railroad, the STB was forced to impose an emergency order due to UP service problems. Foster Poultry Farms, which owns facilities in Turlock and Traver, California, relies on UP for regular unit train shipments of corn. In 2022, UP was unable to deliver sufficient corn between February and December, which meant hundreds and thousands of dairy cattle were not being fed and millions of chickens were in danger of starving to death.[14] UP was forced to prioritize trains to Foster Farms.[15]

The merger provides an offer to arbitrate claims of merger-related service disruptions, but the arbitration program applies only to non-exempt commodities shipped under tariff service. However, much of the traffic that the merged company handles consists of exempt commodities or is carried under contracts and would not be protected. Therefore, much of the impacted traffic would not be protected under these arbitration programs.

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[13] *Joint Petition for Service Order*, STB Ex Parte No. 573, STB Service Order No. 1518, served Oct. 31, 1997.

[14] *Foster Poultry Farms – Ex Parte Petition for Emergency Service Order,* STB F.D. 36609, , (STB served Dec. 30, 2022).

[15] *Foster Poultry Farms – Ex Parte Petition for Emergency Service Order,* STB, F. D. 36609, (STB served July 1, 2022).

In particular, agreements in place with NS to deliver benefits around safety, efficiency and other public benefits must be adopted by the merged company. A new or adopted counter approach to agreements that does carry forward public benefits through contracts and project delivery may introduce impacts to public health and safety or freight transportation. To this end, Maryland requests that any approval require enforceable commitments to: uninterrupted continuation of existing projects, contracts and operational agreements between NS and Maryland-based entities, and establishment of dedicated Maryland-specific managerial and operational points of contact within the merged entity, backed by monitored service-continuity requirements and corrective-action triggers.

VIII. DIVERGENCE OF MERGER APPLICATION FORECASTS WITH PAST BEHAVIOR AND STRATEGIES

The purported benefits of the proposed merger, particularly when viewed against the railroad industry's recent economic history, do not outweigh the substantial public harms and risks associated with the transaction. Although the application asserts that the merger will generate significant efficiencies, reduce truck traffic, and produce billions of dollars in annual shipper savings, the historical record provides little basis for confidence that these benefits will be realized or passed on to the public.

The merger application claims efficiencies will divert 1.98 million units annually from trucks to rail, resulting in a 13% traffic increase and $3.5 billion in annual shipper savings. However, skepticism is warranted: UP and NS have not grown freight volumes over the past 25 years, with combined ton-miles dropping 11% between 2000 and 2025 despite market and economic growth. This lack of volume growth reflects a corporate fixation on the operating ratio—a metric showing the ratio of operating expenses to revenues—which incentivizes railroads to prioritize profitability over expanding service. UP's operating ratio has hovered around 60% since 2020, and merging with NS could align NS's financials with UP's, but this focus encourages railroads to cherry-pick profitable traffic and demarket less lucrative shipments. If merged, as a new for-profit enterprise, UP and NS will likely absorb efficiency gains as increased profit rather than expanding service or delivering public benefits—keeping with recent historic trends. Past efforts like PSR, which cut workforce headcount by 38% between 2015 and 2021, have not resulted in customer savings or significant traffic growth, underscoring that the investor-driven focus with operating ratio as detrimental to both rail volume and public interest.

IX. SPECIFIC CONDITIONS MARYLAND REQUESTS (IF THE MERGER IS APPROVED)

For the reasons stated above, the State of Maryland respectfully requests that the Board take into account the foregoing comments and consider the merger's projected effects on Maryland's transportation system, economic wellbeing, and rail operations, with particular attention to port competitiveness, short-line interchange, passenger rail capacity, and workforce impacts. In order to do so, the Board should impose enforceable conditions, commitments, and port-specific protective measures designed to prevent economic harm and ensure the protection of Maryland's public interests—including permanent gateway protections, investment-anchored workforce commitments, CSX access at DMT, and preservation of MARC access to NS assets on the NEC.

1. Coordination: Require ongoing coordination between Maryland and the merged entity throughout merger implementation, including monitored service-continuity protocols, interchange congestion safeguards for Maryland short-lines, and transparent reporting of gateway and pricing practices affecting Maryland shippers.

2. Agreements: Maryland requests that any approval require enforceable commitments, including but not limited to, uninterrupted continuation of existing projects, contracts and operational agreements between NS and Maryland-based entities, and establishment of dedicated Maryland-specific managerial and operational points of contact within the merged entity, backed by monitored service-continuity requirements and corrective-action triggers.

3. Short-Line Competitive Access on Delmarva: Grant reciprocal switching access between Delmarva Central and CSX (e.g., at Newark, DE or another feasible location), with commercially reasonable access rates to ensure this option is usable and competitive.

4. Restoration of Intermodal Service at Seagirt: Direct the merged entity to evaluate and, where feasible, restore intermodal capabilities at Seagirt, coordinated with the Maryland Port Administration, to strengthen Baltimore's intermodal connectivity and reduce diversion risk.

5. Competitive Access for Hagerstown Shippers: Reciprocal switching for sole-served NS customers in the Hagerstown area to ensure competitive CSX access, with negotiated access rates maintained at commercially reasonable levels.

6. MARC Expansion Preservation: Applicants agreement to MTA acquisition of the Claremont Branch—the sole corridor able to complete the Penn-Camden Connector (PCC)— is critical to linking the existing Penn Line and Camden Line, while also providing necessary access to the Mt. Clare Yard to support MARC layover activities. The Board must preserve this acquisition and direct expediting its completion, given the broad public interest.

7. Future Passenger Rail Access Assurances: Applicants guarantee to accommodate future passenger rail access to Hagerstown via the Crescent Corridor if MARC or other passenger service is extended, with corridor-level capacity planning to address forecast freight growth.

8. Continued Use of NS Assets on the Northeast Corridor: Binding commitments from Applicants ensuring continued availability of NS Northeast Corridor assets (including PTC systems used by MARC trains) at reasonable cost.

9. Reciprocal switching and/or track usage rights for CSX at DMT: Provide CSX a practical competitive access pathway to DMT with commercially reasonable rates, charges, and terms of service, including switching frequency and timing, car supply and car handling, yard and terminal access, interchange location and hours, and operating priority, that are no less favorable than those the Applicants provide to their own traffic, or that of any affiliate, moving to or from the same facility, and that are sufficient to permit CSX to offer shippers a competitively viable alternative to the Applicants' single-line service—including a reduction or elimination of switch fees under 49 U.S.C. § 11102 for competitors along lines into Dundalk Marine Terminal-- enabling shippers to obtain competitive pricing and service.

10. Gateway and Pricing Protections Beyond Oversight Period: Implement permanent gateway protections, transparent monthly reporting on Maryland gateway flows, and commercially reasonable rate divisions, with enforcement mechanisms that extend beyond the five-year oversight horizon.

11. Marketing Parity and Balanced Deployment: Mandate that the merged railroad's national marketing programs, blocking plans, and asset assignments treat Baltimore as a priority gateway for Mid-Atlantic/Midwest lanes, avoiding systemic de-prioritization of East Coast ports.

12. Bayview/DMT Interchange Performance Metrics: Require public-facing performance metrics (e.g., interchange dwell, car cycle time, lift productivity) and corrective action plans when thresholds are breached, to ensure fluid goods movement through the Baltimore gateway.

Respectfully submitted,

STATE OF MARYLAND

By: Kathryn Thomson

Kathryn Thomson, Secretary

Maryland Department of Transportation

7201 Corporate Center Drive
Hanover, Maryland 21076
Dated: November 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November 2026, I caused a copy of the foregoing to be served by email or by first-class mail, postage prepaid 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.



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