AUSTIN KNUDSEN

STATE OF MONTANA

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November 17, 2026

ENTERED
Office of Chief Counsel
November 17, 2026
Part of
Public Record

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

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

We write to express our continued opposition to the proposed merger between Union Pacific (UP) and Norfolk Southern (NS). This merger would be harmful to shippers and American consumers. At an earlier stage of this proceeding, we noted our opposition in writing to the proposed merger and the inadequate package put forward by UP-NS in support of their merger request. Since then, our staffs have dug even deeper, talking to farmers and other shippers, worker organizations, and other industry stakeholders, and reviewing materials submitted to the Board. That work and discovery have confirmed the basis for our opposition: this merger would harm shippers, consumers, and the American economy, reducing the degree to which America First policies are supporting economic growth and reduced costs for families.

As you know, on August 11, 2026, we requested that the Board reject UP-NS's Application because it fails to show on a *prima facie* basis that the transaction would be in the public interest. *See* Record No. 311922. The Board deferred addressing this issue on September 18, 2026. We urge the Board to address our request at its earliest convenience, and note that shippers, other railroads, and rail workers share our view that the proposed transaction will harm the rail industry, shippers, farmers, and ultimately consumers.

In addition, we note that UP and NS, as public companies, have made earnings and operational performance disclosures to investors. These disclosures show unambiguously that (i) UP and NS are each highly profitable, and (ii) they are growing and taking intermodal market share from trucks ***without merging.*** This is yet further corroboration that the proposed merger is unnecessary and is a play to further UP and NS's private interests, rather than the public interest.

DEPARTMENT OF JUSTICE

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Finally, as explained below in detail, discovery in the Board's proceeding has revealed that UP has threatened shippers with additional price increases if those shippers oppose the proposed transaction. This conduct is shocking and is very strong evidence that UP is well aware that its proposed deal will harm shippers. The Board should seriously consider disciplinary action to protect shippers' ability to express their candid views to the Board and in no circumstances reward this conduct by approving UP's proposed transaction. For these reasons, we believe the proposed merger would harm rail customers such as manufacturers and farmers, and result in higher prices for the hard-working residents of our states.

The proposed merger is not in the public interest. In our November 14, 2025 and August 11, 2026 letters, we explained how the proposed merger will massively consolidate the already concentrated rail industry—reducing transportation options and harming businesses that have benefitted from President Trump's America First policies. The substantial harms are summarized in our August 11 letter and include fewer routing options, higher captive freight costs, and substantial risk of supply chain disruptions.

None of UP-NS's proposed conditions come close to addressing these issues, much less "enhancing competition" as the STB's Major Merger Rules require. Committed Gateway Pricing, Applicants' sole competitive enhancement, applies to very little traffic, is temporary, and would set prices higher than what most shippers currently pay on similar traffic. UP/NS's other proposals aimed at preventing harm are vague, limited in scope, and filled with procedural hurdles. UP/NS's Targeted Access Program (TAP) only applies if shippers are already experiencing service disruptions and its rate arbitration process requires shippers to initiation a complaint against UP and undergo a length and complex process to secure any relief from price increases associated with the transaction. We have no confidence that any package of conditions could fully and permanently address the loss of competition caused by the proposed deal, but Applicants' proposals fall far short of the concrete and enforceable remedies for merger harms that we fight for when reviewing mergers. Shippers should have to suffer before a remedy becomes available; rather, the entire goal of merger remedies is to prevent harm from occurring in the first place, and the limited, complicated, and caveated proposals that UP has made clearly do not prevent harm. As proposed, the merger would raise the cost of living for consumers in our states, many of whom already struggle to afford everyday necessities.

UP and NS do not need this merger to compete effectively. In October 2026, UP touted "record financial results," net income up by 16%, and its ability to price above inflation.[1] UP also reported 11% intermodal volume growth and "strong

[1] *See* Union Pacific Press Release, Union Pacific Reports Third Quarter 2026 Results (Oct. 21, 2026) https://www.up.com/press-releases/financial/3q26-earnings-261022.

over-the-road conversions."[2] NS likewise reported record revenue growth at 14% with intermodal revenue up 21%.[3] UP and NS claim a merger is necessary for growth while achieving record growth without one. Most of the public benefit UP/NS claim the merger will generate comes from intermodal truck-to-rail conversions. According to their own investor statements, UP, NS, and the rail industry more generally are achieving this goal today, by competing on price and working together to interchange efficiently. We do not begrudge UP's and NS's business success – that is the free market and capitalism at work, the core of what makes America exceptional – but it shows that a merger is not needed for rail to thrive and compete effectively against trucks. To our knowledge, neither UP nor NS has reconciled their claims that the merger is essential to achieve growth and truck-to-rail conversions while, at the same time, they are reporting exceptional growth, including by taking intermodal share from trucks as independent companies right now. A merger that harms competition simply is not needed.

UP's threats against shippers are unacceptable, and also telling. In March 2026, at the Southwest Association of Rail Shippers' annual meeting, UP CEO Jim Vena publicly threatened rate increases for shippers that oppose the transaction.[4] This occurred in front of an audience of roughly 900 shippers present at the conference. If UP is explicitly threatening shippers publicly *en masse*, we can only assume that UP makes similar, or potentially even more aggressive, threats in private customer conversations. Senator Baldwin has heard from "numerous stakeholders" that they fear UP retaliation if they publicly voice their concerns.[5]

Despite very substantial experience across our offices reviewing mergers, we cannot recall direct threats of this nature being made to hundreds of shippers, and we would be troubled by this conduct with respect to a merger in any industry, let alone a vital part of our nation's industrial backbone, like freight rail. It is a federal crime to knowingly use intimidation, make threats, or "corruptly persuade[]" another person to "influence, delay, or prevent the testimony of any person in an official proceeding."[6] That prohibition reaches proceedings before administrative agencies such as this Board.[7] Whether the relevant criminal evidentiary standards are met is not a question we address here. At minimum, however, we submit that the Board should act decisively to show that blatant bullying with the intent and effect of corrupting its review of an industry-altering merger has no place in STB

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[2] *See* Union Pacific, Third Quarter 2026 Earnings Presentation at 11, 13 (Oct. 22, 2026) https://investor.unionpacific.com/static-files/be7edc8a-147d-4650-84e5-94b8f9ded2ac.

[3] *See* Norfolk Southern, Q3 2026 Earnings Call Presentation at 10 (Oct. 22, 2026) https://filecache.investorroom.com/mr5ir_nscorp/1464/Q3_2026_Earnings_Combined_Presentation-v2_FINAL.pdf.

[4] ACC-9 / ACD-9 / AFPM-9 / NITL-6 / TFI-9 at 4.

[5] Letter from Hon. Tammy Baldwin, U.S. Senate, to the Surface Transportation Board at 1 (July 17, 2026).

[6] 18 U.S.C. § 1512(b)(1).

[7] *See* 18 U.S.C. § 1515(a)(1); U.S. Dep't of Justice, Criminal Resource Manual § 1729.

proceedings. At the very least, we respectfully request that the Board presume that additional shippers have been silenced by these threats and in truth oppose the merger. The fact that UP's CEO felt the need to threaten shippers shows that he expected that but-for the threat, shippers would oppose the merger. This strikes us as powerful evidence that the proposed deal will harm, and will not benefit, shippers, and that UP's most senior leadership is very much aware of that reality. We further request that the Board take all available steps to receive and consider the views of shippers, including by requesting that other parts of the federal government that may have received information from shippers about the proposed transaction's potential impacts, including the Department of Justice, the Department of Agriculture, and the Department of Energy, provide that information to the Board on an anonymized or confidential basis. While this would be a far cry from shippers directly engaging with the Board and participating in its review proceedings without fear of retribution, it may be the best-available way to understand the true perspectives of shippers.

Perhaps remarkably in the context of UP's threats, multiple shipper organizations, and now several individual shippers, have stepped forward and shared their view that the proposed combination of UP and NS will reduce their competitive options and harm their ability to bring inputs into their facilities and/or their products to market.[8] We applaud these organizations for speaking out even when doing so entails risk of retaliation and stand with them in our positions as *parens patriae* to the citizens of our states in opposing a transaction that will harm the public interest.

For these reasons, we respectfully ask the STB to reject the proposed merger between UP and NS. Our states cannot afford a mega railroad with the power to dictate transportation prices and silence the same customer voices that would point this out. In this proceeding, UP and NS will likely continue to file cherry-picked analysis and give valid concerns the back of the hand—but their comments to investors and customers demonstrate the merger is unnecessary and anticompetitive. Thank you for your attention to this important matter.

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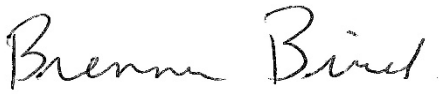
[8] *See* ACC-6 / ACD-6 / AFPM-6 / NITL-3 / TFI-6 at 3 ("This merger will deepen [shipper] captivity, eliminate what limited competitive options remain, and leave [shippers] exposed to service deterioration and rate increases with no recourse."); USPR Letter at 2 (Aug. 26, 2026) ("It is clear USPR will have less competitive options and pay higher rates due to the merger."); Silica Services Letter at 1 (Aug. 17, 2026) ("A single linehaul railroad controlling the rates and service of its interchange competitor is not a fair fight, and Silica would be foreclosed from the eastern market as surely as if the door had been bolted shut.").

Sincerely,



Montana Attorney General



Iowa Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Comments to be served 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, Docket No. FD 36873.

Signed,

/s/ *Brent Mead*
Brent Mead
Deputy Solicitor General
Montana Department of Justice

Dated November 17, 2026.