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November 18, 2026

312935

Chief of Case Administration
Office of General Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

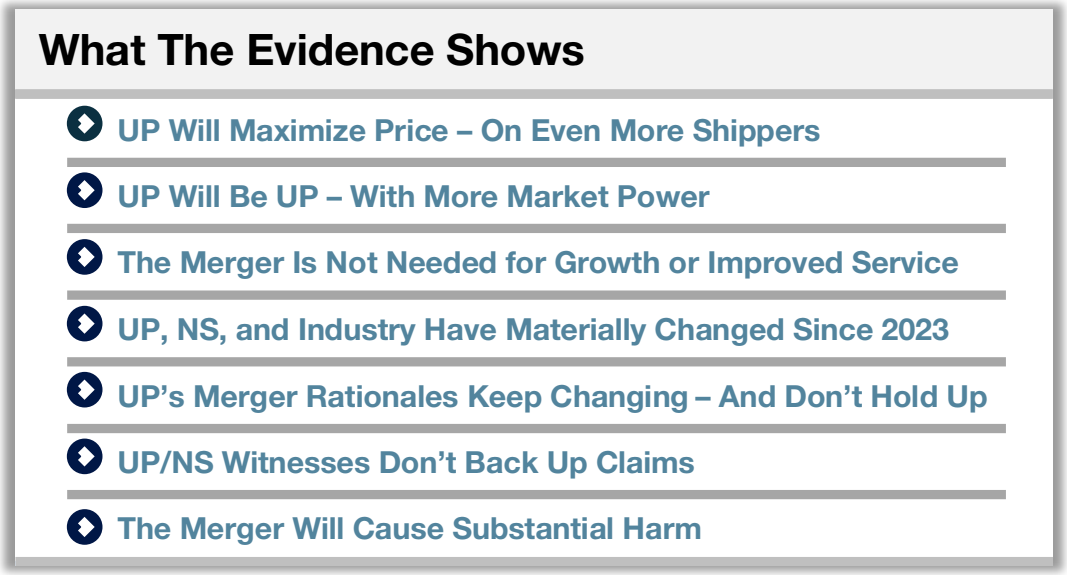
BNSF-73

ENTERED
Office of Chief Counsel
November 18, 2026
Part of
Public Record

Re: FD 36873 – BNSF Summary of Evidence

Dear Chief of Case Administration:

Today, BNSF is filing its opposition to the proposed merger of UP and NS. BNSF's opposition includes a 250+ page brief, supported by more than 130 exhibits, declarations from three BNSF executives and five expert witnesses, and terabytes of supporting data and workpapers. Please find attached for e-filing a presentation entitled "The Merger is Not in the Public Interest." This presentation summarizes key evidence and testimony that highlights core problems with UP/NS's merger proposal:



We are concurrently filing a highly confidential version of these materials to be filed under seal.

Respectfully,

/s/ Daniel Donovan
Daniel T. Donovan, P.C.
Counsel for BNSF Railway Company

The Merger is Not in the Public Interest

STB Finance Docket No. 36873

November 18, 2026

What The Evidence Shows

- UP Will Maximize Price – On Even More Shippers
- UP Will Be UP – With More Market Power
- The Merger Is Not Needed for Growth or Improved Service
- UP, NS, and Industry Have Materially Changed Since 2023
- UP's Merger Rationales Keep Changing – And Don't Hold Up
- UP/NS Witnesses Don't Back Up Claims
- The Merger Will Cause Substantial Harm

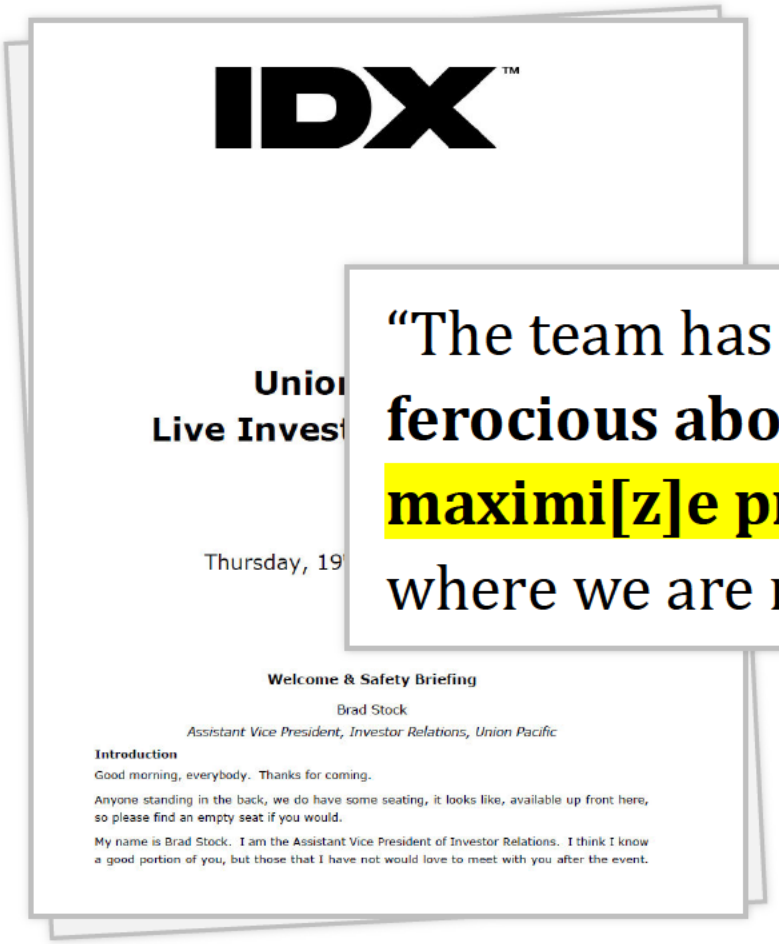
UP Will Maximize Price – On Even More Shippers

UP "Will Maximize Price"



Kenny Rocker

Executive Vice President of Marketing & Sales


IDX™

Union
Live Invest

Thursday, 19

Welcome & Safety Briefing

Brad Stock

Assistant Vice President, Investor Relations, Union Pacific

Introduction

Good morning, everybody. Thanks for coming.

Anyone standing in the back, we do have some seating, it looks like, available up front here, so please find an empty seat if you would.

My name is Brad Stock. I am the Assistant Vice President of Investor Relations. I think I know a good portion of you, but those that I have not would love to meet with you after the event.

"The team has a hustle mentality, and **we are very ferocious about business development. We will maximi[z]e price**. And I am very bullish about where we are now. I am very bullish."

Union Pacific, Live Investor Road Show Tr. (Sept. 19, 2024) at 34

UP is the “First to Increase” Price



Kenny Rocker

Executive Vice President of Marketing & Sales

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Union
Live Invest

Thursday, 19

Welcome & Safety Briefing

Brad Stock

Assistant Vice President, Investor Relations, Union Pacific

Introduction

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Anyone standing in the back, we do have some seating, it looks like, available up front here, so please find an empty seat if you would.

My name is Brad Stock. I am the Assistant Vice President of Investor Relations. I think I know a good portion of you, but those that I have not would love to meet with you after the event.

“And as I mentioned, **we have always been very price disciplined. Meaning, you know, the last to lower, the first to increase here**.”

Union Pacific, Live Investor Road Show Tr. (Sept. 19, 2024) at 29

UP Pride Point: “[redacted]” than Peers



Kenny Rocker

Executive Vice President of Marketing & Sales

[redacted]

UP Pride Point: “[redacted]” in Industry



Kenny Rocker

Executive Vice President of Marketing & Sales

[redacted]

[redacted]

[redacted]

UP Remains “[redacted]”



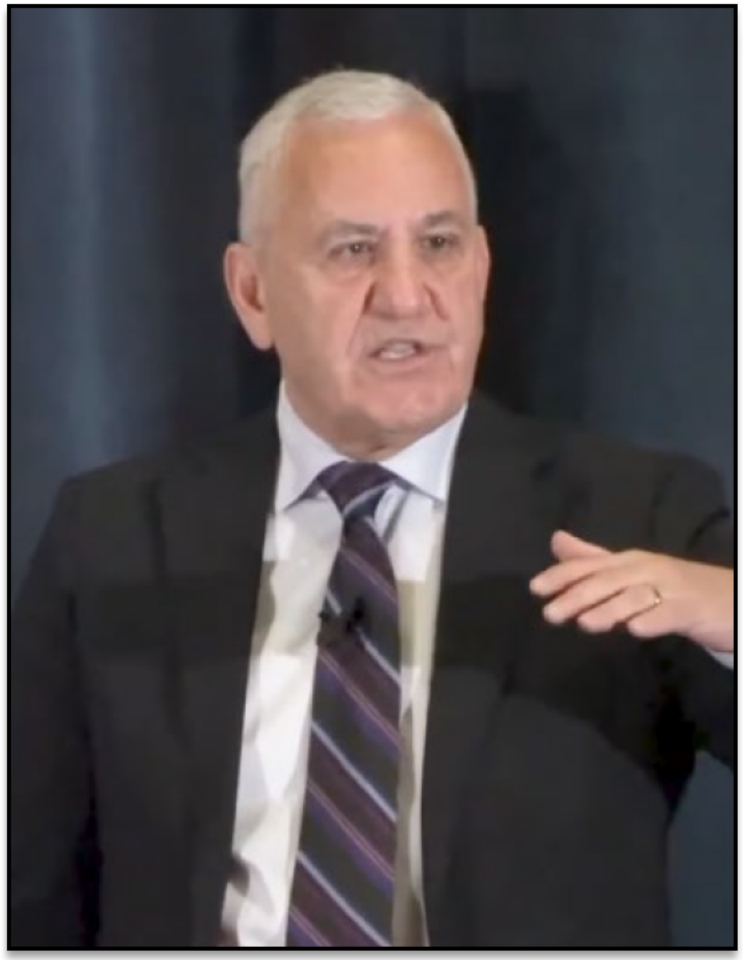
Kenny Rocker

Executive Vice President of Marketing & Sales

[redacted]

UP Will Be UP—
With More Market Power

UP Will Raise Rates to "Teach You a Lesson"



Jim Vena
CEO & Director

"[I]f I stick around, which I probably will, I'll probably **increase everybody's rates** that said they didn't want a seamless railroad **by three or four extra percent to teach you a lesson**."

SWARS Annual Conference, March 2026

UP Will Make Trackage Rights Uneconomic



Jim Vena

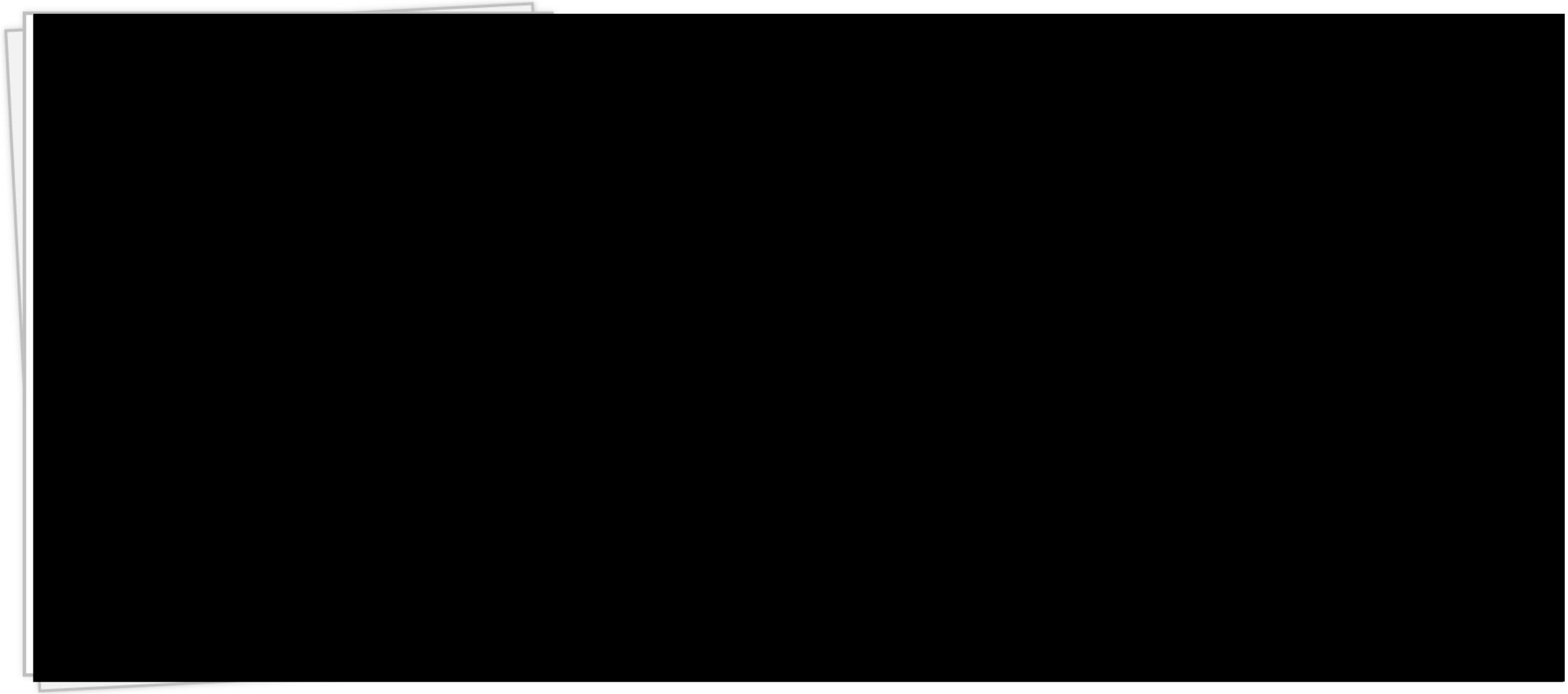
CEO & Director

Without mentioning BNSF by name, Vena said the long-distance trackage rights request doesn't make sense. "If we allowed X railroad to run on our railroad for 800 miles, we would charge them a per car-mile charge that actually would make it more expensive for them to get to that destination," he said.

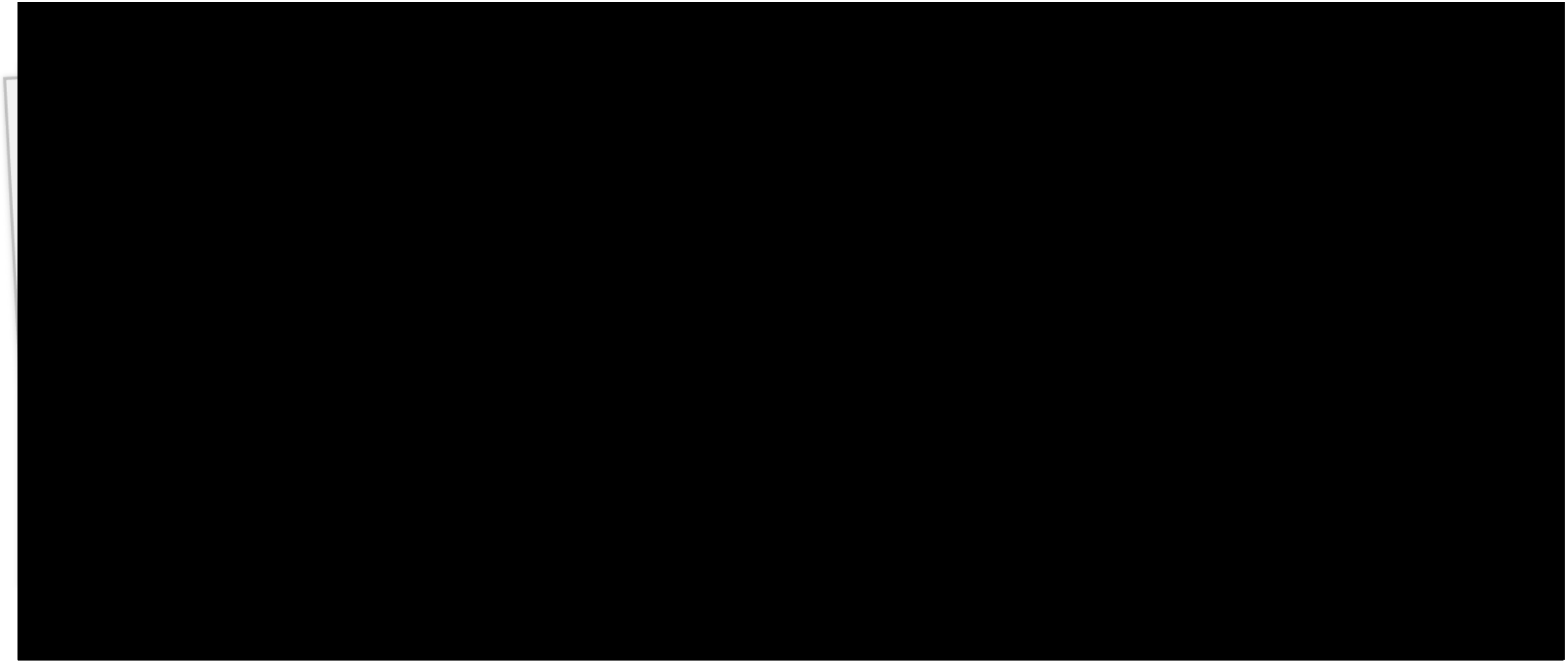
"I thought about just agreeing because guess what: We would just reset the price higher for us," Vena said, adding: "That doesn't make a particle of sense in business."

Union Pacific blasts rival railroads' trackage rights requests, FreightWaves (Sept. 18, 2026), https://www.freightwaves.com/news/union-pacific-blasts-rival-railroads-trackage-rights-requests

UP Will Extract *Every* Dollar



UP Will Extract *Every* Dollar



UP: Maybe The Statute Does Not Apply to Us



Jim Vena

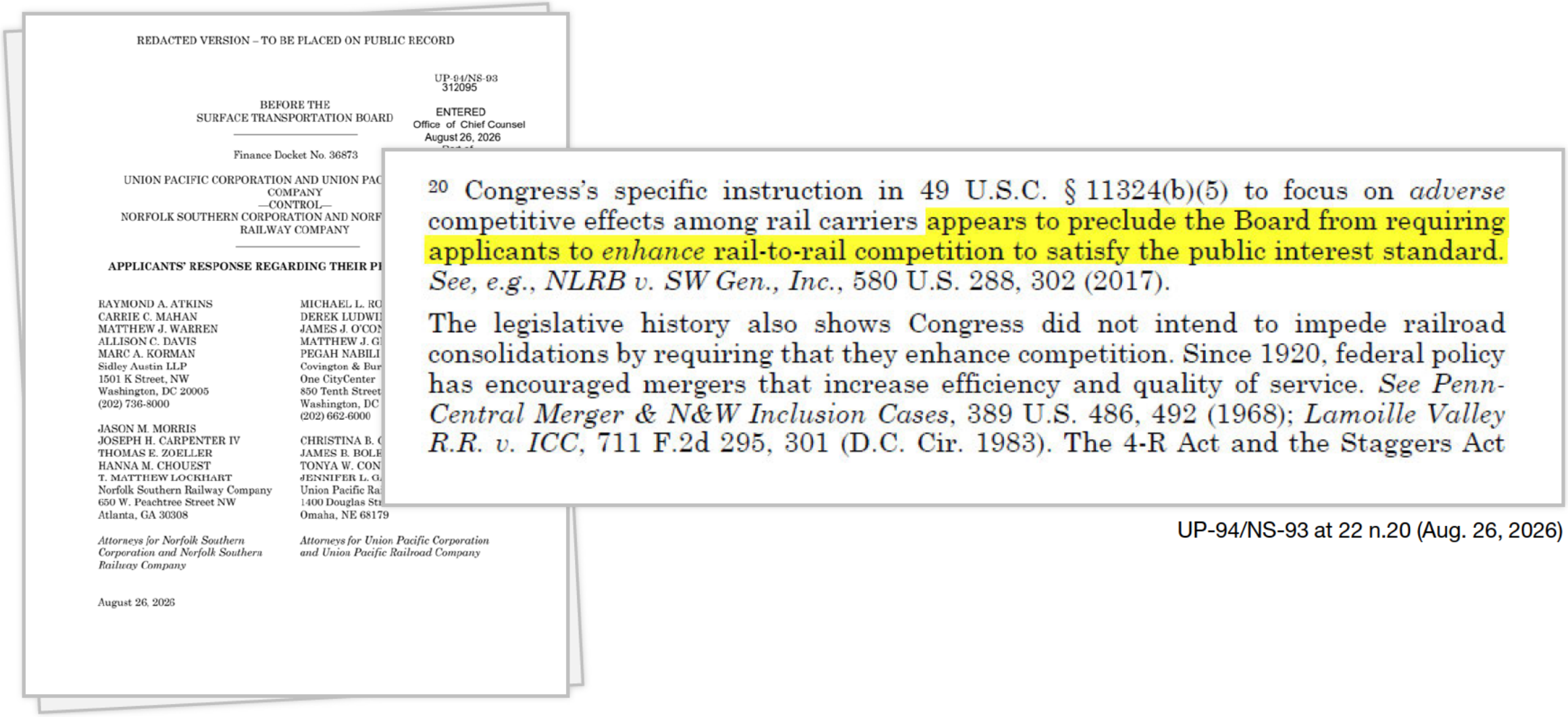
CEO & Director

Even so, Vena said his view was that the period of abeyance does not change the overall information-gathering period, and that a decision is still due 15 months after the application was accepted.

"There's a statute for the STB that was given them by Congress, and it's pretty clear. Says that once you accept, it's 12 months. That's what we would expect them to do. ... I follow the law, so if that's what the statute says, then that's what we're going to do. Otherwise, we don't have to follow the statute, either, that talks about the public interest."

David Lassen, *UP CEO says railroads will deliver merger information to regulators in two parts (updated)*, TrainsPRO (June 18, 2026), https://www.trains.com/pro/freight/class-i/up-ceo-says-railroads-will-deliver-merger-information-to-regulators-in-two-parts/

UP: Maybe We Don't Have to Enhance Competition



REDACTED VERSION – TO BE PLACED ON PUBLIC RECORD

UP-94/NS-93
312095

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
August 26, 2026

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PAC
COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORF
RAILWAY COMPANY

APPLICANTS' RESPONSE REGARDING THEIR PI

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1400 Douglas St
Omaha, NE 68179

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

August 26, 2026

[20] Congress's specific instruction in 49 U.S.C. § 11324(b)(5) to focus on *adverse* competitive effects among rail carriers appears to preclude the Board from requiring applicants to *enhance* rail-to-rail competition to satisfy the public interest standard. *See, e.g., NLRB v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017).

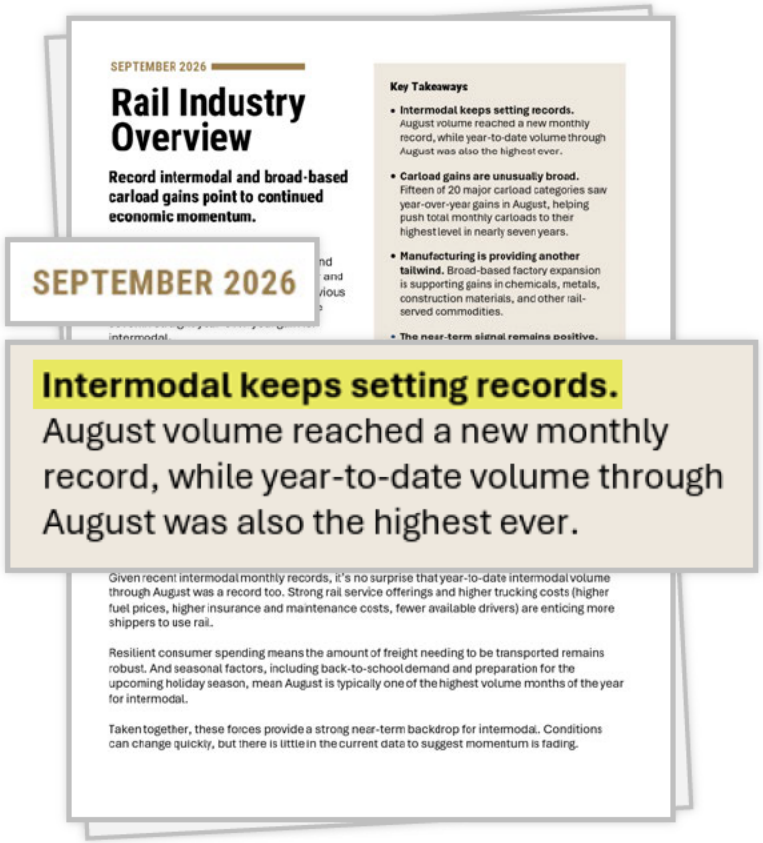
The legislative history also shows Congress did not intend to impede railroad consolidations by requiring that they enhance competition. Since 1920, federal policy has encouraged mergers that increase efficiency and quality of service. *See Penn-Central Merger & N&W Inclusion Cases*, 389 U.S. 486, 492 (1968); *Lamoille Valley R.R. v. ICC*, 711 F.2d 295, 301 (D.C. Cir. 1983). The 4-R Act and the Staggers Act

UP-94/NS-93 at 22 n.20 (Aug. 26, 2026)

The Merger Is Not Needed for Growth or Improved Service

Rail Keeps Setting Records – Without a Merger

ASSOCIATION OF AMERICAN RAILROADS



Ass'n of Am. Railroads, Sept. 2026 Report at 1



Ass'n of Am. Railroads, Oct. 2026 Report at 1



Ass'n of Am. Railroads, Nov. 2026 Report at 1

UP Breaks Revenue Records – Without a Merger



Jim Vena

CEO & Director



Jennifer Hamann

Chief Financial Officer

Corrected Transcript

22-Oct-2026

Union P[illegible] Corp. (UNP)

Q3 2026 Earnings Call

"So this morning, **Union Pacific reported record financial results** as net income totaled $2.1 billion and our adjusted **earnings per share grew 15% to $3.53**."

"I will begin with our third quarter income statement on slide 6, **where operating revenue of $7.2 billion increased 15% versus last year.** Digging into the components of our growth further, **freight revenue totaled $6.8 billion, up 15% on 6% volume growth**."

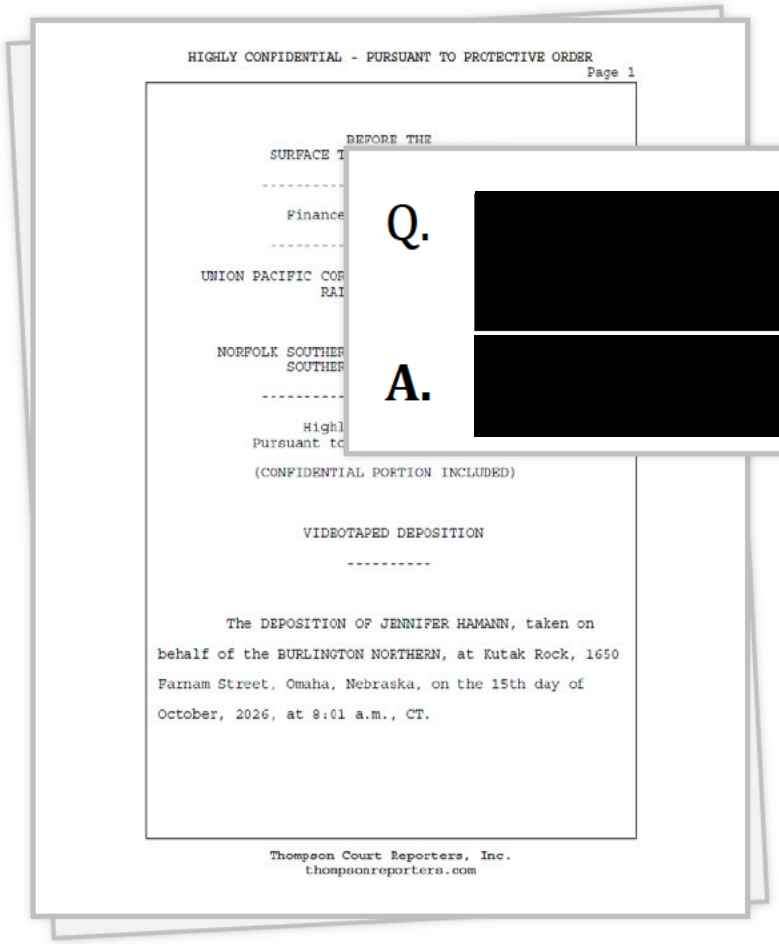
UP Corp., Q3 2026 Earnings Call Tr. (Oct. 22, 2026) at 4

UP Breaks Volume Records – Without A Merger



Jennifer Hamann

Chief Financial Officer



HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

BEFORE THE

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(CONFIDENTIAL PORTION INCLUDED)

VIDEOTAPED DEPOSITION

The DEPOSITION OF JENNIFER HAMANN, taken on behalf of the BURLINGTON NORTHERN, at Kutak Rock, 1650 Farnam Street, Omaha, Nebraska, on the 15th day of October, 2026, at 8:01 a.m., CT.

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

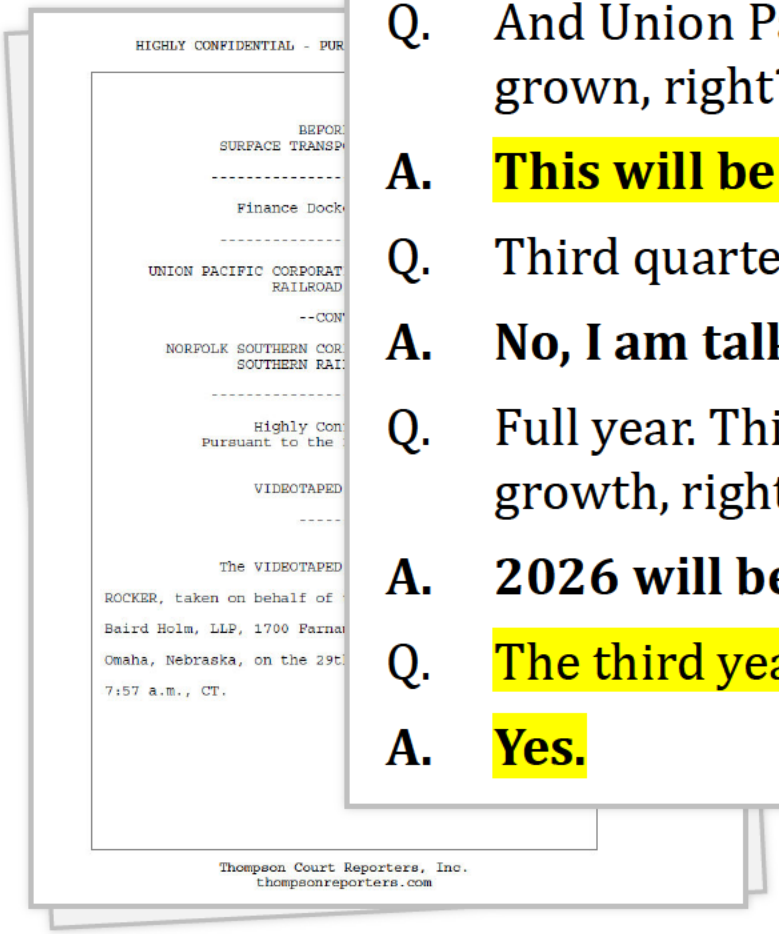
J. Hamann Dep. 148:9-12

UP is Growing Every Year



Kenny Rocker

Executive Vice President of Marketing & Sales


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ROCKER, taken on behalf of
Baird Holm, LLP, 1700 Farna
Omaha, Nebraska, on the 29t
7:57 a.m., CT.

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. And Union Pacific, over the last – from 2023 to today has grown, right?

A. This will be our third consecutive year of growth.

Q. Third quarter record growth, right?

A. No, I am talking full year.

Q. Full year. Third consecutive year of year-over-year growth, right?

A. 2026 will be.

Q. The third year of year-over-year growth, correct?

A. Yes.

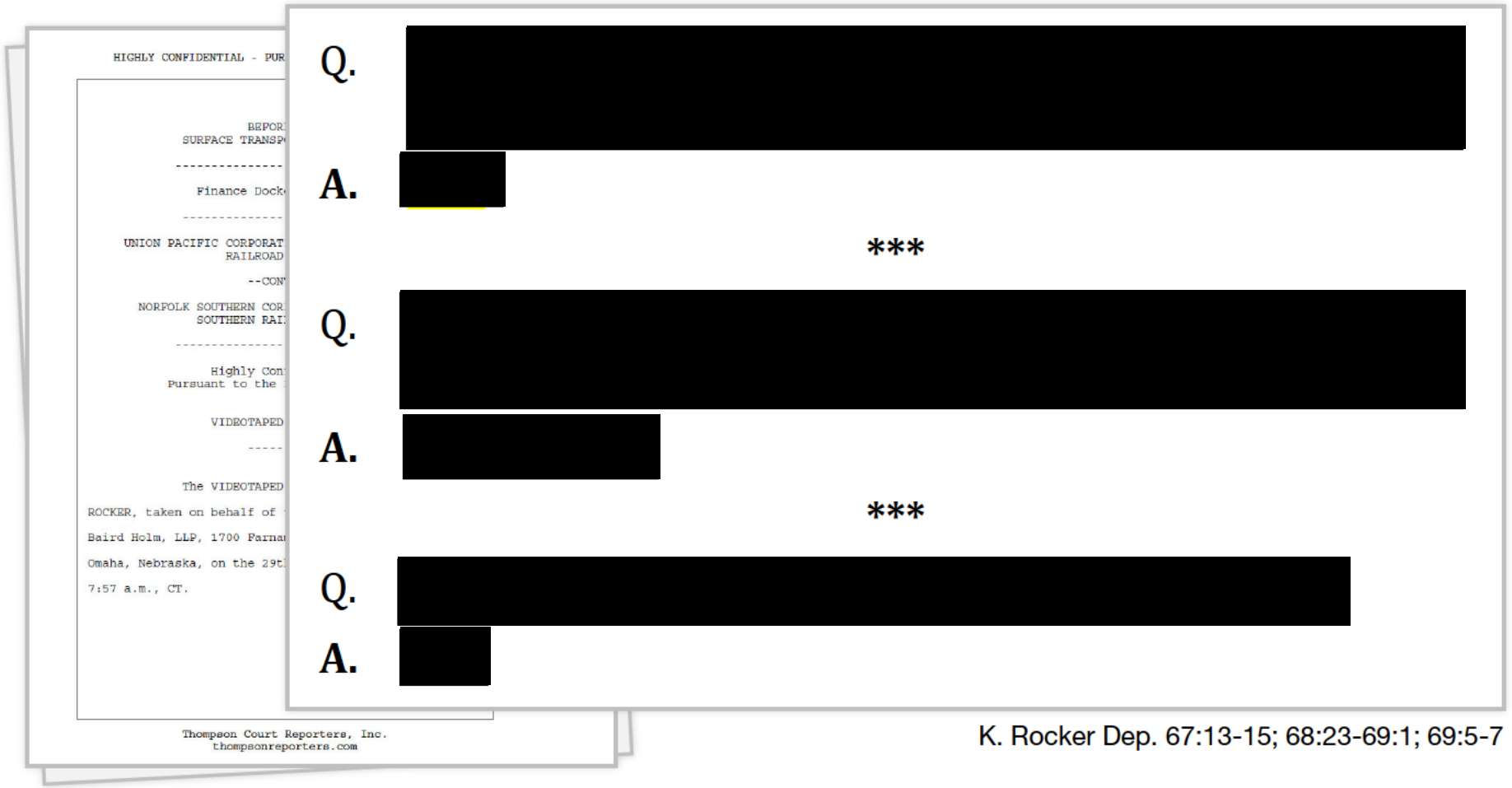
K. Rocker Dep. 220:6-17 (de-designated by UP)

[redacted]



Kenny Rocker

Executive Vice President of Marketing & Sales



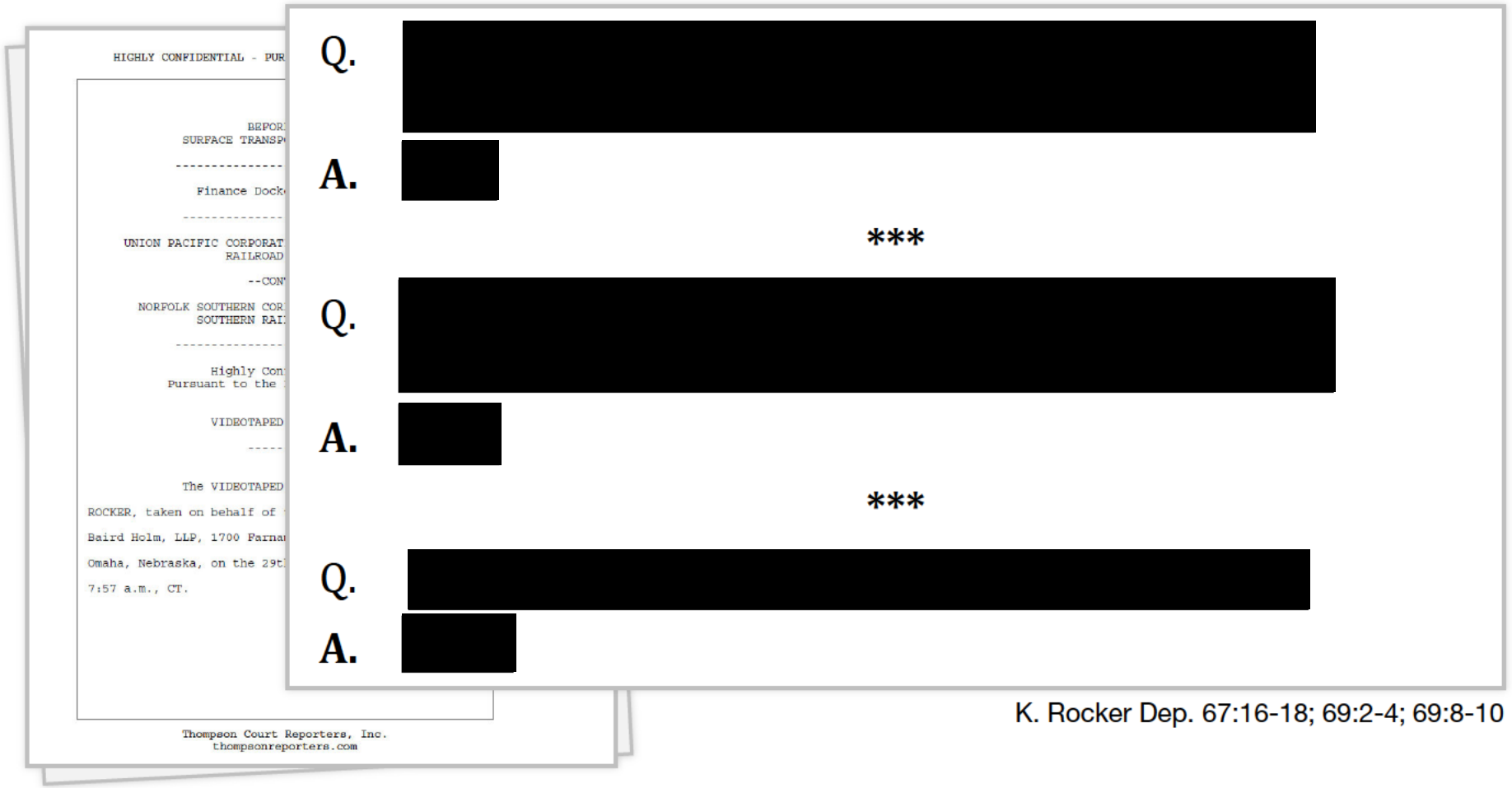
K. Rocker Dep. 67:13-15; 68:23-69:1; 69:5-7

[redacted]



Kenny Rocker

Executive Vice President of Marketing & Sales


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ROCKER, taken on behalf of
Baird Holm, LLP, 1700 Farna
Omaha, Nebraska, on the 29t
7:57 a.m., CT.

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

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Q. [redacted]

A. [redacted]

***

Q. [redacted]

A. [redacted]

K. Rocker Dep. 67:16-18; 69:2-4; 69:8-10

UP Keeps Setting Performance Records



Eric Gehringer

UP COO

S&P Global
Market Intelligence

Union Pacific Corporation NYSE:UNP

FQ4 2025 Earnings Call Transcripts

Tuesday, January 27, 2026 1:45 PM GMT

S&P Global Market Intelligence Estimates

	CONSENSUS	ACTUAL	SURPRISE
FQ1 2025	2.73	2.70	(1.10 %)
FQ2 2025	2.91	3.03	4.12 %
FQ3 2025	3.00	3.08	2.67 %
FQ4 2025	2.87	2.86	(0.35 %)

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spglobal.com/marketintelligence

1

"**Freight car velocity** of 239 miles per day beat last year's record fourth quarter by 9% and **set a best-ever quarterly record**. This result was **driven by record quarterly terminal dwell** of 19.8 hours, increased train speed **and continued process and technology improvements** to remove daily car touches."

UP Corp., Q4 2025 Earnings Call Tr. (Jan. 27, 2026) at 8

UP Keeps Setting Performance Records



Eric Gehringer

UP COO

"Operating discipline and consistent execution of the fundamentals drove **another quarter of record workforce productivity, record train length and record fuel consumption.**"

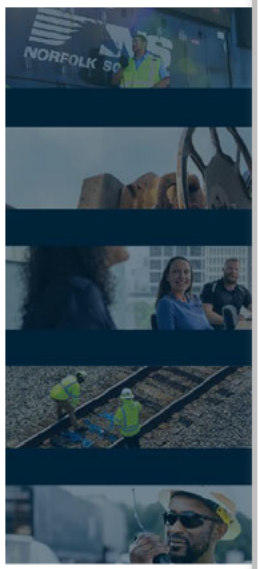
22-Oct-2
Union Pacific Corp (UNP)
Q3 2026 E

"**This remarkable progress is supported by technology improvements and mainline capacity infrastructure** investments that enhance network efficiency. These results are a testament of our unwavering focus on safety, service and operational excellence. **The team is well-positioned** to serve our customers and empowered **to raise the bar in what's possible.**"

FACTSE
1-877-FACTS

Union Pacific Corp., Q3 2026 Earnings Call Tr. (Oct. 22, 2026) at 7

NS is Achieving Revenue Records, Too



3RD QUARTER 2026 RESULTS

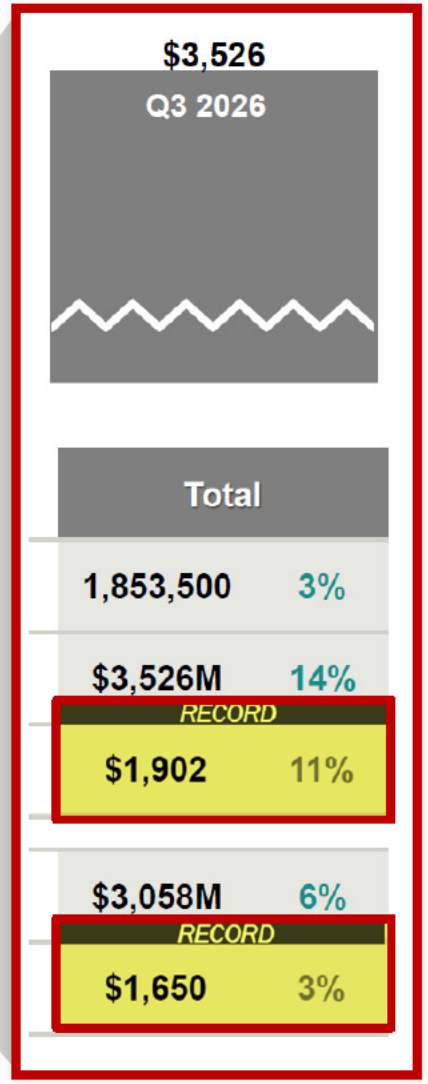
Q3 2026 vs. Q3 2025 / Revenue change $ in millions / favorable / unfavorable



	Merchandise		Intermodal		Coal		Fuel		Total	
Volume	611,500	3%	1,060,600	3%	181,400	3%	--	--	1,853,500	3%
Revenue	$2,188M	11%	$919M	21%	$419M	12%	--	--	$3,526M	14%
	RECORD								RECORD	
RPU	$3,579	8%	$866	18%	$2,311	9%	--	--	$1,902	11%
	RECORD									
Revenue (less fuel)[1]	$1,996M	5%	$674M	7%	$388M	5%	$468M		$3,058M	6%
	RECORD								RECORD	
RPU (less fuel)[1]	$3,264	2%	$635	4%	$2,145	2%			$1,650	3%
	RECORD									

(1) Please see reconciliation to GAAP posted on our website on the Investors page under Events and Presentations for this event.

10



Norfolk Southern, Q3 2026 Earnings Call Presentation (Oct. 22, 2026) at 10

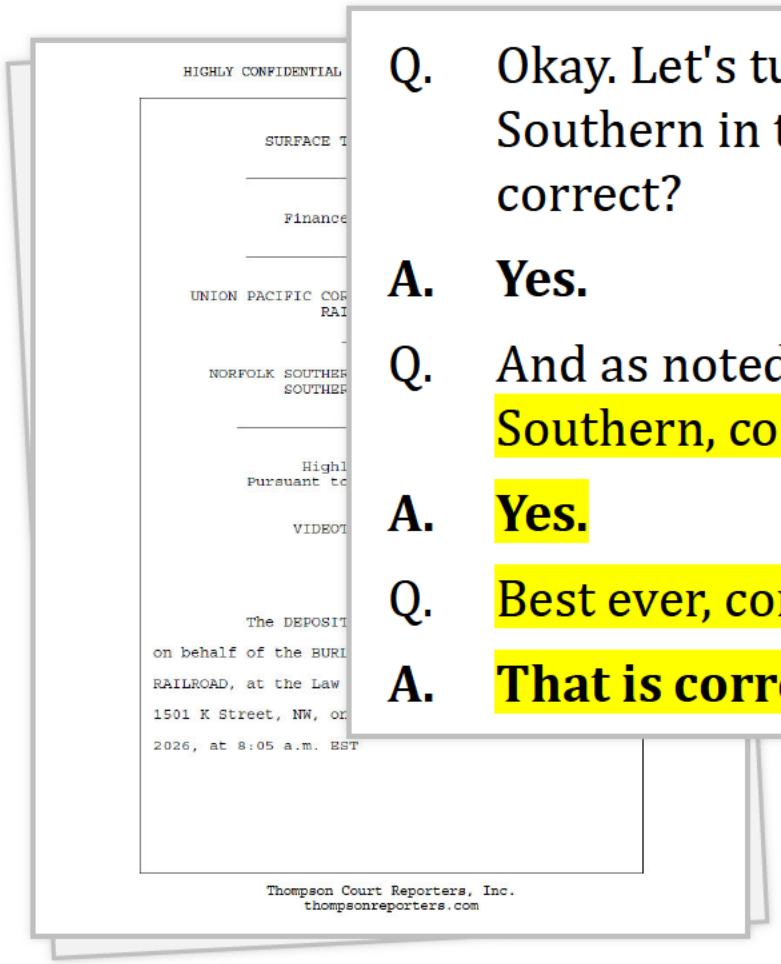
NS is Breaking Revenue Records – Without A Merger



Ed Elkins

Executive VP &
Chief Commercial Officer

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The DEPOSIT
on behalf of the BURL
RAILROAD, at the Law
1501 K Street, NW, or
2026, at 8:05 a.m. EST

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Q. Okay. Let's turn to revenue. Revenue for Norfolk Southern in the second quarter of 2026 was 2.13 billion, correct?

A. Yes.

Q. And as noted here, that was a record for Norfolk Southern, correct?

A. Yes.

Q. Best ever, correct?

A. That is correct.

E. Elkins Dep. 99:5-13 (de-designated by NS)



Shawn Tureman

AVP – Intermodal & Automotive

NORFOLK SOUTHERN

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

BEFORE THE SURFACE TRANSPORTATION BOARD

-

UNION PACIFIC
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CORPORATION AND
NORFOLK SOUTHERN
RAILWAY COMPANY.

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Videota
of SHAWN TUREMAN tak
notice, was held at
Sidley Austin LLP, 1
Washington, D.C., beginning at 8:03 a.m.,
on the above date, before Michelle L.
Ridgway, a Registered Professional
Reporter, Certified Shorthand Reporter,
Certified Realtime Reporter, Certified
Court Reporter, and Notary Public.

- - -

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thompsonreporters.com

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

S. Tureman Dep. 217:13-19

UP, NS, and Industry Have Materially Changed Since 2023

Applicants Base Their Benefit Claims on 2023 Data



David Hunt

Traffic Expert

OLIVER WYMAN
A MARSH BUSINESS

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

Exhibit 4-4: Key assumptions for truck-to-rail diversion modeling

Assumption	Description
Traffic base year	• 2023 base year for all traffic, with no forecast of future years
Traffic sources	• 100% waybill data for rail traffic characteristics (e.g., rail tons) – Representative county-county rail route characteristics from lowest impedance paths are generated from stations in the same 100% waybill data • Transearch, S&P Global Markets, 2023 freight flow database for truck traffic

1 APP. VOL. 2, PAGE 388

Am. App. Vol. 2 p. 425

2023 Was A Low Point Across the Industry

OCTOBER 2026

Rail Industry Overview

More of the same: solid rail traffic growth and economic momentum despite obstacles.

Based on opinion polls and consumer confidence surveys, you might think the U.S. economy is in terrible shape. But despite real challenges that could evolve into full-fledged crises, including inflation, high energy prices, rising interest rates, and global conflicts, the overall economy continues to perform much better than many expected.

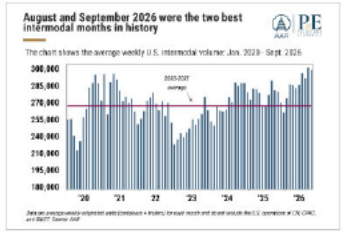
Rail traffic continues to perform well too. August, September, and the third quarter set new intermodal records, and total carloads have grown year over year for nine straight months. Excluding coal, carloads are growing twice as fast as the overall economy.

Key Takeaways

- **Another intermodal record.** The third quarter was the best quarter ever for intermodal. A record-setting August was followed by a stellar September.
- **Carload gains are unusually broad.** September was the ninth straight month with year-over-year total carload gains. Carloads are now generally at levels not seen since 2019.
- **Manufacturing momentum is real.** Broad-based manufacturing expansion now appears firmly entrenched, supporting carloads of chemicals, steel, construction materials, and more.
- **Significant risks remain, but the economy is shrugging them off.** High energy prices, geopolitical tensions, and weak consumer confidence so far aren't enough to derail the freight economy.

Subscribe to receive the Rail Industry Overview directly in your inbox.

Importantly, carload growth is occurring across the industrial spectrum, not just in a handful of isolated sectors. The manufacturing expansion that took off at the start of the year appears increasingly durable. When coupled with resilient consumer demand, this bodes well for continued healthy rail volumes.



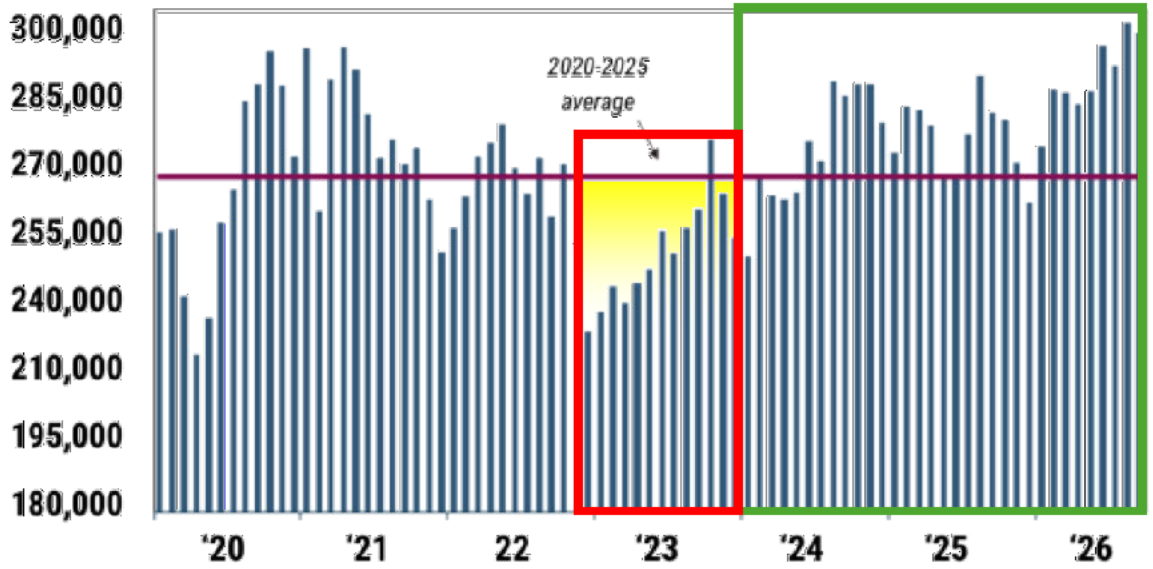
Best-ever intermodal volumes.

U.S. railroads originated nearly 295,000 intermodal containers and trailers per week in September, down only slightly from August's record high despite the Labor Day holiday. This made the third quarter the highest-volume quarter ever for U.S. intermodal. Record-high diesel prices, an exodus of truck drivers driven by both market and regulatory factors, and generally strong railroad service levels have made intermodal an increasingly attractive option for shippers.

August and September 2026 were the two best intermodal months in history

AAR | PE POLICY AND ECONOMICS

The chart shows the average weekly U.S. intermodal volume: Jan. 2020 - Sept. 2026



Data are average weekly originated units (containers + trailers) for each month and do not include the U.S. operations of CN, CPKC, and GMXT. Source: AAR

Ass'n of Am. Railroads, October 2026 Report at 1

2023 Was “Historically Challenging” for NS



Mark George

Chief Executive Officer

NORFOLK SOUTHERN

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

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VIDEOTAPED DEPOSITION

The DEPOSITION OF MARK R. GEORGE, taken on behalf of Burlington Northern Santa Fe Railway Company, at the Law Offices of Sidley Austin LLP, 1501 K Street, NW, Washington, DC 20005, on the 17th day of September, 2026, at 8:59 a.m. EST.

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. Okay. Let's cut through it. 2023 was a historically challenging year for Norfolk Southern, correct?

A. Yes.

M. George Dep. at 57:15-18 (de-designated by NS)

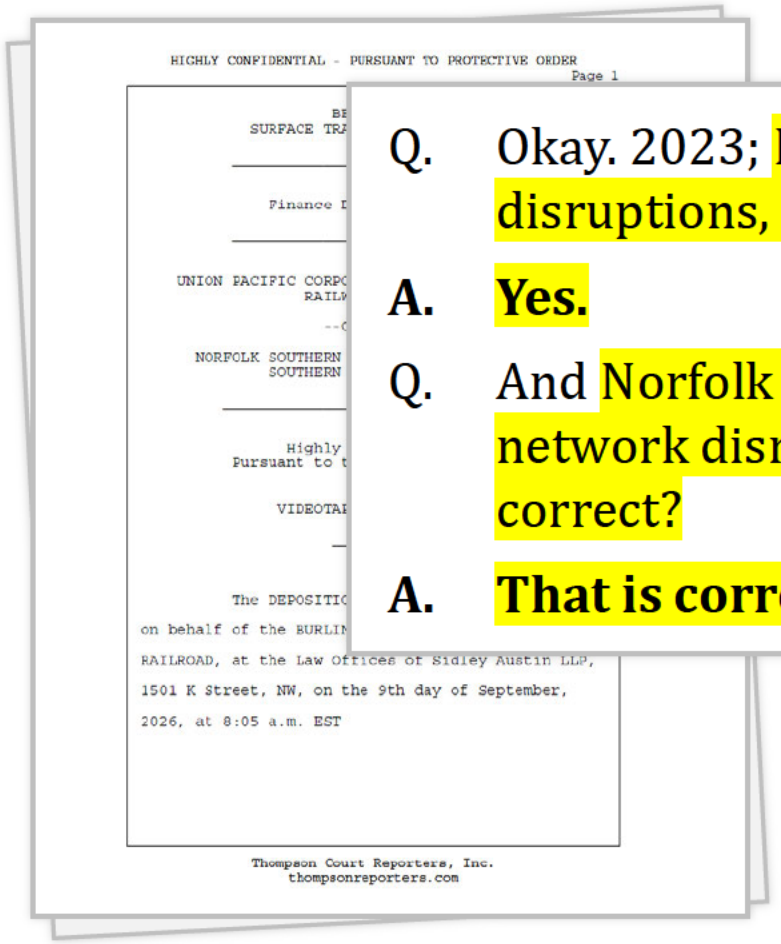
NS Faced Serious Network Disruptions In 2023



Ed Elkins

Executive VP &
Chief Commercial Officer

NORFOLK SOUTHERN



HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
Page 1

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The DEPOSITIO
on behalf of the BURLIN
RAILROAD, at the Law Offices of Sidley Austin LLP,
1501 K Street, NW, on the 9th day of September,
2026, at 8:05 a.m. EST

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. Okay. 2023; Norfolk Southern also faced serious network disruptions, correct?

A. Yes.

Q. And Norfolk Southern hasn't had those same kind of network disruptions in 2024, '25, or year to date '26, correct?

A. That is correct.

E. Elkins Dep. at 87:19-88:1 (de-designated by NS)

2024 Was “Year of Transformation” for NS



Mark George

Chief Executive Officer

NORFOLK SOUTHERN

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

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The DEPOSIT

behalf of Burlington Northern Santa Fe Railway Company, at the Law Offices of Sidley Austin LLP, 1501 K Street, NW, Washington, DC 20005, on the 17th day of September, 2026, at 8:59 a.m. EST.

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. So compared to 2023, Norfolk Southern has seven new board members and a new senior management team, correct?

A. That's correct.

Q. And fair to say 2024 was a year of transformation for Norfolk Southern, correct?

A. Absolutely.

M. George Dep. at 50:7-13 (de-designated by NS)

[redacted]



David Lehlbach

AVP – Strategic Planning

NORFOLK SOUTHERN

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behalf of the Burling
at the Law Offices of
Street, NW, Washingto
of September, 2026, a

Thompson
thompsonreporters.com

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

D. Lehlbach Dep. 85:10-22

2023 Was a Challenging Year for UP, Too



Jim Vena

CEO & Director

2023 10-K

"**For 2023**, we reported earnings per diluted share of $10.45, **a 7% decrease versus 2022**, reflecting 1% lower volumes and an operating ratio increase of 220 basis points."

"**Freight revenues decreased** 3% year-over-year to $22.6 billion driven by lower fuel surcharge revenues, **negative mix of traffic (decreased lumber shipments and increased short haul rock shipments), and a 1% decrease in volume**, partially offset by core pricing gains. Volume decreases were primarily driven by weaker demand for intermodal and coal shipments."

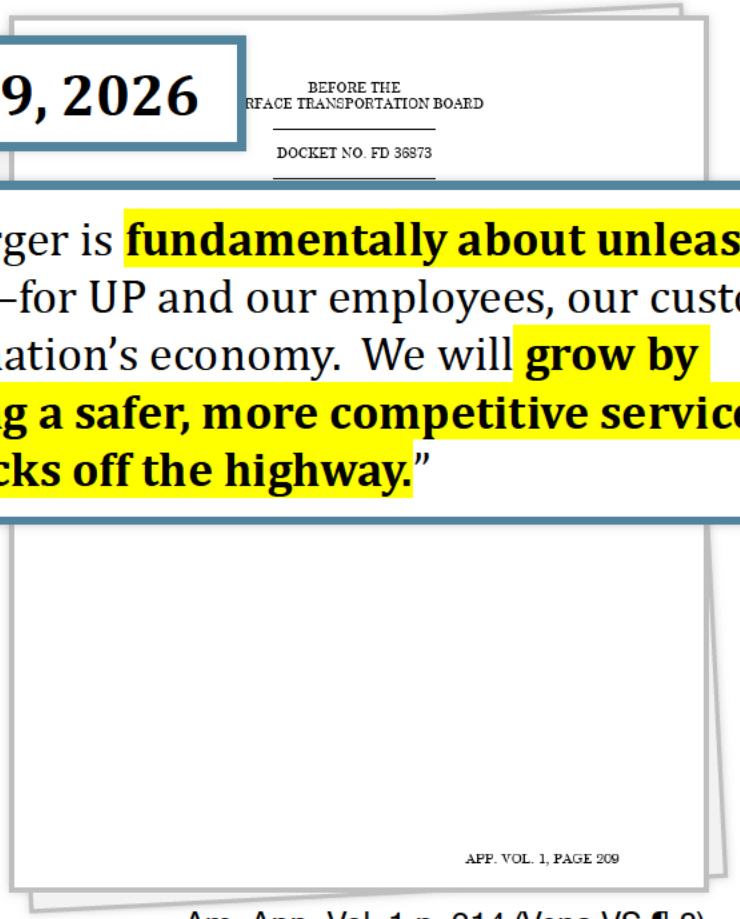
Union Pacific Corp. 2023 Annual Report (Form 10-K) at 3, 26

UP's Merger Rationales Keep Changing – And Don't Hold Up

Changing Merger Story: UP Doesn't Trust the Diversions

THEN

April 29, 2026


BEFORE THE
RFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

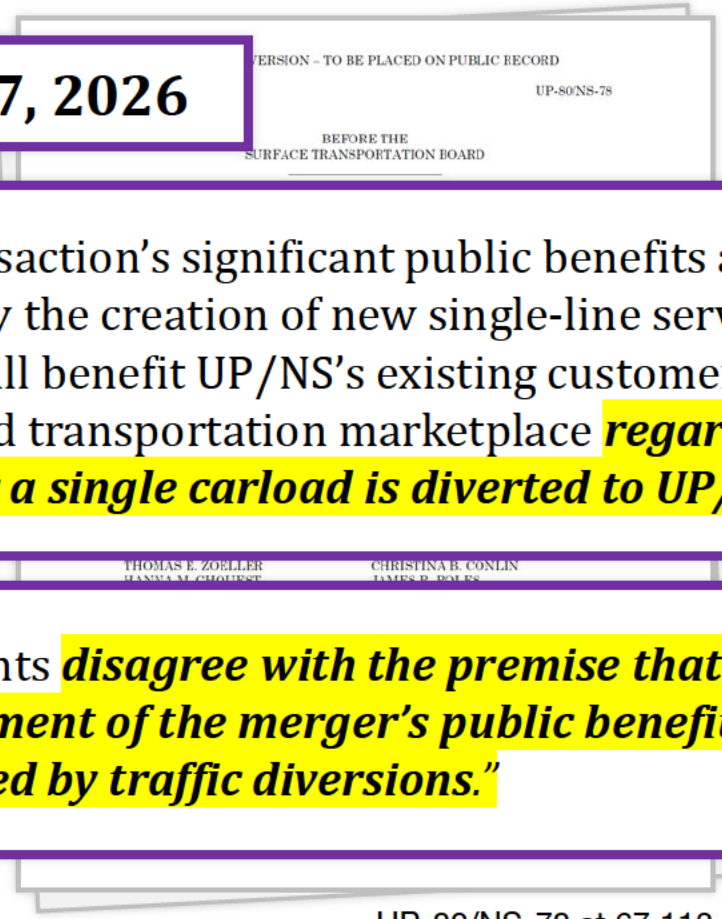
APP. VOL. 1, PAGE 209

"Our merger is **fundamentally about unleashing growth**—for UP and our employees, our customers, and the nation's economy. We will **grow by providing a safer, more competitive service to take trucks off the highway.**"

Am. App. Vol. 1 p. 214 (Vena VS ¶ 8)

NOW

July 27, 2026


ERSION – TO BE PLACED ON PUBLIC RECORD

UP-80/NS-78

BEFORE THE
SURFACE TRANSPORTATION BOARD

THOMAS E. ZOELLER CHRISTINA B. CONLIN

The transaction's significant public benefits are driven by the creation of new single-line service, which will benefit UP/NS's existing customers and the broad transportation marketplace ***regardless of whether a single carload is diverted to UP/NS.***"

"Applicants ***disagree with the premise that achievement of the merger's public benefits can be measured by traffic diversions.***"

UP-80/NS-78 at 67,113

UP/NS's Traffic Expert Can't Get It Right



David Hunt

Traffic Expert

OLIVER WYMAN
A MARSH BUSINESS

- **Six** iterations of reports and supplements
- Cascading errors throughout workpapers

~230 rows
in errata submissions

Over 310
errors/corrections

Over 214
replacement
workpapers submitted

Thousands of individual workpaper errors

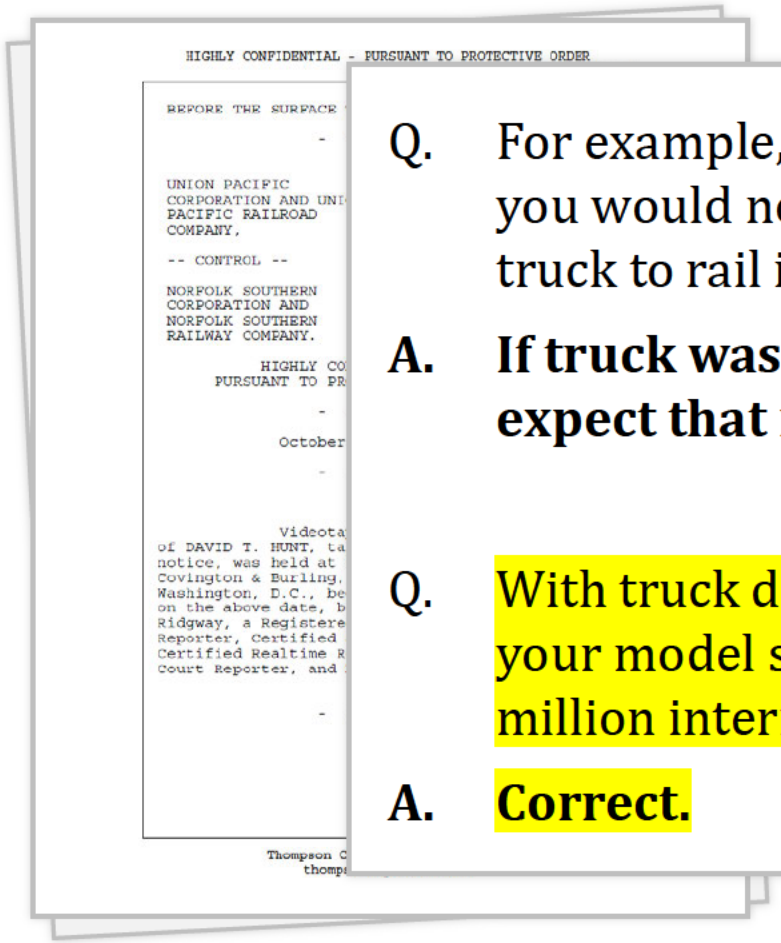
Projected Traffic Diversions Don't Make Sense



David Hunt

Traffic Expert

OLIVER WYMAN
A MARSH BUSINESS


HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

BEFORE THE SURFACE

UNION PACIFIC
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CORPORATION AND
NORFOLK SOUTHERN
RAILWAY COMPANY.

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October

Videota
of DAVID T. HUNT, ta
notice, was held at
Covington & Burling,
Washington, D.C., be
on the above date, b
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Certified Realtime R
Court Reporter, and

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Q. For example, if truck were 99 percent cheaper than rail, you would not expect to see significant diversions from truck to rail in the intermodal space, correct?

A. If truck was 99 percent cheaper than rail, I would expect that most shippers would select truck.

* * *

Q. With truck discounted by 99 percent in all future lanes, your model still predicts the merger will divert 1.13 million intermodal units from truck to rail, correct?

A. Correct.

D. Hunt Dep. 188:8-18, 340:24-341:5 (de-designated by UP)

Projected Traffic Diversions Don't Make Sense

31%

. . . of truck-to-intermodal diversions come from lanes with zero pre-merger rail share

43-47%

. . . of truck-to-intermodal diversions occur in lanes where rail costs more than truck

[redacted]



Aaron Pfeifer

General Director, Pricing & Equipment

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Page 1

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The DEPOSITION
behalf of the BURLINGT
OF Kutak Rock, 1650 Fa
the 20th day of August

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

A. Pfeifer Dep. Tr. 152:9-19

[redacted]



Todd Rynaski

SVP - Strategy

[redacted]

[redacted]

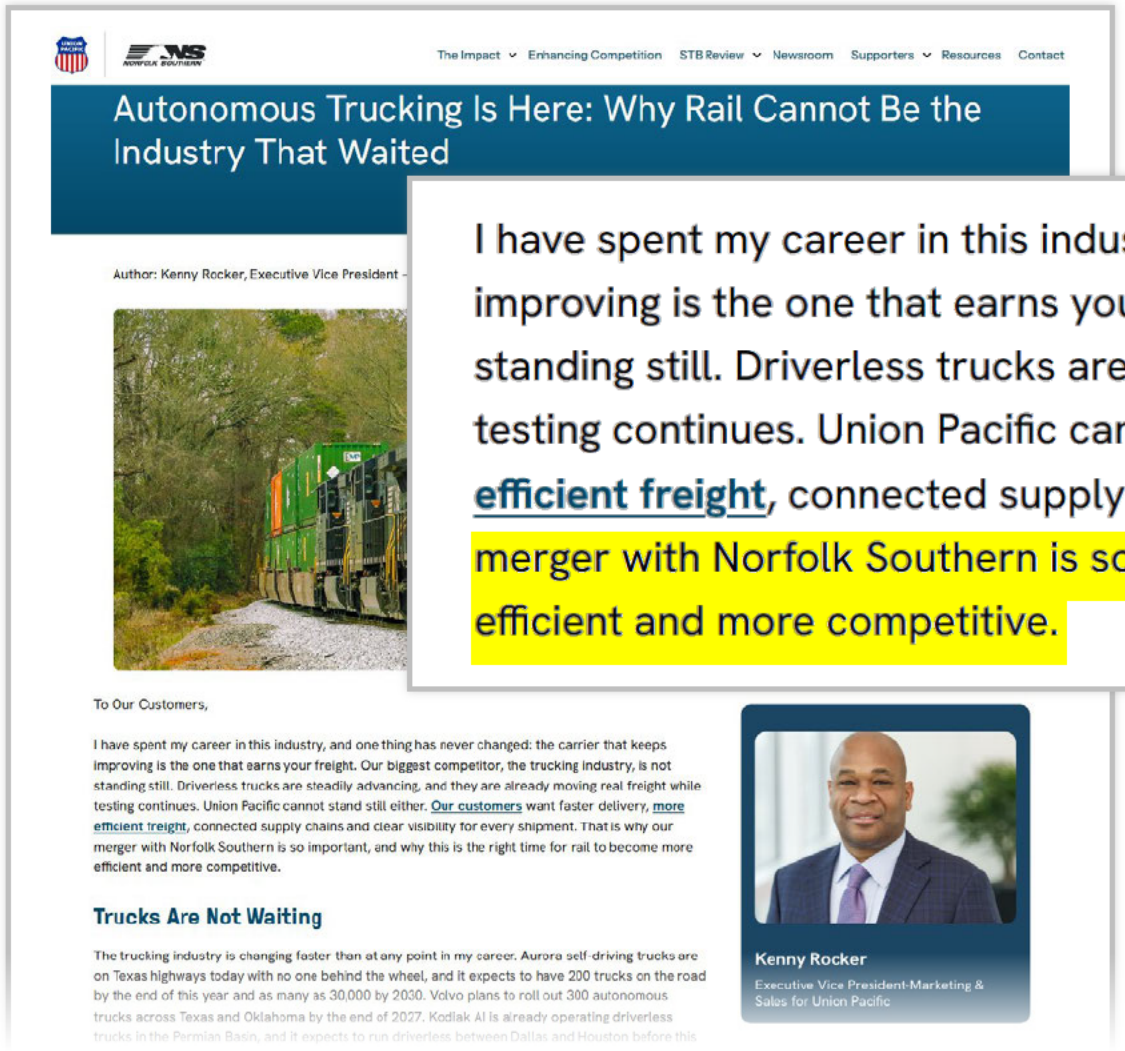


Todd Rynaski

SVP - Strategy

[redacted]

UP's New Merger Justification: Autonomous Trucks



The Impact | Enhancing Competition | STB Review | Newsroom | Supporters | Resources | Contact

Autonomous Trucking Is Here: Why Rail Cannot Be the Industry That Waited

Author: Kenny Rocker, Executive Vice President –

To Our Customers,

I have spent my career in this industry, and one thing has never changed: the carrier that keeps improving is the one that earns your freight. Our biggest competitor, the trucking industry, is not standing still. Driverless trucks are steadily advancing, and they are already moving real freight while testing continues. Union Pacific cannot stand still either. Our customers want faster delivery, more efficient freight, connected supply chains and clear visibility for every shipment. That is why our merger with Norfolk Southern is so important, and why this is the right time for rail to become more efficient and more competitive.

Trucks Are Not Waiting

The trucking industry is changing faster than at any point in my career. Aurora self-driving trucks are on Texas highways today with no one behind the wheel, and it expects to have 200 trucks on the road by the end of this year and as many as 30,000 by 2030. Volvo plans to roll out 300 autonomous trucks across Texas and Oklahoma by the end of 2027. Kodiak AI is already operating driverless trucks in the Permian Basin, and it expects to run driverless between Dallas and Houston before this

Kenny Rocker
Executive Vice President-Marketing & Sales for Union Pacific

> I have spent my career in this industry, and one thing has never changed: the carrier that keeps improving is the one that earns your freight. Our biggest competitor, the trucking industry, is not standing still. Driverless trucks are steadily advancing, and they are already moving real freight while testing continues. Union Pacific cannot stand still either. **Our customers** want faster delivery, **more efficient freight**, connected supply chains and clear visibility for every shipment. That is why our merger with Norfolk Southern is so important, and why this is the right time for rail to become more efficient and more competitive.

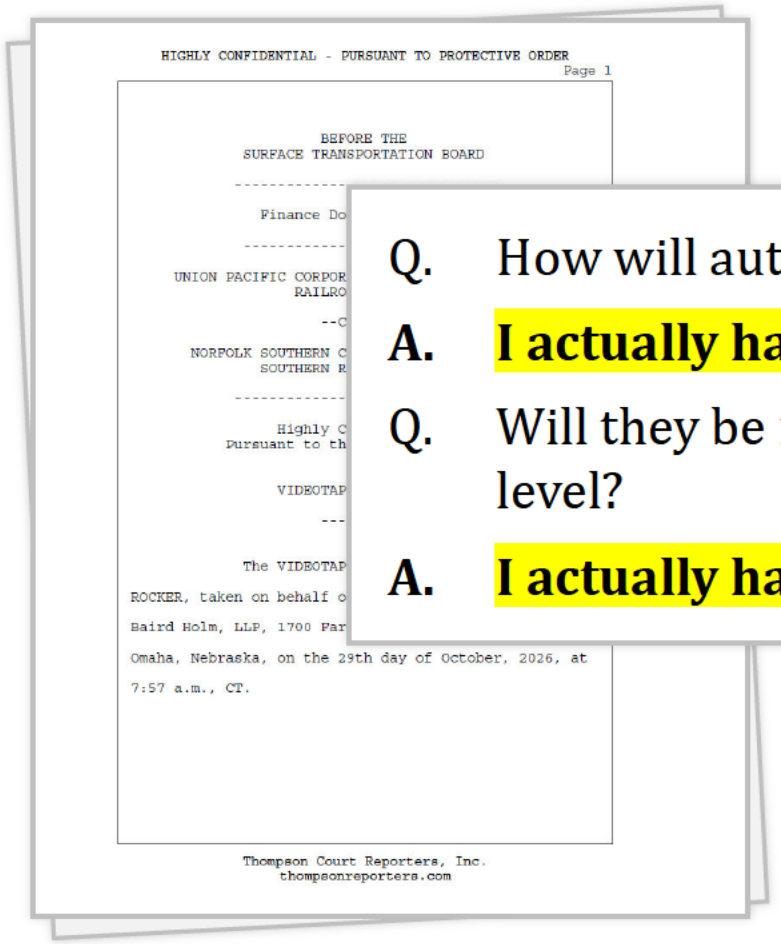
Kenny Rocker, *Autonomous Trucking Is Here: Why Rail Cannot Be the Industry That Waited,* Union Pacific (Oct. 27, 2026) https://www.up-nstranscontinental.com/letters/autonomous-trucking-is-here-why-rail-cannot-be-the-industry-that-waited/

That Excuse for Merger Falls Flat, Too



Kenny Rocker

Executive Vice President of Marketing & Sales


HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

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The VIDEOTAP
ROCKER, taken on behalf o
Baird Holm, LLP, 1700 Par
Omaha, Nebraska, on the 29th day of October, 2026, at
7:57 a.m., CT.

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. How will autonomous trucks be regulated?

A. I actually have no idea.

Q. Will they be regulated at the federal level or the state level?

A. I actually have no idea.

K. Rocker Dep. at 96:4-13 (de-designated by UP)

Autonomous Trucks are Not a Near-Term Threat



Kenny Rocker

Executive Vice President of Marketing & Sales

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ROCKER, taken on behalf o
Baird Holm, LLP, 1700 Far
Omaha, Nebraska, on the 2
7:57 a.m., CT.

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Q. … [I]f your board, your December board meeting said: Hey, Mr. Rocker, I read your letter to your customers. It seems like autonomous trucks are a threat. When is it going to become a nationwide problem, what would you say?

A. I will be candid with you, honest with you. I don't have enough information to say when. It could be ten years. It could be 15. It could be five. It, you know—it—it could change if I have spent, you know, more time with them specifically in the future.

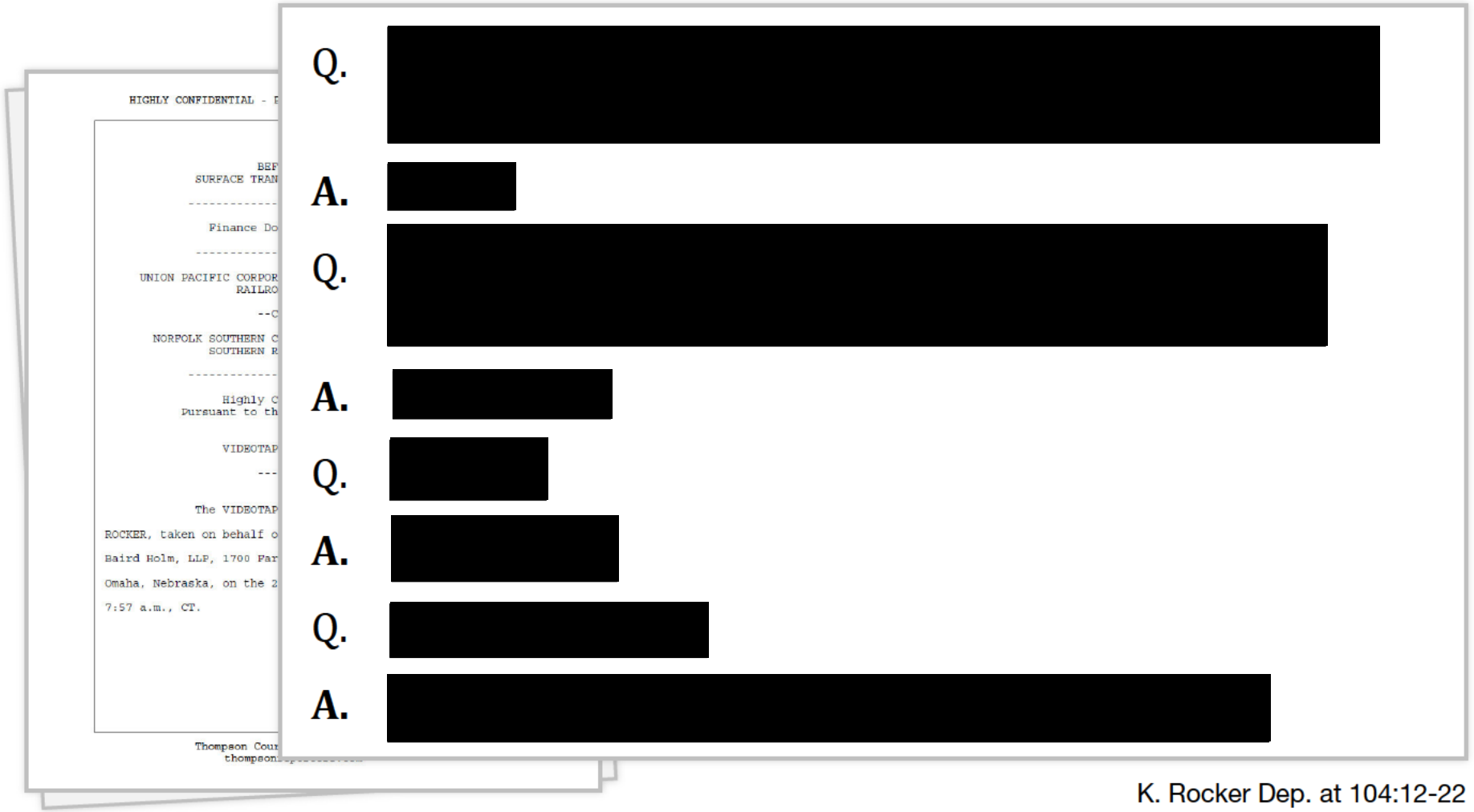
K. Rocker Dep. at 98:6-19 (de-designated by UP)

[redacted]



Kenny Rocker

Executive Vice President of Marketing & Sales



K. Rocker Dep. at 104:12-22

UP/NS Witnesses Don't Back Up Claims

UP *Said* Merger Will Be "Most Thoroughly Planned"



Jim Vena

CEO & Director

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

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

VERIFI

V. J

APP. VOL. 1, PAGE 209

"The merger will be the most thoroughly planned, carefully executed railroad merger in history."

Am. App. Vol. 1, p. 211(Vena VS ¶ 3)

[redacted]



Sonal Bhatia

Integration Sponsor

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RAILWAY COMPANY. :

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October 27, 202

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of SONAL BHATIA, taken purs
notice, was held at the law
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Washington, D.C., beginning
on the above date, before M
Ridgway, a Registered Profe
Reporter, Certified Shortha
Certified Realtime Reporter
Court Reporter, and Notary

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Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

***

Q. [redacted]

A. [redacted]

S. Bhatia Dep. 202:14-19; 203:11-16

[redacted]



Sonal Bhatia

Integration Sponsor

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October 27, 202

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Reporter, Certified Shortha
Certified Realtime Reporter
Court Reporter, and Notary

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Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

***

Q. [redacted]

A. [redacted]

S. Bhatia Dep. 185:18-23; 186:16-21

[redacted]



Sonal Bhatia

Integration Sponsor

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RAILWAY COMPANY. :

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October 27, 2020

- - -

Videotaped hybrid deposition
of SONAL BHATIA, taken pursuant to
notice, was held at the law offices of
Covington & Burling, 850 10th Street, NW,
Washington, D.C., beginning
on the above date, before M
Ridgway, a Registered Profe
Reporter, Certified Shortha
Certified Realtime Reporter
Court Reporter, and Notary

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Thompson Cour
thompsonreporters.com

Q. [redacted]

A. [redacted]

S. Bhatia Dep. 142:6-143:2

Q. [redacted]

A. [redacted]

S. Bhatia Dep. 143:20-24

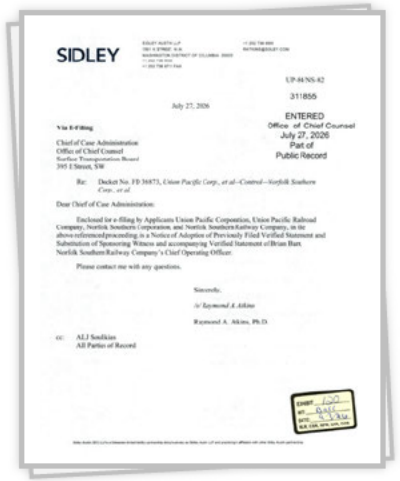
[redacted]



Brian Barr

NS COO
(Replaced Orr in June 2026)

NORFOLK SOUTHERN



SIDLEY

UP-84/NS-82

311855

July 27, 2026

ENTERED
Office of Chief Counsel
July 27, 2026
Part of
Public Record

Via E-Filing

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW

Re: Docket No. FD 36873, *Union Pacific Corp., et al.—Control—Norfolk Southern Corp., et al.*

Dear Chief of Case Administration:

Enclosed for e-filing by Applicants Union Pacific Corporation, Union Pacific Railroad Company, Norfolk Southern Corporation, and Norfolk Southern Railway Company, in the above-referenced proceeding is a Notice of Adoption of Previously Filed Verified Statement and Substitution of Sponsoring Witness and accompanying Verified Statement of Brian Barr, Norfolk Southern Railway Company's Chief Operating Officer.

Please contact me with any questions.

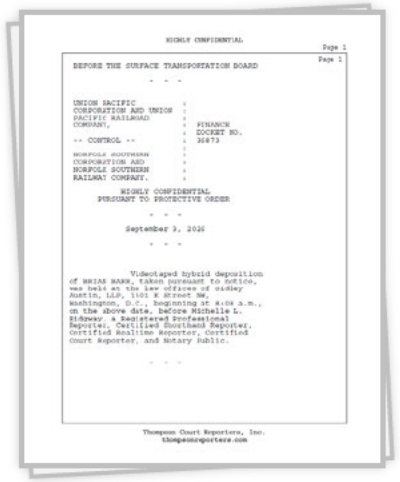
Sincerely,

/s/ Raymond A. Atkins

Raymond A. Atkins, Ph.D.

cc: ALJ Sosklies
All Parties of Record

EXHIBIT 100
BY BARR
DATE 9-3-26
KR CSR NPR RPR



HIGHLY CONFIDENTIAL

Page 1

BEFORE THE SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY, -- CONTROL -- NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY.

FINANCE DOCKET NO. 36873

HIGHLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

September 3, 2026

Videotaped hybrid deposition of BRIAN BARR, taken pursuant to notice, was held at the law offices of Sidley Austin, LLP, 1501 K Street NW, Washington, D.C., beginning at 9:06 a.m., on the above date, before Michelle L. Sidney, a Registered Professional Reporter, Certified Southland Reporter, Certified Realtime Reporter, Certified Court Reporter, and Notary Public.

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4. As reflected in the attached Verified Statement, Mr. Barr has carefully reviewed the Operating Plan in its entirety, together with the information and materials upon which it is based, and he is adopting that statement and verifying that each statement with respect to Norfolk Southern's operations therein is true and correct to the best of his knowledge, information, and belief.

Q. [redacted]

A. [redacted]

* * *

Q. [redacted]

A. [redacted]

UP-84/NS-82 at ¶ 4; B. Barr Dep. 125:11-14; 108:21-24

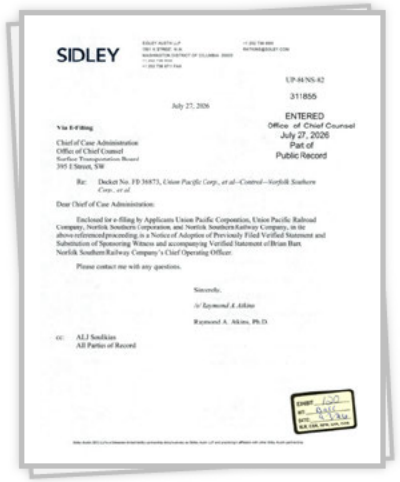
[redacted]



Brian Barr

NS COO
(Replaced Orr in June 2026)

NORFOLK SOUTHERN



SIDLEY

UP-84/NS-82

311855

July 27, 2026

ENTERED
Office of Chief Counsel
July 27, 2026
Part of
Public Record

Via E-Filing

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW

Re: Docket No. FD 36873, *Union Pacific Corp., et al.—Control—Norfolk Southern Corp., et al.*

Dear Chief of Case Administration:

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Please contact me with any questions.

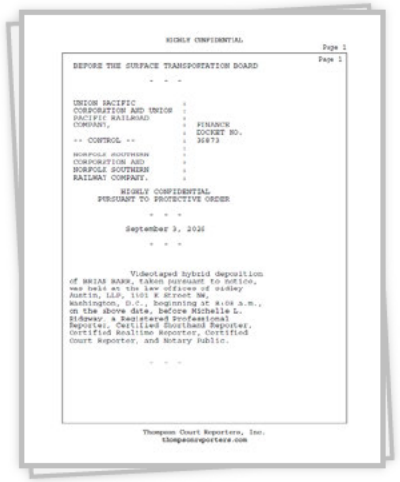
Sincerely,

/s/ Raymond A. Atkins

Raymond A. Atkins, Ph.D.

cc: ALJ Soskkin
All Parties of Record

EXHIBIT 100
BY Barr
DATE 9-3-26
KR CSR, RPR, CRR, CRC



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Page 1

BEFORE THE SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY, -- CONTROL -- NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY.

FINANCE DOCKET NO. 36873

HIGHLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

September 3, 2026

Videotaped hybrid deposition of BRIAN BARR, taken pursuant to notice, was held at the law offices of Sidley Austin, LLP, 1501 K Street NW, Washington, D.C., beginning at 9:06 a.m., on the above date, before Michelle L. Ridgway, a Registered Professional Reporter, Certified Southland Reporter, Certified Realtime Reporter, Certified Court Reporter, and Notary Public.

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4. I have carefully and independently reviewed the Operating Plan submitted as Exhibit 13 to the Amended Application filed on April 30, 2026 in the above-captioned docket in its entirety, together with the information and materials upon which it is based. I have also reviewed the errata, which, among other things, makes corrections to the Operating Plan.

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Barr VS at ¶ 4; B. Barr Dep. 112:3-15

[redacted]



Katherine Novak

CGP Sponsor

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

Page 1

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

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VIDEOTAPE

The DEPOSITION OF KATHERINE N. NOVAK, taken on behalf of the BURLINGTON NORTHERN, at the Law Office of Kutak Rock, 1650 Farnam Street, Omaha, Nebraska, on September 24th, 2026, at 8:03 a.m. Central Daylight Time.

REPORTED BY: GREG S. WEILAND, CSR, RDR, CRR

JOB NO.: 23793

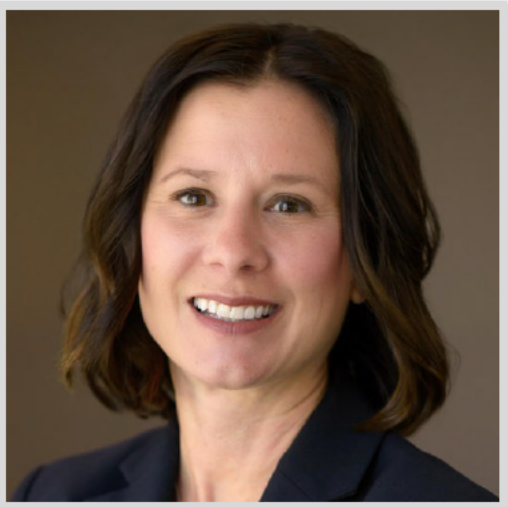
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Q. [redacted]

A. [redacted]

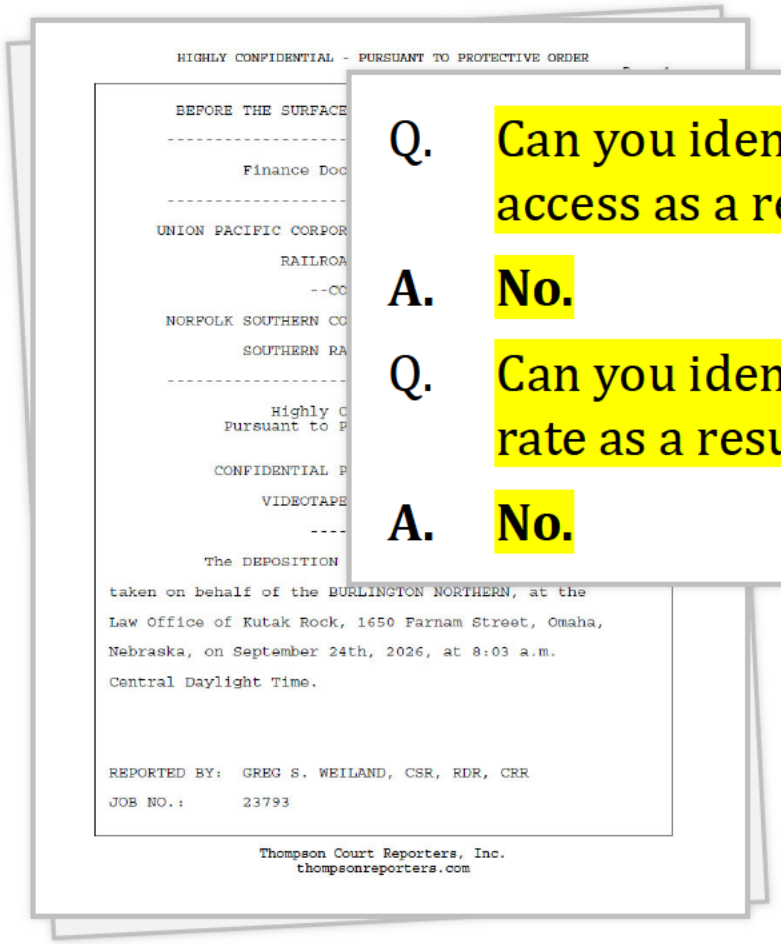
K. Novak Dep. 200:8-12

Sponsor Cannot Identify Shippers Who Would Benefit



Katherine Novak

CGP Sponsor



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BEFORE THE SURFACE

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VIDEOTAPE

The DEPOSITION
taken on behalf of the BURLINGTON NORTHERN, at the
Law Office of Kutak Rock, 1650 Farnam Street, Omaha,
Nebraska, on September 24th, 2026, at 8:03 a.m.
Central Daylight Time.

REPORTED BY: GREG S. WEILAND, CSR, RDR, CRR
JOB NO.: 23793

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. Can you identify a single shipper that will have increased access as a result of CGP?

A. No.

Q. Can you identify a single shipper that will have a better rate as a result of CGP?

A. No.

K. Novak Dep. 202:18-203:2 (de-designated by UP)

[redacted]



Katherine Novak

CGP Sponsor

UNION PACIFIC

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RAILROA
--CC
NORFOLK SOUTHERN CO
SOUTHERN RA

Highly C
Pursuant to P

CONFIDENTIAL P
VIDEOTAPE

The DEPOSITION
taken on behalf of the DU
Law Office of Kutak Rock,
Nebraska, on September 24
Central Daylight Time.

REPORTED BY: GREG S. WEILAND, CSR, RDR, CRR
JOB NO.: 23793

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

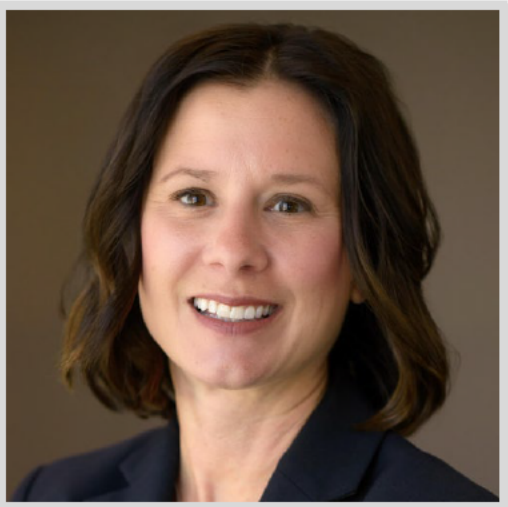
* * *

Q. [redacted]

A. [redacted]

K. Novak Dep. 181:16-20; 182:6-11

[redacted]



Katherine Novak

CGP Sponsor

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

Page 1

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC
RAILROA
--CC
NORFOLK SOUTHERN CO
SOUTHERN RA

Highly C
Pursuant to P

CONFIDENTIAL P

VIDEOTAPE

The DEPOSITION OF KATHERINE N. NOVAK,
taken on behalf of the BURLINGTON NORTHERN, at the
Law Office of Kutak Rock, 1650 Farnam Street, Omaha,
Nebraska, on September 24th, 2026, at 8:03 a.m.
Central Daylight Time.

REPORTED BY: GREG S. WEILAND, CSR, RDR, CRR
JOB NO.: 23793

Thompson Court Reporters, Inc.
thompsonreporters.com

Q. [redacted]

A. [redacted]

K. Novak Dep. 215:12-14

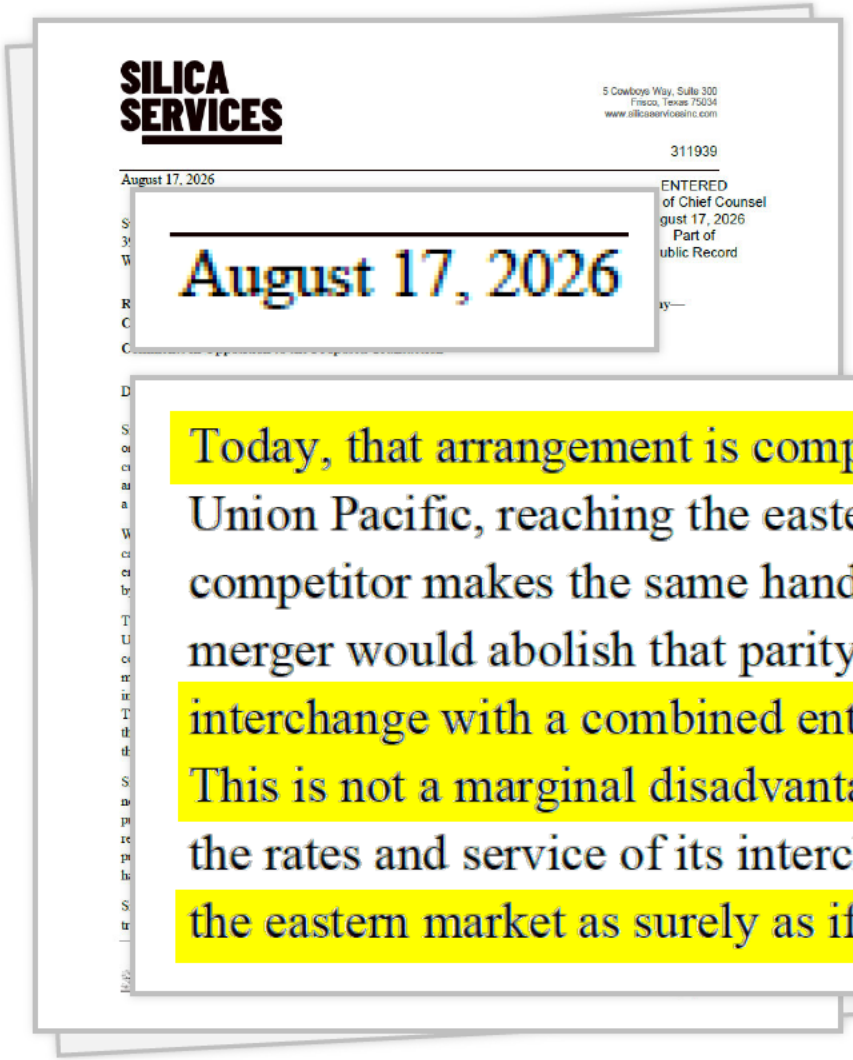
The Merger Will Cause Substantial Harm

Shippers and Unions Widely Oppose

- **<u>Shippers</u> – More than 50%** of all rail cargo is represented by shipper and trade associations opposed to or expressing concern about the merger

- **<u>Workers</u> – Over 70%** of the projected combined UP-NS unionized workforce is represented by organizations that oppose the merger

Industrial Shipper: Merger Harms Competition


SILICA SERVICES

5 Cowboys Way, Suite 300
Frisco, Texas 75034
www.silicaservicesinc.com

311939

August 17, 2026

ENTERED
of Chief Counsel
gust 17, 2026
Part of
ublic Record

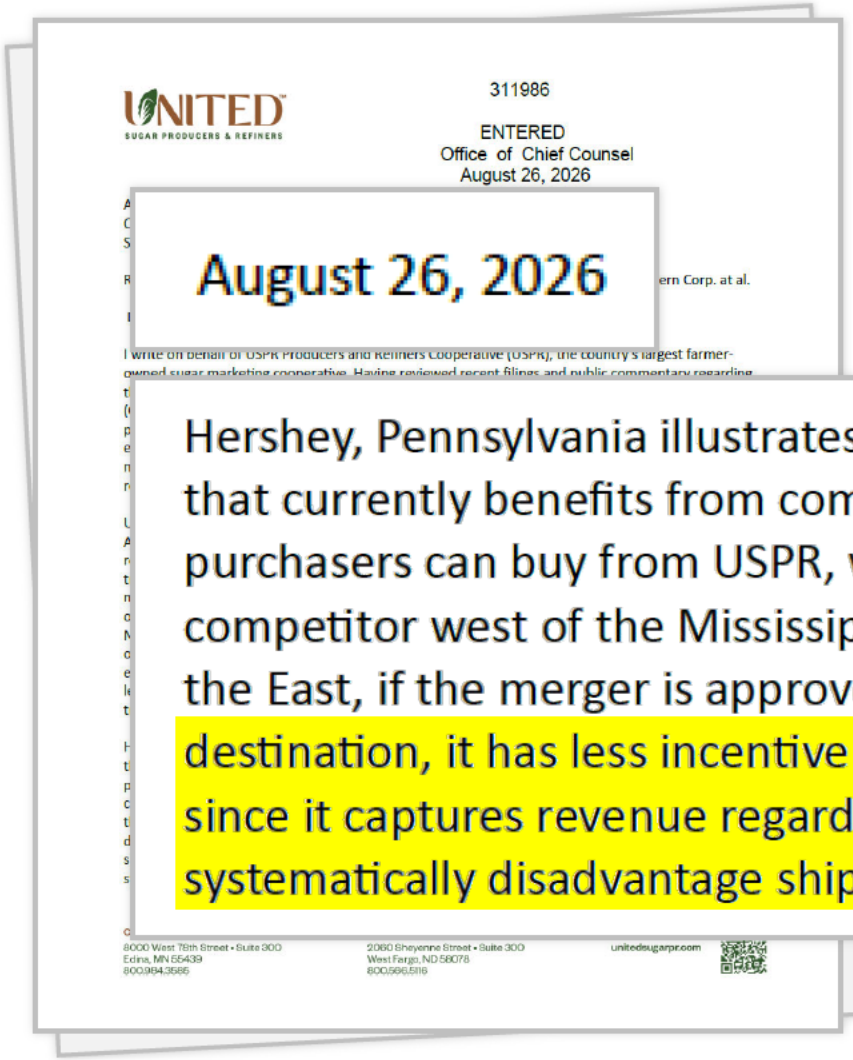
August 17, 2026

Today, that arrangement is competitively neutral. Whether a shipper's sand originates on BNSF or on Union Pacific, reaching the eastern geomarket requires an interchange with Norfolk Southern. Every competitor makes the same handoff, and Silica competes on the merits, on service, and on price. The merger would abolish that parity in a single stroke. Silica's BNSF origin traffic would now require an interchange with a combined entity controlled by the very rival it competes against from other origins. This is not a marginal disadvantage Silica could engineer around. 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.

SILICA SERVICES

Comments, Silica Services

Ag Shipper: Merger Harms Key Interchanges


UNITED
SUGAR PRODUCERS & REFINERS

311986

ENTERED
Office of Chief Counsel
August 26, 2026

August 26, 2026

ern Corp. at al.

I write on behalf of USPR Producers and Refiners Cooperative (USPR), the country's largest farmer-

8000 West 78th Street • Suite 300
Edina, MN 55439
800.984.3586

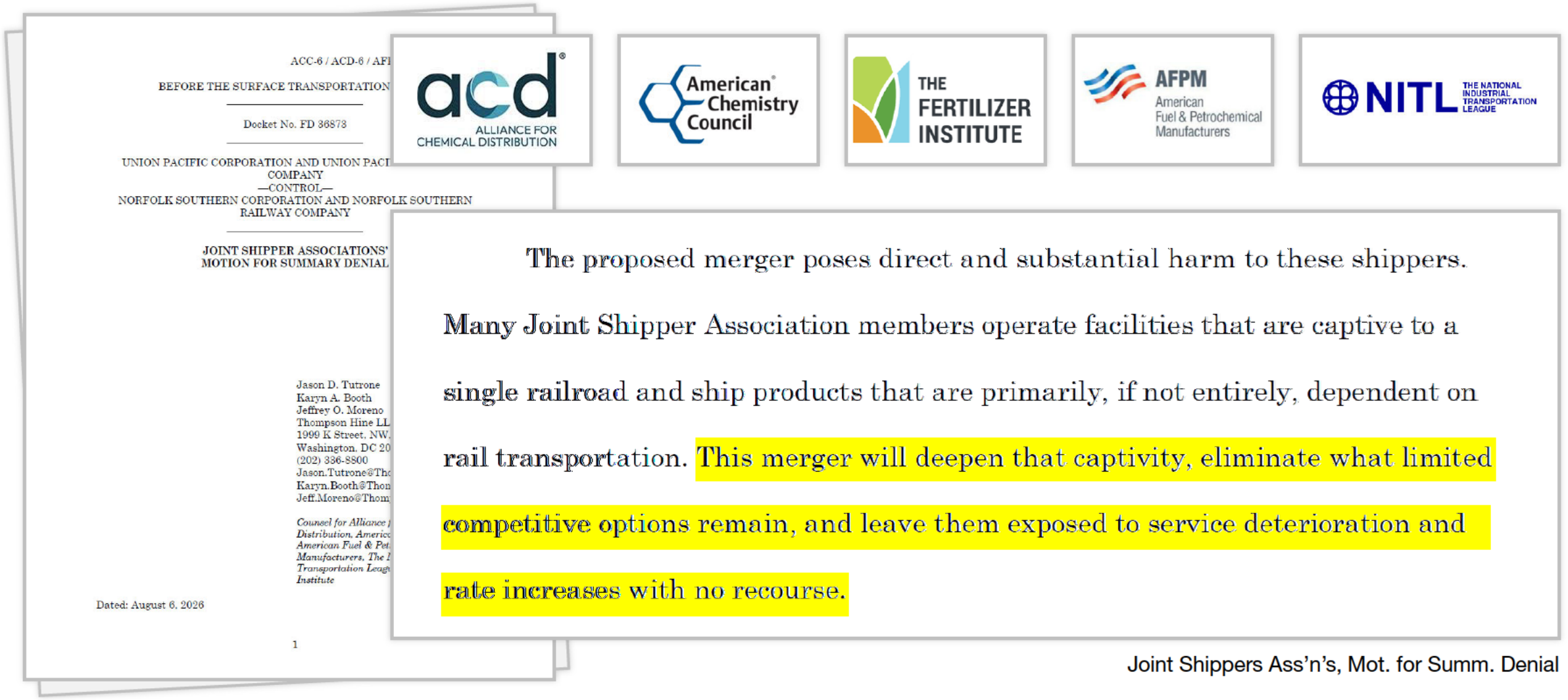
2060 Cheyenne Street • Suite 300
West Fargo, ND 58078
800.566.5116

unitedsugarpr.com

Hershey, Pennsylvania illustrates an example. Hershey, Pennsylvania is a large sugar-consuming market that currently benefits from competition among distributors served by different rail routings: purchasers can buy from USPR, which uses BNSF in the West and NS in the East, or from our primary competitor west of the Mississippi River, which is served by UP in the West and would also use UP in the East, if the merger is approved. Once a single railroad controls both legs of the route to a shared destination, it has less incentive to offer competitive rates through key interchange points like Chicago, since it captures revenue regardless of which shipper it favors. USPR believes this dynamic will systematically disadvantage shippers who currently partner with railroads other than UP and NS.

Comments, United Sugar Producers and Refiners Cooperative at 2

Major Shipper Groups: Merger Leads to Rate Hikes



ACC-6 / ACD-6 / AFI

BEFORE THE SURFACE TRANSPORTATION

Docket No. FD 36873

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

JOINT SHIPPER ASSOCIATIONS'
MOTION FOR SUMMARY DENIAL

Jason D. Tutrone
Karyn A. Booth
Jeffrey O. Moreno
Thompson Hine LL
1999 K Street, NW,
Washington, DC 20
(202) 336-8800
Jason.Tutrone@Tho
Karyn.Booth@Thon
Jeff.Moreno@Thom

Counsel for Alliance f
Distribution, Americ
American Fuel & Pet
Manufacturers, The I
Transportation Leagu
Institute

Dated: August 6, 2026

1

ALLIANCE FOR CHEMICAL DISTRIBUTION

American Chemistry Council

THE FERTILIZER INSTITUTE

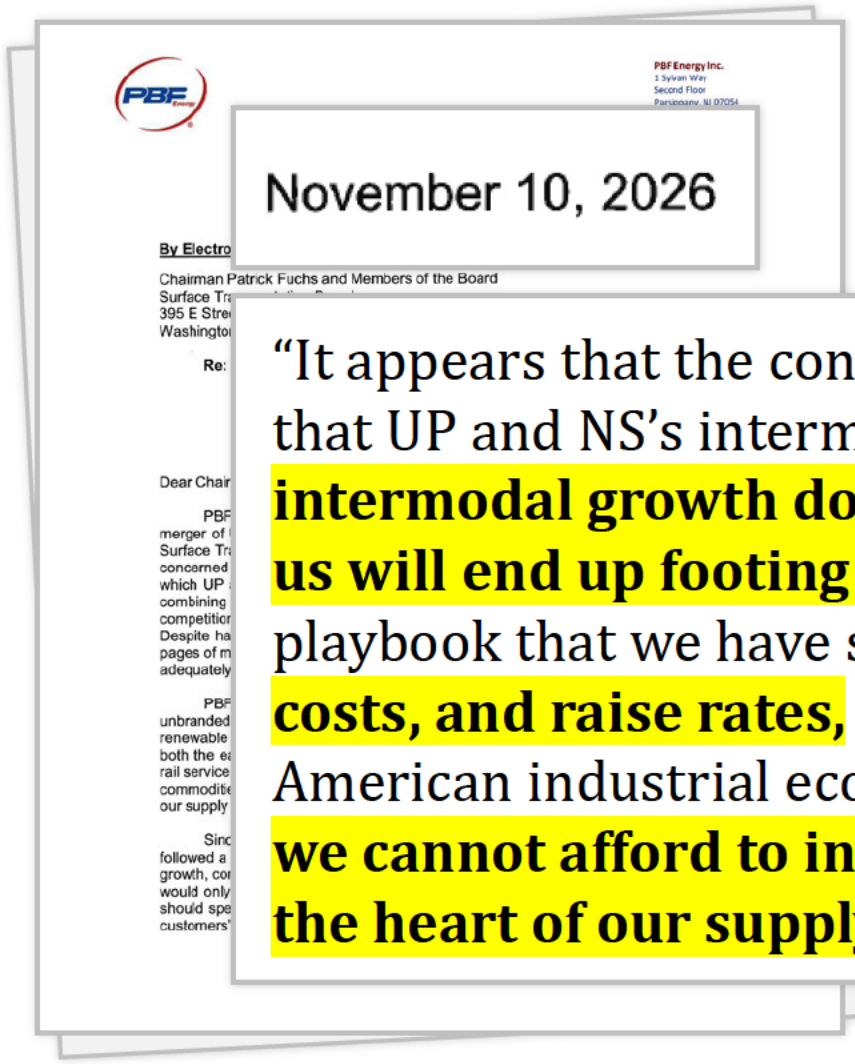
AFPM American Fuel & Petrochemical Manufacturers

NITL THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

The proposed merger poses direct and substantial harm to these shippers. Many Joint Shipper Association members operate facilities that are captive to a single railroad and ship products that are primarily, if not entirely, dependent on rail transportation. This merger will deepen that captivity, eliminate what limited competitive options remain, and leave them exposed to service deterioration and rate increases with no recourse.

Joint Shippers Ass'n's, Mot. for Summ. Denial

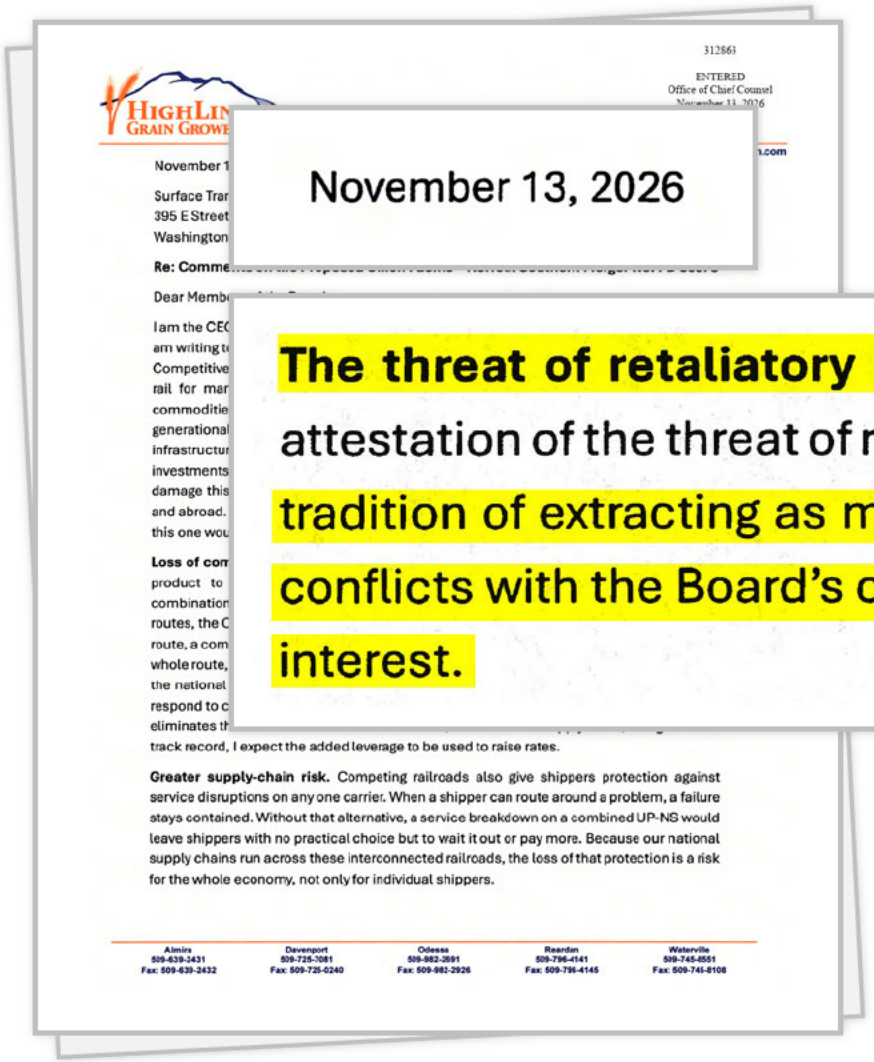
Energy Shipper: Merger Leads to Rate Hikes



"It appears that the consensus among stakeholders with intermodal expertise is that UP and NS's intermodal growth projections are exaggerated. **When that intermodal growth does not happen, PBF believes that carload shippers like us will end up footing the bill for the merger.** UP and NS will follow the same playbook that we have seen for the last decade. **They will cut service, reduce costs, and raise rates,** but this time it will be done on a much larger scale. The American industrial economy is already facing significant inflationary challenges; **we cannot afford to institutionalize the merged entity's pricing practices at the heart of our supply chain."**

PBF Energy Comments In Opposition (November 10, 2026)

Shipper: "The Threat of Retaliatory Behavior is Real."



312863

ENTERED
Office of Chief Counsel

November 13, 2026

November 1

Surface Trar
395 E Street
Washington

Re: Comme

Dear Memb

I am the CEC
am writing t
Competitive
rail for mar
commoditie
generational
infrastructur
investments
damage this
and abroad.
this one wou

Loss of com
product to
combination
routes, the C
route, a com
whole route,
the national
respond to c
eliminates th
track record, I expect the added leverage to be used to raise rates.

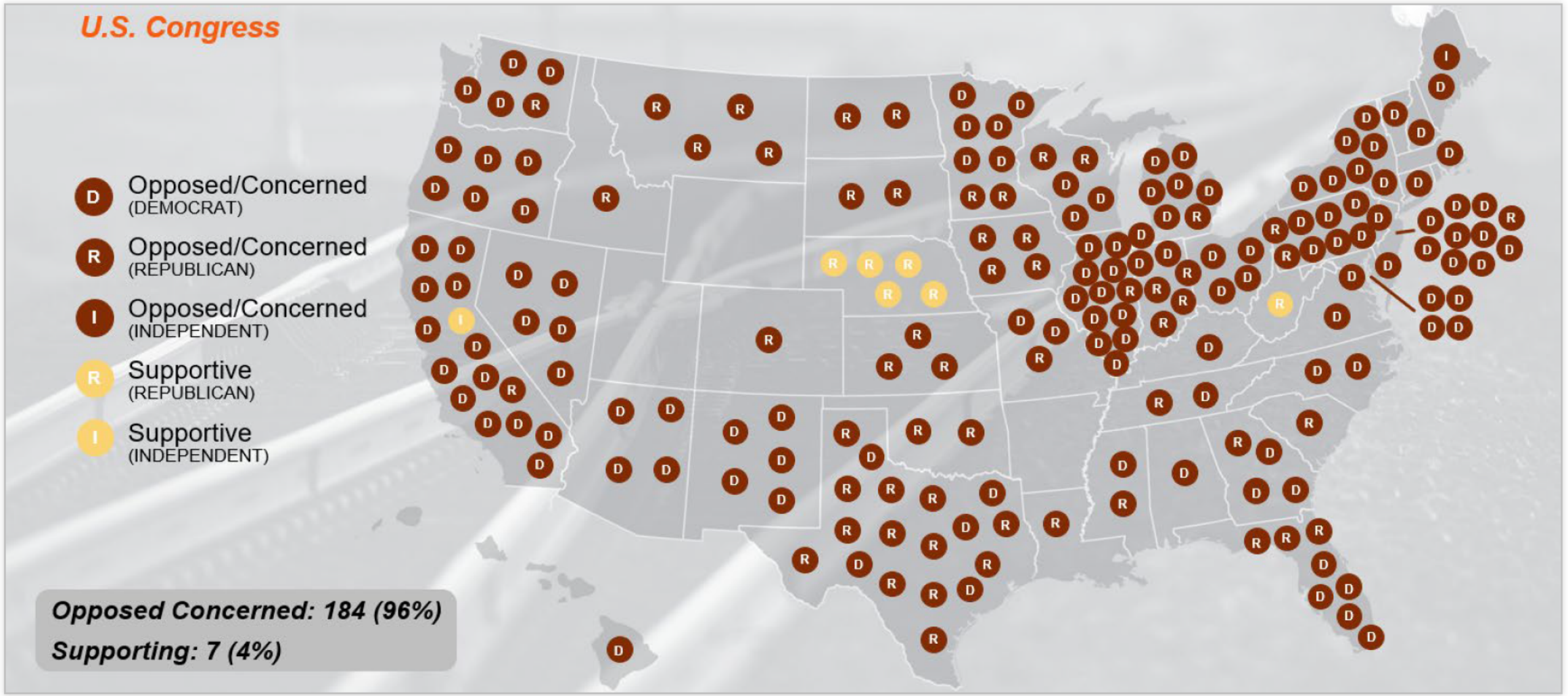
Greater supply-chain risk. Competing railroads also give shippers protection against service disruptions on any one carrier. When a shipper can route around a problem, a failure stays contained. Without that alternative, a service breakdown on a combined UP-NS would leave shippers with no practical choice but to wait it out or pay more. Because our national supply chains run across these interconnected railroads, the loss of that protection is a risk for the whole economy, not only for individual shippers.

Almira 509-639-3431 Fax: 509-639-2432 | Davenport 509-725-7081 Fax: 509-725-0240 | Odessa 509-982-2691 Fax: 509-982-2926 | Reardan 509-796-4141 Fax: 509-796-4145 | Waterville 509-745-8551 Fax: 509-745-8108

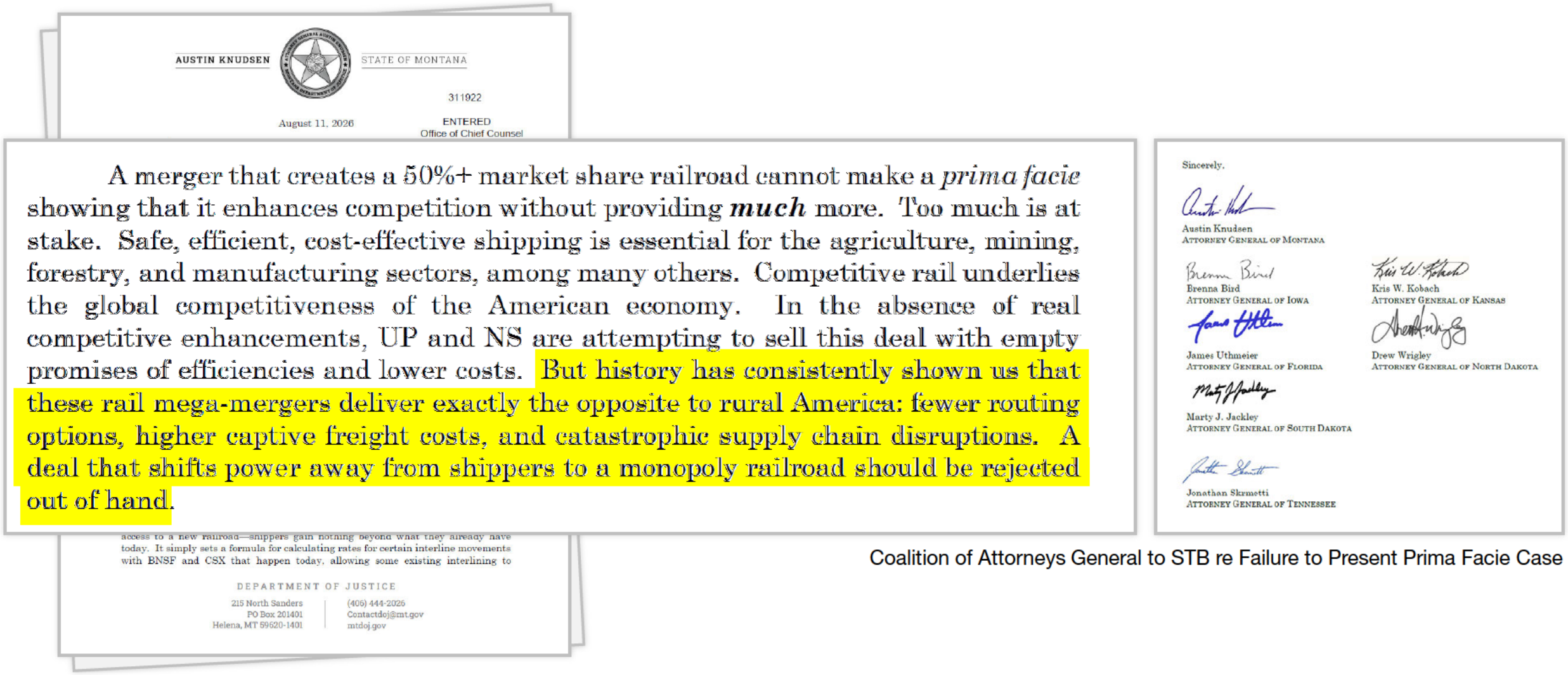
The threat of retaliatory behavior is real. The viral video of UP's CEO stands as a self-attestation of the threat of retaliation. This behavior is simply an extension of a long-standing tradition of extracting as much margin as possible from the marketplace. This point alone conflicts with the Board's criteria to enhance competition and be consistent with the public interest.

HighLine Grain Growers, Inc., Comments on Proposed Merger

Congressional Opposition is Bipartisan and Widespread



State Attorneys General Echo Anticompetitive Concerns



AUSTIN KNUDSEN

STATE OF MONTANA

311922

August 11, 2026

ENTERED
Office of Chief Counsel

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.

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

DEPARTMENT OF JUSTICE

215 North Sanders
PO Box 201401
Helena, MT 59620-1401

(406) 444-2026
Contactdoj@mt.gov
mtdoj.gov

Sincerely,

Austin Knudsen
ATTORNEY GENERAL OF MONTANA

Brenna Bird
ATTORNEY GENERAL OF IOWA

Kris W. Kobach
ATTORNEY GENERAL OF KANSAS

James Uthmeier
ATTORNEY GENERAL OF FLORIDA

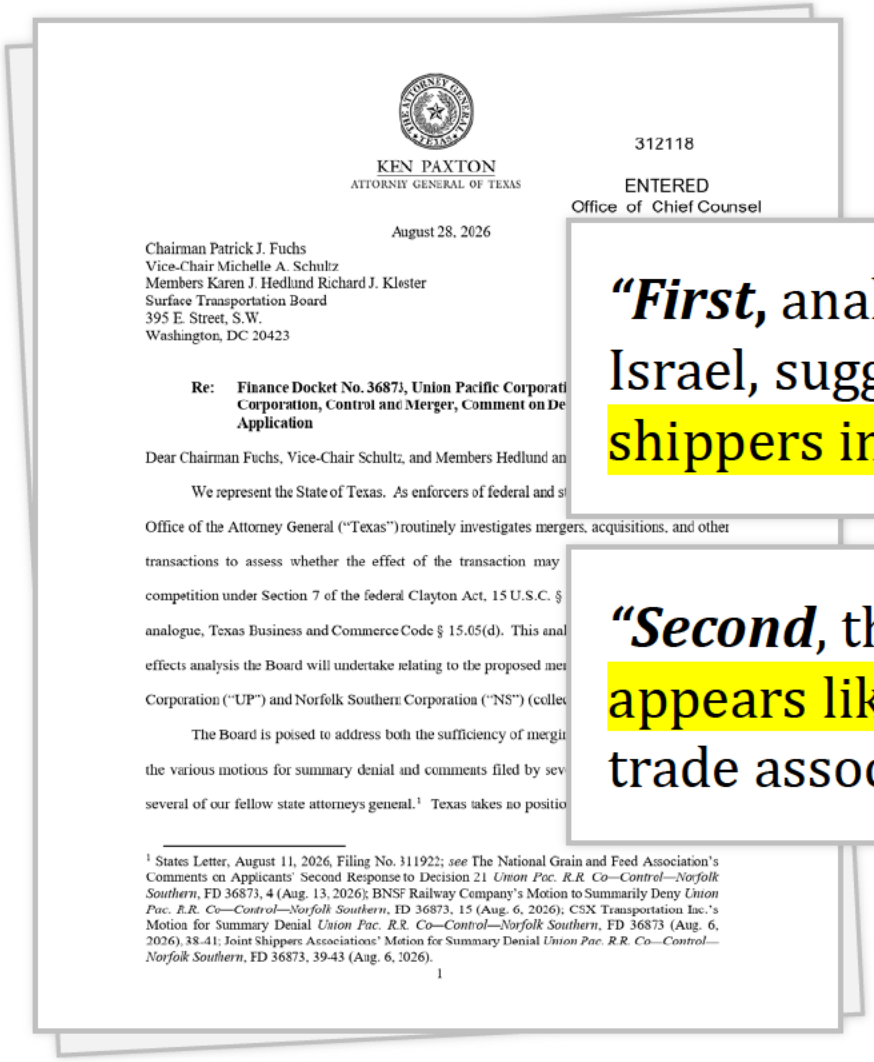
Drew Wrigley
ATTORNEY GENERAL OF NORTH DAKOTA

Marty J. Jackley
ATTORNEY GENERAL OF SOUTH DAKOTA

Jonathan Skrmetti
ATTORNEY GENERAL OF TENNESSEE

Coalition of Attorneys General to STB re Failure to Present Prima Facie Case

Texas AG Echoes Anticompetitive Concerns



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

312118

ENTERED
Office of Chief Counsel

August 28, 2026

Chairman Patrick J. Fuchs
Vice-Chair Michelle A. Schultz
Members Karen J. Hedlund Richard J. Klester
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423

Re: Finance Docket No. 36873, Union Pacific Corporati Corporation, Control and Merger, Comment on De Application

Dear Chairman Fuchs, Vice-Chair Schultz, and Members Hedlund an

We represent the State of Texas. As enforcers of federal and st

Office of the Attorney General ("Texas") routinely investigates mergers, acquisitions, and other transactions to assess whether the effect of the transaction may competition under Section 7 of the federal Clayton Act, 15 U.S.C. § analogue, Texas Business and Commerce Code § 15.05(d). This anal effects analysis the Board will undertake relating to the proposed mer Corporation ("UP") and Norfolk Southern Corporation ("NS") (collec

The Board is poised to address both the sufficiency of mergir the various motions for summary denial and comments filed by sev several of our fellow state attorneys general.[1] Texas takes no positio

[1] States Letter, August 11, 2026, Filing No. 311922; *see* The National Grain and Feed Association's Comments on Applicants' Second Response to Decision 21 *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873, 4 (Aug. 13, 2026); BNSF Railway Company's Motion to Summarily Deny *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873, 15 (Aug. 6, 2026); CSX Transportation Inc.'s Motion for Summary Denial *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873 (Aug. 6, 2026), 38-41; Joint Shippers Associations' Motion for Summary Denial *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873, 39-43 (Aug. 6, 2026).

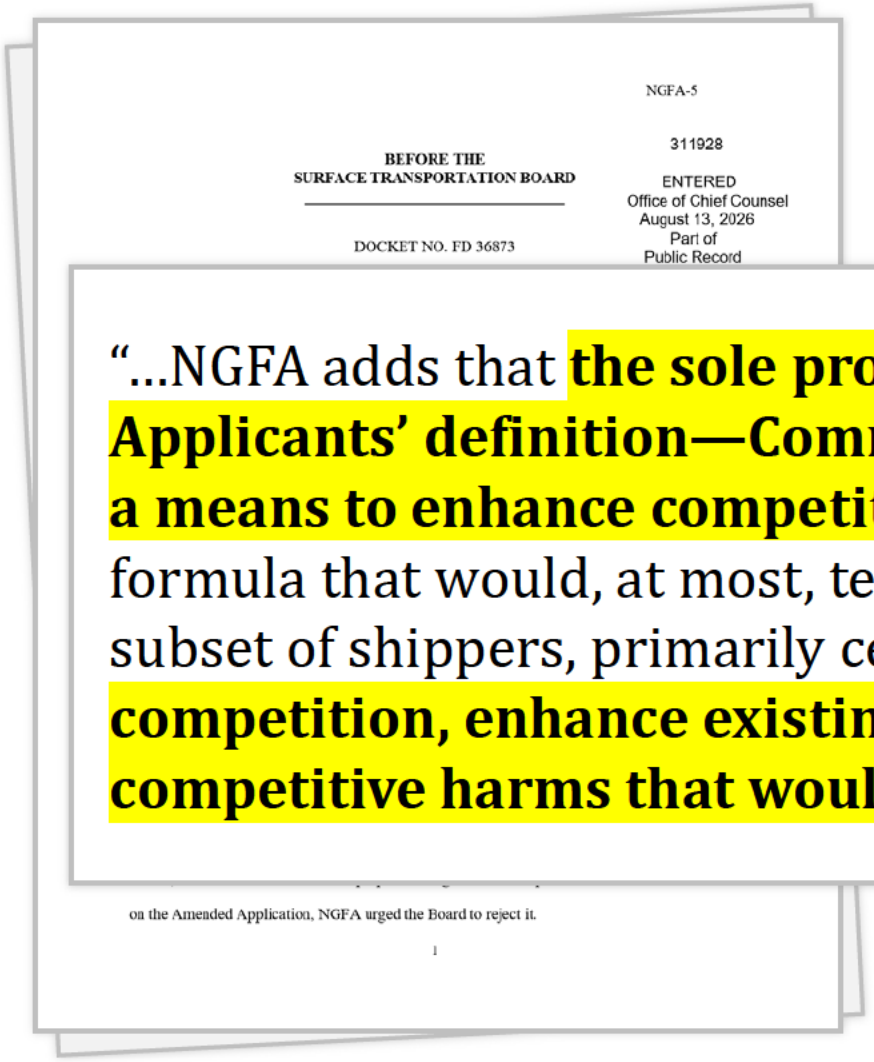
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> ***"First,*** analysis presented by one of the Applicants' experts, Dr. Mark Israel, suggests that several categories of shippers—including shippers in Texas—are likely to face rate increases post-transaction."

> ***"Second***, the Applicants' Committed Gateway Pricing Program ("CGP") appears likely to impose price increases on Texas shippers, as several trade associations comprised of Texas shippers have pointed out."

Texas Attorney General Ken Paxton to STB re Enhanced Competition Analysis

Ag Shipper: CGP Does Not Enhance Competition



NGFA-5

311928

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
August 13, 2026
Part of
Public Record

DOCKET NO. FD 36873

on the Amended Application, NGFA urged the Board to reject it.

1

NGFA
TRANSFORMING AMERICA'S HARVEST ®

"...NGFA adds that **the sole proposed means to enhance competition under the Applicants' definition—Committed Gateway Pricing—is not conceptually or actually a means to enhance competition between railroads.** Rather, it is a proportional rate formula that would, at most, temporarily preserve competitive options for a very limited subset of shippers, primarily certain grain shippers. **It does not create new competition, enhance existing competition, or adequately address the broader competitive harms that would result from the transaction."**

NGFA, Comments on Applicants' Second Response to Decision No. 21

Applicants' Remedies are Hollow and Limited

CGP

- ***Limited Scope***: Only ~0.9% of rail traffic eligible.
- ***Inflated Rates***: Rate at 70th% of other UP rates.
- ***Limited Application***: Intermodal, autos, and other traffic excluded.
- ***Limited Term***: Applies during oversight period only.

Rate ADR

- ***Not User Friendly***: Complex and lengthy dispute process.
- ***Limited Scope***:
  - Substantial eligibility restrictions.
  - Only available if STB determines public benefits have not materialized.
- ***Limited Term***: Applies during oversight period only.

TAP

- ***Not User Friendly***: Complex and lengthy dispute process
- ***Limited Scope***:
  - UP sets its own service targets.
  - Only available after shipper suffered service harms.
- ***Limited Term***: Available only during network integration period.

CERTIFICATE OF SERVICE

I certify that I caused the foregoing 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
Attorney for BNSF Railway Company
November 18, 2026