312947

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

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

--CONTROL--

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

OPENING COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey, operator of shipping ports in and around New York-New Jersey Harbor, respectfully submits the opening Comments regarding the above-captioned proceeding and any related sub-proceedings before the Surface Transportation Board.

Dated: November 18, 2026

Respectfully submitted,

Amy Fisher
General Counsel
The Port Authority of New York and New Jersey
150 Greenwich Street
4 World Trade Center, 23rd Floor
New York, New York 10007

Tel: 212.435.3515
amfisher@panynj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the opening Comments of The Port Authority of New York and New Jersey has been electronically filed with the Surface Transportation Board (the "Board") and served on those parties as required in the Decision of the Board in Docket FD 36873 dated August 18, 2026, by electronic mail or by first class mail on this 18th day of November, 2026.

/s/ Amy Fisher
Amy Fisher
General Counsel
The Port Authority of New York and New Jersey

PORT AUTHORITY NY NJ
AIR LAND RAIL SEA

November 18, 2026

The Honorable Patrick J. Fuchs
Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

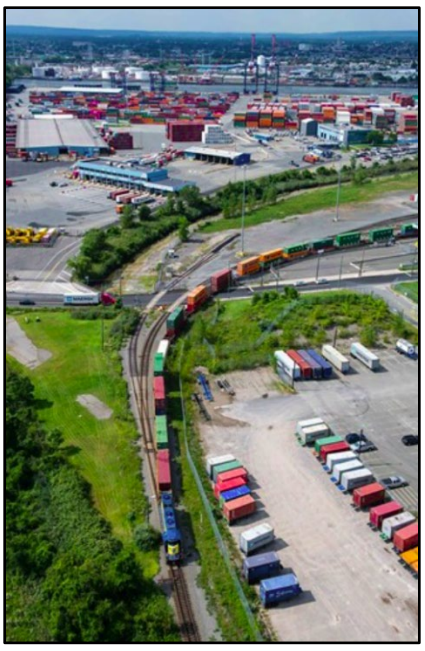
The Honorable Michelle A. Schultz
Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

The Honorable Karen J. Hedlund
Member
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

The Honorable Richard J. Kloster
Member
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

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

The proposed acquisition of control ("Transaction") by Union Pacific Corporation ("UP") of Norfolk Southern Corporation and, through it, Norfolk Southern Railway Company ("NS"; and with UP, the "Applicants") creates an urgent concern for intermodal cargo shipping through the Port of New York and New Jersey (the "Port") and for the greater Northeast region (the New England and Middle Atlantic states to Virginia) as well as the communities who live there. Other than making modest investment commitments to the "Watershed Region" (the central U.S. rail freight corridor concentrated around the Mississippi River), the Applicants do not offer existing NS customers a concrete description of their transcontinental vision, much less a commitment to invest in Northeastern rail assets. Instead, the Applicants appear intent on capturing the full value of efficiency gains in the Northeast for themselves, while relegating the New York/New Jersey region to the end of the line, presumably to accommodate additional rail traffic that benefits others.



Howland Hook Marine Terminal ExpressRail

The Applicants ask the Board to approve a transaction that would significantly impact critical rail routes serving the Port without concrete commitments to protect service, capacity, and investment. The Applicants could have committed to working with stakeholders on preserving and building upon the Conrail Shared Assets Operations ("CSAO") framework which ensures

access to two Class 1 railroads, and to make appropriate upgrades in consideration of the significant additional freight anticipated to be shipped from western and southern gateways to the Northeast, but they did not. Instead, the Applicants appear to attach little significance to the region, despite it being home to approximately 22% of the U.S. population and a similar proportion of U.S. GDP.

The Port Authority of New York and New Jersey ("Port Authority"), operator of the Port, has been a proud innovator in freight logistics since its establishment in 1921, when the charter entered into between the states of New York and New Jersey and approved by the U.S. Congress, expressed that "a better co-ordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey."[1] Together the Port terminals form the largest container port on the East Coast, the second largest gateway in the nation, the first port of call for 72% of vessels serving the region,[2] and a critical national freight gateway, with 8.9 million TEU moved through the Port in 2025.[3]

The first container shipments in the world left Port Newark, New Jersey on a vessel bound for Houston, Texas in 1956 and the Port Authority has led in intermodal transportation ever since, with a longstanding goal of encouraging reliable rail links from its four Port facilities (Port Newark, Elizabeth Port Authority Marine Terminal, Howland Hook Marine Terminal and Port Jersey Authority Marine Terminal; collectively "Port Facilities"). The Port Authority has invested over $600 million to develop four on-dock and near-dock facilities known as ExpressRail, without any private sector investment from the rail industry. We currently connect to CSX Transportation, Inc. ("CSX") and NS through the North Jersey Shared Assets Area operated by Consolidated Rail Corporation ("Conrail") under the CSAO framework, which CSX and NS have jointly controlled since 1998. At its Oak Island Yard in Newark, New Jersey, Conrail serves as a neutral terminal and switching railroad, spotting trains to local terminals and building and dispatching trains for on-transit over CSX and NS lines.

A key element of the Port Authority's *Port Master Plan* is further investment in rail infrastructure to improve the movement of cargo between the Port and the Midwestern hinterlands. To that end, the Plan calls for expanding the Port Authority's own working tracks, facilitating interconnections between Oak Island Yard and our intermodal and auto terminals and working with interested parties to increase switching capacity, add spur lines and storage areas and implement other upgrades at/around Oak Island Yard—all to ensure the efficient movement of cargo by rail for the benefit of Port shippers. Yet merger-related impacts and intermodal growth plans for the marine terminals at the Port were not included in the Applicants' submission.

In 2025, the Port moved 719,000 containers by rail, with almost 90% going to the Midwest; 40% to/from Chicago, with Columbus, Cleveland, Detroit and Kansas City rounding out the top five origins/destinations. NS currently handles 35% of our intermodal volume with CSX handling the other 65%. Today, just 3% of our rail volume is interchanged in Chicago for destinations farther west. As proposed, the Transaction is likely to materially affect all those routes. In connection with the joint acquisition of Conrail assets by CSX and NS in 1998, the Port

Authority fought hard to establish the governance structure for the CSAO which prevails to this day and, in particular, the ability of Conrail to make investments in the North Jersey Shared Asset Area served by the CSAO. The governance structure allows the Port Authority a forum to present service level concerns and propose new service and constructive growth opportunities to senior management of CSX, NS and Conrail. If the Transaction is approved, the Board should preserve the existing structure and strengthen it by providing continuing oversight to ensure rail movements are determined by market fundamentals, such as line haul rates, frequency of service and reliability of that service rather than solely reflecting the corporate goals, or market power, of the Applicants.

The risk to the Port and the cargo that flows through it is *immediate*. History shows that railroad mergers routinely trigger multi-year rail service inefficiencies and disruptions that could negatively affect the Port's operations and the entire supply chain between the ports in the Northeast and inland locations. Inefficiencies in Port operations could be left on a back burner for years with the merged railroad recapturing cargo volume from wherever it was diverted. The merger would therefore reduce the competitive pressure to maintain reliable service and invest in individual coastal gateways.

The Board should also determine what conditions could be imposed on the Applicants to ensure Northeastern ports will continue to enjoy adequate rail service and not become a by-way in favor of western gateways. As Gene Seroka, Executive Director of the Port of Los Angeles ("POLA"), put it "[Y]ou're sailing on a ship getting to Los Angeles to on-dock rail through the Alameda Corridor [between POLA and Port of Long Beach]….There's the retail consuming area of the tri-state New York, New Jersey and Connecticut, the ability to get to Boston, to get to the Mid- and South Atlantic, to get to the Sunbelt, which is growing so fast. And…now have the same company trying to make that turn more efficient."[4]

There are important negative effects which might occur were the merged entity to fail to support the Port as well as other East Coast ports. The Port serves vital global shipping routes which are not efficiently served through the West Coast. In addition, it provides essential capacity when other gateways face congestion, extreme weather, or other supply chain disruptions. In 2022, more than 80% of the Port's growth was estimated to be cargo diverted from the West Coast due to effects of the Covid-19 pandemic.[5] And the shifts go both ways. In 2024, when labor uncertainty shifted cargo in the opposite direction, Union Pacific reported that increased West Coast imports drove international intermodal volume up 33% year over year in the third quarter.[6] A reliable national freight system therefore depends on maintaining viable gateways on both coasts. The Board should require the Applicants to make concrete commitments so that the Port can depend on the merged railroad's promises rather than hoping that it makes voluntary choices about where to provide service, allocate equipment, or invest capital.

Accordingly, the Port Authority requests that the Board require specific, measurable, and enforceable commitments now, before the merger closes. Those commitments must preserve existing service, improve intermodal capacity and rail connectivity, protect East Coast traffic from discriminatory treatment, and require meaningful merger-related investment at the Port. General assurances, future cooperation, and after-the-fact remedies are not enough. The Applicants must

demonstrate in advance how their claimed public benefits will produce actual improvements in service, capacity, and reliability for East Coast shippers.

1. **The Board should impose conditions to ensure that the Port does not face discrimination in access to rail transportation**

The Port is critical to supply chains both locally and throughout the United States. It is the largest container port on the East Coast and perennially the second or third largest in the nation, serving shipping routes across the globe.[7,8] The Port also serves as the Northeast's primary freight gateway, providing efficient access to communities across New York, New Jersey, and New England that cannot be served as efficiently from ports farther south or on the West Coast.[9] Its importance extends beyond the region: the Port provides access to an extensive inland market across the Northeast, Ohio Valley, and Midwest and functions as a critical alternative gateway when labor actions, extreme weather, shipping route constraints, tariff-driven surges, bridge closures, or congestion disrupt cargo flows at other ports.[10] Disruption at this gateway therefore affects not only the Port and the New York-New Jersey metropolitan area, but consumers and businesses throughout the country and the world. By providing world class shipping services, the Port increases global trade for the United States and reduces the risk that a localized disruption elsewhere will become a national supply-chain crisis.

The Port and its partners have invested heavily to extend the logistics chain inland from its terminals. Our on-dock ExpressRail facilities have 75,000 feet of working track and a collective capacity of 1.5 million container lifts annually that permit containers to move directly from marine terminals to inland destinations, reducing unnecessary truck traffic, congestion, emissions, and handling costs. But U.S. shippers do not currently have access to an efficient and reliable single-line transcontinental route and the Port remains primarily served by trucks, with 85% of its volume remaining within about 250 miles of the Port Facilities.[11] The Applicants seek to change this deficiency. They should be obligated to do so in a non-discriminatory fashion so that the 150-year history of West Coast operations by UP does not disadvantage the East Coast gateways.

The Transaction plans could eliminate any incentives the Applicants would have to invest in the Port. Today, NS has reason to protect cargo moving through the Port and East Coast gateways, while UP has reason to protect cargo moving through West Coast gateways. If the merger closes, a single railroad can capture a much larger share of cargo regardless of which coast a shipper uses. The Board should not assume that the merged railroad will voluntarily make the investments needed at every gateway when the Transaction reduces the competitive consequences of failing to make such investments.[12] Similarly, there may be no incentive to alleviate congestion and other negative externalities suffered by the Port's shippers as a result of the merged entity's investments elsewhere.

To address these concerns (which, to be fair, the Applicants avow will not occur), the Board should impose requirements on the merged entity (i) to affirm its assumption of all NS obligations for rail operations under STB Finance Docket No. 33388 issued on July 23, 1998, as amended or supplemented by the Board since that date, and the Shared Assets Area Operating Agreements for

the Northern and Southern New Jersey Shared Assets Area, in order to ensure those operations continue in a constructive and non-discriminatory manner and confirm forbearance from making investments which would undercut the viability of the CSAO; and (ii) engage in immediate discussion with the Port to:

(a) determine upgrades to CSAO rail operations to be paid for by the merged entity in an equitable and meaningful amount for the following: (i) upgraded connections to the automotive processors located on and nearby the Port; (ii) redevelopments in the Oak Island Yard to add staging trackage and switching capability for additional maneuverability, all in anticipation of increased rail operations into and out of the Port area as a result of the Transaction and an expected doubling of rail cargo by 2050; (iii) the addition of RAFF tracks to expand freight capacity, provide redundancy in the freight network, and enhance safety and support for Port and industrial growth; and (iv) a direct connection from the Port Authority's Greenville Yard to the Selkirk freight classification yard near Albany;

(b) develop a new southbound connector from the ExpressRail Elizabeth facility, with associated improvements on the Conrail Garden State Secondary (running from Newark south to Perth Amboy through New Jersey's industrial and chemical corridor), to provide a second egress point from the on-dock rail terminals allowing trains to move southward;

(c) add new short line service to Lehigh Valley along NS trackage for intermodal connection to existing yards near Bethlehem, Pennsylvania;

(d) provide for reliable, on-time, clean, modern, and efficient trains that are fully digitally controlled for pre-scheduled NS rail service; and

(d) provide westward single-line trackage to additional origin and destination points not currently served, immediately upon achievement of guaranteed shipper demand at a level equivalent to other gateways.

The Board should retain oversight of the Applicants' compliance with this requirement.

2. The Board should provide precautionary protections to address foreseeable service failures

The Port's operations depend on closely coordinated vessel, truck, and rail schedules. When trains are delayed, containers waiting to move inland accumulate on the docks and occupy space needed to unload arriving ships.[13] Reduced terminal fluidity can slow vessel operations, force importers to compete for scarce trucks, and cause importers to pay more to store their goods at the Port Facilities or the rail terminals. Because vessels often call at a sequence of ports, disruption at the Port can cascade to subsequent ports of call.[14] The costs do not remain with the railroad.

This is not speculation. The Board itself cited the service failures that followed the mergers of the 1990s when it paused railroad mergers and adopted its current, more demanding review standards.[15] The record is consistent:

- **UP/Southern Pacific (1996).** UP's acquisition of Southern Pacific produced immediate congestion, lost shipments, and long delays.[16] Despite management's assurances that problems were being solved, service worsened.[17] A year later, UP's Houston hub was in "virtual gridlock," with "a backup of trains stretching all the way to California,"[18] because the two railroads' computer systems, dispatching methods, and workforces could not be integrated. Texas businesses alone lost an estimated $1.093 billion.[19] The Ports of Houston and Laredo became "chokepoints," ocean liners could not load or unload, and congestion forced vessels to divert from POLA.[20]

- **BNSF and UP/SP.** The Federal Railroad Administration found that both merged railroads struggled to harmonize information systems, train dispatchers, staff operations, and provide adequate facilities and equipment,[21] and that the two railroads' incompatible databases produced inaccurate train lists and waybills that "compromised the safety of train crews."[22]

- **CSX/NS split of Conrail (1999).** NS, one of the Applicants here, suffered delays, undelivered cargo, and angry shippers; UPS shifted 50% of its business to trucks.[23] Both railroads lost track of hazardous materials shipments after switching computer systems.[24] As *TrainsPRO* recounted in 2025, "[c]omputer glitches brought Norfolk Southern and eventually CSX to their knees."[25]

- **CPKC (2025).** Two years after its merger closed, CPKC's computer system cutover failed,[26] congesting yards across Louisiana, eastern Texas, and Mississippi.[27] The Board's own oversight data showed longer dwell, slower trains, and worse on-time performance;[28] dwell at Shreveport nearly doubled, from 35 to 68 hours.[29] Chemical shippers diverted freight to trucks to keep plants running,[30] and CPKC resorted to embargoing railcars bound for customer facilities.[31]

The damage lasts. In 2000, four years after UP/SP, the Board found that "the railroad industry and shipping public have not yet recovered from the disruptions associated with the previous round of rail mergers[.]"[32] A merger of this scale, integrating two of the largest railroads in the country, carries at least the same risk.

The Board need not assume that integration will fail. But it should recognize that the consequences of failure at the Port would be substantial and that safeguards are most effective when established before problems arise. Performance metrics, reporting requirements, escalation procedures, contingency measures, and meaningful remedies must therefore be conditions of approval, not subjects for future negotiation after service has deteriorated. Specifically, the merged entity should be required to provide a plan for the Board's approval to address temporary

congestion and prioritization of container operations for containers outbound from the Port over containers inbound to the New York-New Jersey region from UP's existing gateways, until the investment described above in Port rail assets can be completed. The Board should retain oversight of compliance with this requirement in conjunction with the oversight of the upgrades in Item #1.

3. **The Applicants propose adding capacity without considering whether it will improve rail options for Port shippers.**

The Applicants have not made concrete commitments showing how the Transaction will maintain reliable service and deliver meaningful intermodal improvements at the Port. Their submissions do not meaningfully address the needs of the Port's four on-dock, ship-to-rail ExpressRail terminals, which are dedicated to international intermodal freight. Instead, the only project specifically identified to "support merger-related growth in the New York / New Jersey market" is reopening NS's idle E-Rail Terminal in Elizabeth, New Jersey for domestic freight,[33] with no capital investment beyond necessary terminal maintenance and crane procurement to restart operation.[34]

At this time, the Port Authority believes re-opening the E-Rail Terminal would be counterproductive to the goal of providing efficient, competitive intermodal rail options to Port shippers. We believe strengthening the CSAO network, in operation for nearly thirty years and providing a shared network that accommodates routing over both CSX and NS track, provides a valuable, competitive choice for shippers. The Applicants should be required to demonstrate how reopening E-Rail for domestic freight fits within a railroad-funded investment plan for the Northeast region. Re-opening E-Rail should be prohibited unless capacity concerns at Port Facilities and on the Garden State Secondary have been addressed (for example, through completion of the "southbound connector" and upgrades to the Garden State Secondary as described above) so that the Applicants cannot exploit their post-Transaction position to disadvantage CSX.

4. **The Board should require concrete commitments before the Transaction closes**

The Board's heightened public-interest standard requires substantial, demonstrable, and merger-specific public benefits.[35] Claimed connectivity and single-line service are not enough unless matched with the physical capacity and service protections needed to deliver them.[36] Because East Coast shippers cannot rely on mere promises, in addition to the foregoing requests, the Port requests that the Board require, at minimum:

- **Service reliability and shipper protections**. Maintain or improve service to the Port and the regional rail lines serving the Northeast, Ohio Valley, and Midwest, with measurable standards for train frequency, transit time, terminal dwell, equipment availability, and service reliability; transparent reporting; contingency measures; escalation procedures; and meaningful remedies for service failures. These protections should remain in effect for at least ten years.

- **Modern, efficient operations**. For efficiency at the ExpressRail facilities, it is critical that NS sort rail cars at origin by Port Facility and not unreasonably restrict train lengths. Failure to observe these operational principles leaves train balancing and sorting to be done locally, which is daunting, inefficient, costly, and time-consuming. Furthermore, on-time train arrival, which is within the control of the railroads, is only around 35%, while on-time departure, within the control of the container terminal operators, is over 95%. Attention by the Applicants to the details of proper housekeeping, digital management of all trains and additional equipment, personnel and infrastructure will help maintain modern and efficient operations that will lead to rail growth at the Port Facilities.

- **Preserving existing services and protection against discrimination**. Preserve the service, access, and operational capacity NS currently provides to the Port, and do not disadvantage Port traffic in favor of West Coast gateways through discriminatory rates, service reprioritization, equipment allocation, or capacity decisions attributable to the merger.

- **A funded infrastructure and capacity plan**. Work with the Port to develop a comprehensive plan for intermodal and automotive movements in and around the Port, including adequate trackage and switching capacity, modern locomotive and switching engines, storage and maintenance facilities, technology, reliable operations, anticipated capital investments, implementation schedules, and measures to preserve service during redevelopment.

The above-described conditions address Transaction-specific risks and claimed Transaction benefits. They would not require the Applicants to guarantee uninterrupted operations in all circumstances. They instead would require the merged railroad to commit to the service it will provide, the capacity it will create, the investments it will make, and the remedies that will apply if Transaction-related service falls materially short. General promises to cooperate are materially different from defined metrics, reporting obligations, escalation procedures, and an enforceable backstop when service deteriorates. We note that the Applicants' submissions to date fail miserably in providing the kind of actionable, granular information that would enable the Port Authority to anticipate with any degree of specificity (and therefore to comment upon) the negative consequences of the Transaction and we can only assume that many other stakeholders have been left in the same unenviable position. As a result, if it approves the Transaction, the Board must retain jurisdiction over the merged railroad to ensure that unanticipated consequences of the Transaction do not arise.

The choice before the Board is urgent and *concrete*. Without specific, measurable, and enforceable commitments to improve service and invest in critical rail infrastructure serving the Port, the Applicants have not demonstrated that their claimed efficiencies and traffic growth will produce substantial and demonstrable public benefits for the Port or the national transportation network. Northeast shippers cannot be left to depend on voluntary assurances from a merged railroad whose incentives to protect any particular coastal gateway would be diminished by the Transaction itself. The Board, if it determines to approve the Transaction at all, should require the

commitments described above beforehand, so that the Transaction preserves the Port as a robust and competitive East Coast gateway, protects prior public and private investment, and does not shift the costs and risks of the Applicants' projected benefits to the Port, shippers, and local, state and national communities.

***

[1] *See* N.J. Stat. Ann. § 32:1-1 (West); 1921 N.Y. Laws ch. 154, § 1 (preamble).

[2] The Port Authority of New York and New Jersey, "The Largest U.S. East Coast Containerport," available at www.panynj.gov/port/en/index.html, accessed October 21, 2026 ("Our ability to get goods into the hands of consumers quickly gives us our competitive edge along with receiving the most first port of calls, 72%, [more] than any other East Coast port.").

[3] Mark Hrywna, The New Jersey Transportation Planning Authority, "Port of New York & New Jersey Volumes Continue to Grow" available at https://njtpa.org/blog/port-of-ny-nj-volumes-continue-to-grow, accessed November 14, 2026 ("The Port last year handled 8.9 million Twenty-Foot Equivalent Units (TEU), up 2.3 percent over 2025 and 4.3 percent over its forecast. TEU is the standard marine shipping container, which can hold up to 28 metric tons.").

[4] Freightwaves, July 31, 2025, Interview with Gene Seroka. https://www.freightwaves.com/news/rail-deal-will-open-new-markets-for-top-us-container-port.

[5] Tomer Raanan, "One Hundred Ports: A tale of three coasts — how the pandemic shifted US imports," *Lloyds List*, available at https://www.lloydslist.com/LL1145879/One-Hundred-Ports-A-tale-of-three-coasts--how-the-pandemic-shifted-US-imports, accessed October 20, 2026 ("Meanwhile, Port of Los Angeles executive director Gene Seroka said recently about 15% of the port's cargo had been diverted in 2022, especially since August.").

[6] Union Pacific Corporation, SEC Form 10-Q for Q3 2024, filed October 24, 2024, p. 21 ("Premium – Premium includes shipments of finished automobiles, automotive parts, and merchandise in intermodal containers, both domestic and international. Premium freight revenues increased in the third quarter and nine-month periods of 2024 compared to 2023 due to increased volume and core pricing gains, partially offset by lower fuel surcharge revenues and negative mix. In the third quarter of 2024, international intermodal experienced heavy demand due to increased U.S. West Coast imports, a result of freight shifted from the East Coast and Canadian ports due to uncertainty related to labor negotiations, driving volume up 33% compared to the third quarter 2023.").

[7] The Port Authority of New York and New Jersey, "2024 At a Glance," available at https://www.panynj.gov/content/dam/port/our-port/PONYNJ_AtAGlance2024.pdf, accessed on October 21, 2026.

[8] The Port is estimated to import 34.5% of the TEUs imported on the North American East Coast and 17.8% of total U.S. imports. See The Port Authority of New York and New Jersey, "2023 At a Glance," available at https://www.panynj.gov/content/dam/port/our-port/PONYNJ_AtAGlance2023.pdf, accessed on October 21, 2026; The Port Authority of New York and New Jersey, "2023 Monthly Cargo Volumes", available at https://www.panynj.gov/port/en/our-port/facts-and-figures.html, accessed on October 21, 2026; "Import Cargo Volume Expected to Remain Below 2025 Levels Despite May-June Bump," *National Retail Federation*, May 8, 2026, available at nrf.com/media-center/press-releases/import-cargo-volume-expected-to-remain-below-

2025-levels-despite-may-june-bump. Share of total U.S. imports is calculated using National Retail Federation estimates for 2025 that the Port imported 4,513,966 loaded TEUs while US ports imported 25.4 million TEUs.

[9] U.S. Census Bureau, "Demographic Trends in the 20th Century" (Census 2000 Special Reports, Series CENSR-4), November 2022 ("The Northeast was the most densely populated region and had the highest percentage of its population living in metropolitan areas throughout the century."); OLIMP Warehousing "West Coast vs New Jersey Fulfillment: Same-Day & 2-Day Shipping Compared," March 19, 2026, *OLIMP Warehousing Blog*, available athttps://olimpwarehousing.com/new-jersey-vs-west-coast-fulfillment-2-day-shipping-usa/ ("Location matters for shipping speed and cost. Distance-driven shipping zones mean a West Coast warehouse can serve California and adjacent states quickly but pushes East Coast shipments into high-cost zones. A New Jersey warehouse offers low zones across the Northeast and Mid-Atlantic but struggles to deliver truly two-day ground to the Pacific Coast.").

[10] Lisa Baertlein, Tim Aeppel, and Dan Burns, "Shippers seek workarounds as U.S. port strike threat looms," Star Advertiser, September 25, 2024, available at https://www.staradvertiser.com/2024/09/25/breaking-news/shippers-seek-workarounds-as-u-s-port-strike-threat-looms/, accessed October 20, 2026, ("U.S. companies that rely on East and Gulf Coast seaports have been importing early, shifting goods to the West Coast, and even putting cargo on pricey flights to hedge against a threatened Oct. 1 strike that could jam supply chains and reignite inflation ahead of the presidential election."). See also "A Tale of Three Coasts: How the Pandemic Shifted U.S. Container Imports." Kuehne+Nagel, 25 July 2023, available at , accessed on October 21, 2026 ("While the Pacific gateway remains the nation's busiest port, the port of New York and New Jersey's ascension reflected a long-term trend of shifting cargo volumes from the west coast ports to those on the east and Gulf coasts. The Panama Canal expansion in 2016, which allowed for larger ships to transit the Central American artery; labour tensions that have escalated around every contract renewal since 2002; and the costliness of California's ports have all contributed to this trend. However, while cargo has been slowly shifting eastwards for more than a decade, that trend was turbocharged during the pandemic — first because of congestion in west coast ports, and later due to labour concerns. …Then, in July [2022], the west coast dockworkers' contract — which covers more than 22,000 International Longshore and Warehouse Union workers in 29 west coast ports — expired, leaving disruption-worn and wary shippers with fears over potential industrial action. More than 80% of the port of New York and New Jersey's growth in 2022 is estimated to be cargo diverted from the west coast."); Lori Ann LaRocco, "New York is Now the Nation's Busiest Port in a Historic Tipping Point for U.S.-bound Trade," CNBC, September 24, 2022, https://www.cnbc.com/2022/09/24/new-york-now-no-1-port-in-us-as-sea-change-in-trade-hits-west-coast.html. ("Historic import and export container processing in the month of August pushed the Port of New York and New Jersey to the No. 1 spot outpacing both the ports of Los Angeles and Long Beach. This comes as the flow of trade continues to move away from the West Coast with logistics managers worried about a labor strike or lockout."); American Trucking Associations et al., "Joint Association Letter to President Biden on West Coast Port Labor Negotiations," March 24, 2023, https://www.trucking.org/sites/default/files/2023-03/West%20Coast%20Port%20Labor%20Negotiations%20Joint%20Association%20Letter%20to%20President%20Biden%20-%20Final%20032423%5B50747%5D.pdf. ("As we have witnessed, significant cargo flows have shifted away from the West Coast ports because of the uncertainty related to the labor negotiations."); Peter Buxbaum, "Port of New York/New Jersey Challenged by West-to-East Cargo Diversions," American Journal of Transportation, October 31, 2022, https://www.ajot.com/premium/ajot-port-of-new-york-new-jersey-challenged-by-west-to-east-cargo-

diversions. ("Figures from the Port Authority of New York and New Jersey show that 70% of the cargo increases at the port this year, through July, have been cargo that has been diverted from West Coast ports.").

[11] Mark Hrywna, The New Jersey Transportation Planning Authority, "Port of New York & New Jersey Volumes Continue to Grow" available at https://njtpa.org/blog/port-of-ny-nj-volumes-continue-to-grow, accessed November 14, 2026 ("New York & New Jersey is predominantly a truck port with 85 percent of its volume remaining within about 250 miles of port facilities, Rooney said, compared with 719,000 rail lifts, or about 8 percent of TEUs.").

[12] Bureau of Transportation Statistics, "Port Performance Freight Statistics – Annual Report," 2026, p. 11 ("Number of Terminals with On-dock Rail Access by Top 25 Container Port, As of October 2025").

[13] Carl Nolte, "Transcontinental Rail Gridlock / Merging of SP, UP tracks creates a train bottleneck," *SFgate*, October 11, 1997, available at https://www.sfgate.com/business/article/Transcontinental-Rail-Gridlock-Merging-of-SP-2802425.php, accessed on October 20, 2026 ("There is a backlog of 30,000 freight containers in Los Angeles/Long Beach harbors."; "But even shippers who have nothing to do with railroads, like South San Francisco's Galoob Toys Inc, are ensnared in the problem. 'I've got 70 containers of toys stuck in Long Beach because of this,' said Jerry Baxla, head of operations for the South San Francisco toymaker… But the Port of Long Beach is backed up with containers that are waiting to be loaded on rail cars, equipment UP can't muster.").

[14] Michael White (Associated Press), "Rail-car shortage puts containers on hold," *Lewiston Tribune*, November 1, 1997, available at https://www.lmtribune.com/business/rail-car-shortage-puts-containers-on-hold-23986b54, accessed on October 20, 2026 ("[T]he Columbia Star eased into the Port of Long Beach only to find a dozen other ships ahead of it, all waiting for berths at the nation's busiest, and perhaps most clogged, harbor complex. A shortage of rail cars resulting from Union Pacific's merger with Southern Pacific Railroad and an unexpected crush of Christmas merchandise has created a huge logjam at Long Beach and the neighboring Port of Los Angeles. Vessels such as the Columbia Star, which arrived Wednesday from New Zealand, its decks stacked high with cargo containers, face a wait of two to four days before docking. And it can take as long as six days to move unloaded cargo off the docks, a task normally performed in one. 'We're all caught by the same thing,' said Bob Kleist, a spokesman for the shipping company Evergreen America Corp., which has a terminal at the Port of Los Angeles. 'We normally load four to five trains a week, but more recently, we've been getting one train out a week.' Columbia Star was heading for Los Angeles, but there was no room to dock or even anchor offshore, so it was diverted to Long Beach's larger anchorage.").

[15] Surface Transportation Board, "Major Rail Consolidation Procedures," June 7, 2001, available at https://www.stb.gov/wp-content/uploads/BV-5-Sep00-Dec01-539.pdf, accessed October 21, 2026, p. 546 ("Because of the small number of remaining Class I railroads, the fact that rail mergers are no longer needed to address significant excess capacity in the rail industry, and the transitional service problems that have accompanied recent rail mergers, we believe that future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest.").

[16] John E. Kwoka and Lawrence J. White, "Manifest Destiny? The Union Pacific-Southern Pacific Merger," working paper, October 1997 ("Kwoka and White (1997)"), p. 30.

[17] Kwoka and White (1997), p. 30.

[18] Daniel Machalaba, "Union Pacific faces possibility of federal intervention in delays," *The Wall Street Journal*, October 27, 1997.

[19] Approximately $2.28 billion in September 2026 dollars, calculated using the Consumer Price Index for All Urban Consumers (CPI-U) with January 1998 as the base: $\$1.093 \times (336.94 \div 1.61.6) \approx \$2.28$ billion. Bernard L. Weinstein and Terry L. Clower, "The Impacts of the Union Pacific Service Disruptions on the Texas and National Economies: An Unfinished Story," prepared for the Railroad Commission of Texas, University of North Texas Center for Economic Development and Research, February 9, 1998 ("Weinstein and Clower (1998)"), p. 4 ("Without question, the Union Pacific's logistical problems are imposing significant incremental costs on Texas manufacturers, growers and shippers that will eventually be passed on to businesses and consumers both in-state and out of-state. We conservatively estimate the costs to date for Texas businesses, measured by lost sales, reduced output and higher shipping charges, at $1.093 billion. We have also identified $643 million in additional costs to businesses, consumers and taxpayers in Texas that may be incurred within the next few months unless the Union Pacific can quickly remediate its service delivery problems (see Table 1).").

[20] Bernard L. Weinstein and Terry L. Clower, "The Impacts of the Union Pacific Service Disruptions on the Texas and National Economies: An Unfinished Story," prepared for the Railroad Commission of Texas, University of North Texas Center for Economic Development and Research, February 9, 1998 ("Weinstein and Clower (1998)"). ("In effect, the Ports of Laredo and Houston have become 'chokepoints' for NAFTA-related trade. As the RRC hearing record indicates, because of the UP's problems cargo is piling up at both ports, and shippers have been forced to use more expensive truck transport to get their products to and from Mexico.").

[21] *Federal Register*, Rules and Regulations, vol. 67, no. 51 (March 15, 2002), ("FRA determined that the BNSF and UP/SP mergers faced significant challenges in harmonizing information systems; training dispatchers; modifying operational practices and procedures; implementing personnel policies directed toward safety; determining appropriate staffing requirements; and providing adequate rail facilities, infrastructure and rolling stock and equipment.").

[22] *Federal Register*, Rules and Regulations, vol. 67, no. 51 (March 15, 2002), ("The BNSF merger, for example, resulted in the merged entity having incompatible electronic database systems used by BN and ATSF. This incompatibility resulted in terminal offices generating and transmitting inaccurate and incomplete train consist lists and waybills, which compromised the safety of train crews transporting the shipments. Even at a very simple level, BN and ATSF each had locomotives bearing the same number; this problem was not addressed before integrated operations began, resulting in dangerous confusion for dispatchers and train crews").

[23] "I Think I Can," *Forbes*, October 18, 1999, available at https://www.forbes.com/forbes/1999/1018/6410064a.html, accessed on October 16, 2026 ("Bitter Rivals Norfolk Southern and CSX divvied up Conrail on June 1. Each railroad has experienced predictable digestive problems: delays, undelivered cargos and angry shippers like UPS, which, during the worst weeks of summer congestion, switched 50% of its business to its trucks.").

[24] *Federal Register*, Rules and Regulations, vol. 67, no. 51 (March 15, 2002), ("The agency found that both NS and CSXT experienced difficulties in identifying and tracking hazardous materials shipments through their respective computer systems after they switched over from Conrail's 'CATS' system in June 1999.").

[25] Bill Stephens, "CPKC's IT stumble casts doubt on further Class I mergers: Analysis," *TrainsPRO*, June 25, 2025, available at https://www.trains.com/trn/news-reviews/news-wire/cpkcs-it-stumble-casts-doubt-on-further-class-i-mergers-analysis/, accessed on October 16, 2026, ("Computer glitches brought Norfolk Southern and eventually CSX to their knees when they split Conrail in 1999.").

[26] Trains.com Staff, "CPKC System Cutover Triggers Service Woes in Some Former KCS Locations," FreightWaves, June 11, 2025 ("FreightWaves June 11"), available at https://www.freightwaves.com/news/cpkc-system-cutover-triggers-service-woes-in-some-former-kcs-locations, accessed on October 16, 2026, ("The Canadian Pacific-Kansas City Southern merger has gone smoothly over the past two years — until a long-planned computer system cutover last month in former Kansas City Southern territory in the U.S. … Immediately after the cutover on the weekend of May 3, dwell spiked at former KSC yards[.]").

[27] Canadian Pacific Kansas City Limited, "CPKC's June 20, 2025 Report on Service Action Plan," CPKC-34, STB Finance Docket No. 36500 (Sub-No. 6), June 20, 2025 ("CPKC Service Action Plan"), p. 6 ("These issues in turn led to congestion at customer facilities, local serving yards, and classification yards across the legacy-KCS network"); FreightWaves June 11, ("[T]he cutover — during which CP's operations system replaced the old KCS system and processes — led to localized service problems in Louisiana, eastern Texas, and parts of Mississippi.").

[28] Letter from Patrick J. Fuchs (Chairman, Surface Transportation Board) to Keith Creel (President and Chief Executive Officer, Canadian Pacific Kansas City Limited), June 17, 2025, STB Finance Docket No. 36500, p. 1 ("Compared to CPKC's performance before the changeover, the Board's oversight data show higher terminal dwell at key yards, slower average velocity, and decreased on-time performance and industry spot and pull.").

[29] FreightWaves June 11, ("Dwell at the hub of Shreveport, for example, jumped from 35 hours to 68 hours for the week ending May 9.").

[30] FreightWaves June 11, ("extended delays forced his company to divert inbound shipments to trucks to avoid plant shutdown. ... And interchanges that usually would take 24 to 48 hours took up to seven days, he said."); Bill Stephens, "CPKC's IT Stumble Casts Doubt on Further Class I Mergers: Analysis," Trains, June 25, 2025 (updated August 6, 2025), available at https://www.trains.com/pro/freight/class-i/cpkcs-it-stumble-casts-doubt-on-further-class-i-mergers-analysis/, accessed on October 16, 2026 ("some chemical shippers had to divert shipments to trucks to keep their plants running.").

[31] CPKC Service Action Plan, pp. 13–14 ("As a last resort, in two specific cases, CPKC embargoed railcars destined for customer facilities where the inventory of railcars precluded receipt of additional cars.").

[32] Surface Transportation board, "Public Views on Major Rail Consolidation," 4 S.T.B. 586 (2000), available at https://www.stb.gov/wp-content/uploads/BV-4-Jan99-Jul00-586.pdf.

[33] Union Pacific Corp. & Norfolk Southern Corp., Application, Vol. 2, Operating Plan at 135 (App. Vol. 2, at 634), ¶ 294.

[34] *Id.*

[35] 49 C.F.R. § 1180.1(a), (c) (providing that the Board does not favor Class I consolidations that reduce transportation alternatives unless there are "substantial and demonstrable public benefits" that cannot otherwise be achieved, and that mergers serve the public interest only when substantial and

demonstrable gains in public benefits outweigh anticompetitive effects, potential service disruptions, and other merger-related harms); see also 49 U.S.C. §§ 10101, 11324.

[36] See 49 C.F.R. § 1180.1(c)(1), (d), (h). The Board expects applicants to propose measures that may be taken if anticipated public benefits fail to materialize; has authority to impose conditions to mitigate or offset harm to the public interest; and requires a Service Assurance Plan addressing, among other things, effects on shippers and ports, service benchmarks, compensation arrangements for service failures, and contingency plans for unanticipated service disruption.