BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION & UNION PACIFIC RAILROAD COMPANY CONTROL – NORFOLK SOUTHERN CORPORATION & NORFOLK SOUTHERN RAILWAY COMPANY	Docket No. FD 36873	312959 ENTERED Office of Chief Counsel November 18, 2026 Part of Public Record

COMMENTS OF THE AMERICAN CEMENT ASSOCIATION

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The American Cement Association ("ACA") hereby submits these Comments in response to the merger application filed by Union Pacific Corporation ("Union Pacific") and Norfolk Southern Corporation ("Norfolk Southern") on April 30, 2026. The Surface Transportation Board ("Board") accepted the revised application for consideration on May 28, 2026, while holding the proceeding in abeyance pending supplemental submissions from the Applicants. On August 18, 2026, after reviewing the Applicants' supplemental submissions and related comments, the Board removed the proceeding from abeyance, established a procedural schedule, and solicited comments on the merits of the revised application.[1] ACA submits these Comments pursuant to that schedule.

I. IDENTITY AND INTEREST

ACA is the leading voice of cement manufacturers in the United States. Cement is the key binding ingredient in concrete, which is used to build and maintain roads, bridges, airports, ports, water infrastructure, military facilities, homes, schools, hospitals, and other essential infrastructure. There are 90 cement manufacturing plants in 34 states and Puerto Rico, five

[1] The Board stated that its decision to remove the proceeding from abeyance "reflects no view on the merits of the Revised Application" or on issues raised in motions and comments filed after the Applicants' July 27 supplemental submissions.

grinding facilities in five states, and over 400 distribution terminals across the country. According to the United States Geological Survey, 110 million metric tons of cement were shipped in the United States in 2024, with an estimated value of $17 billion.[2]

ACA members rely on the railroads to move cement from manufacturing plants to distribution facilities to market. Frequently, there are no practical, feasible modal alternatives to railroad service to meet the business needs of ACA's members. Accordingly, most of the cement shipped in the United States is shipped by rail, making reliable, cost-effective rail service essential to the efficient and sustainable shipment of cement. The proposed transaction would create the first transcontinental railroad with the merged entity having 40 percent of Class I rail track mileage across the country and 40 percent of total rail ton-miles.

It threatens to eliminate competitive options and leave cement shippers exposed to service deterioration and rate increases with limited or no recourse. ACA therefore has a strong interest in this proceeding. In developing these Comments, ACA conducted an anonymized survey of member companies to better understand our members' past experience with rail service, competition, cement logistics, and the impacts of the proposed merger on these issues. Respondents included those responsible for shipping logistics and plant operations. The survey results reflect consistent themes, including a track record of poor rail service, limited competition, and rising shipping costs, which are primary concerns regarding the merger application. The statistics and examples included in these Comments are derived from this anonymized survey.

[2] https://pubs.usgs.gov/periodicals/mcs2025/mcs2025-cement.pdf.

II. EXECUTIVE SUMMARY

ACA appreciates the opportunity to share the perspective and concerns of the nation's cement manufacturers about the proposed merger of Union Pacific and Norfolk Southern. Across the country, ACA members rely on the railroads to ship cement efficiently over long distances from manufacturing plants and grinding facilities to distribution terminals. ACA is concerned that the proposed merger will further erode reliable and cost-effective rail service for cement shippers and weaken the practical competition that remains through gateways, interline routes, interchange, and geographic alternatives.

For the reasons set forth below, ACA respectfully submits that the proposed merger transaction has the real potential to cause substantial adverse competitive and service impacts to ACA members and their customers, and it opposes the transaction. Nevertheless, should the Board ultimately determine that the transaction as a whole is otherwise in the public interest, and decide to approve the merger application, ACA urges the Board to impose concrete, enforceable conditions to ensure the merger does not further erode rail service or practical competitive options for cement shippers. At a minimum, the Board should: 1) eliminate the exemption of hydraulic cement from Board oversight; 2) improve Committed Gateway Pricing so it covers cement at all affected gateways for a permanent duration, and at competitive pricing; 3) require a stronger Service Assurance Plan with measurable service benchmarks, transparent reporting, and meaningful consequences for service failures; 4) strengthen the Common Carrier Obligation as applied to exempt and other commodities; 5) create an education program for shippers; and 6) establish an Exempt Commodity Shipper Committee.

ACA's concerns are not limited to direct dual-service by Union Pacific and Norfolk Southern at the plant or terminal gate. The survey responses show that practical competition for cement shippers also depends on multi-carrier routings, gateway access, reliable interchange,

short line coordination, and the ability to use competitive options as leverage to secure reasonable service and pricing.

III. COST-EFFECTIVE, EFFICIENT RAIL SERVICE IS CRITICAL TO THE CEMENT INDUSTRY

A. IMPORTANCE OF CEMENT TO THE NATIONAL ECONOMY

Cement is critical to the nation's economy. As noted above, 110 million metric tons of cement were shipped across the country in 2024, the majority by rail. According to ACA market intelligence, in 2024:

- 45.2 million metric tons of cement were used in residential and commercial building construction;
- 10.4 million metric tons of cement were used in the construction of drinking water, wastewater infrastructure, ports, locks and dams, and flood control; and
- 32.5 million metric tons were used in the construction of transportation infrastructure, including roads, bridges, transit, rail, airports, and runways.[3]

These numbers demonstrate that cement is an essential construction material to build a wide range of critical infrastructure across the country. The infrastructure built with cement supports the nation's economic and national security. This further demonstrates the need for reliable and timely rail service to ensure critical infrastructure projects can be built in communities across the country.

B. CEMENT SHIPPERS RELY ON RELIABLE RAIL SERVICE

Frequently, there is no practical or feasible modal alternative to railroad service to meet the shipping needs of ACA's members from manufacturing plants to distribution terminals. The

[3] American Cement Association Apparent Use of Portland Cement 2025.

following figures highlight the importance of reliable rail service in moving cement from manufacturing plants and grinding facilities to distribution terminals across the country. Specifically, 79 percent of the cement shipped by rail is shipped up to 599 miles, 14 percent is shipped 600 to 899 miles, and seven percent is shipped 900 miles or more.

Shipping cement by truck is generally not economically viable beyond 100 to 125 miles. Given that 79 percent of cement shipped by rail travels up to 599 miles, rail transportation is essential to moving cement economically. The volume limits of one truck are approximately 25 metric tons, whereas a railcar is more than 100 metric tons. This translates to approximately four trucks being needed to carry the cement that one railcar carries, with shipments by rail reducing the number of trucks on the highway, traffic congestion, and use of diesel fuel, as well as lowering emissions. Given the long distances cement travels and the number of trucks needed to replace a single railcar, ACA has a strong interest in ensuring cement manufacturers have access to consistent and reliable rail service.

Eighty-six percent of respondents reported moving cement by truck due to poor rail service, but respondents identified higher costs, limited truck availability, operational disruption, and shutdown risk as significant deterrents. Accordingly, trucking is usually a measure of last resort, not a scalable substitute for rail.

C. CONSISTENT TRACK RECORD OF POOR RAIL SERVICE

According to the U.S. Geological Survey's 2023 Minerals Yearbook, rail shipments of cement in 2023 were 53.3 percent greater than in 2003. The survey responses show that poor rail service is already a significant and recurring problem for cement shippers. Every respondent to the survey questioned about rail service quality or operational impacts reported a consistent track record of poor rail service and operational challenges impacting the movement of cement. This

poor service includes: 1) reductions or disruptions in rail service; 2) delays in the movement of cement; and 3) poor Class I rail service at connections with Class II and Class III railroads.

1. Reductions or Disruptions in Rail Service

Ninety-three percent of survey respondents reported experiencing reductions and disruptions in rail service. Of those, more than 70 percent report that these reductions or disruptions adversely affect their ability to maintain production levels to meet customer demand.

Survey respondents provided a range of examples of how these reductions and disruptions affect cement shipments and their ability to meet market demand. For example, one survey respondent noted that reducing rail service to a cement manufacturing plant to one day a week reduces the amount of cement that can be shipped to distribution terminals and ultimately to their customers. Another survey respondent noted that reductions and disruptions in service strain a manufacturing plant's capacity to hold railcars, because many plants have limited track space for railcars. If a cement plant receives rail service only once a week, that significantly reduces what can be shipped to distribution terminals to meet market demand.

One survey respondent reported that a reduction in daily switches has forced it to add track space to hold cars before shipping. Such expansions are costly, and not all cement manufacturing and grinding plants have the space to undertake them.

These service failures are especially harmful because plants and terminals generally have finite silo and track capacity. Only a minority of respondents reported sufficient storage capacity to manage rail disruptions, while many reported that capacity depends on the facility, the duration of the disruption, and whether delayed cars arrive in bunches after a missed switch. The combined Union Pacific/Norfolk Southern business plan contains no assurances that such service disruptions or reductions will be adequately addressed and mitigated.

2. Delays in the Movement of Cement

Survey respondents reported that poor rail reliability causes significant delays in shipments from manufacturing and grinding plants to distribution terminals. Eighty-six percent of survey respondents report that rail reliability challenges affect the movement of cement in a range of ways. Survey respondents report gaps between planned and actual transit times that cause delays and temporary supply shortages. Survey respondents also report delays in switching service at a range of locations due to insufficient railroad staffing; delays caused by changes in rail routes; delays due to railyard closures and rerouting; and delays due to congestion at Class I railyards, which prevents the yards from receiving railcars and leads the Class I railroads to circle those railcars on the mainline.

One survey respondent reported that it plans its logistics on the assumption that the Class I railroads will not arrive on schedule, yet it still experiences missed switches. Other than to generally emphasize consolidated system single line service opportunities, which ACA members generally have not found to result in improved performance reliability, the Union Pacific/Norfolk Southern merger application has only limited provisions addressing service reliability issues, which, for the reasons discussed below, are inadequate.

3. Interaction of Poor Class I Rail Service with Class II and Class III Railroads

Many survey respondents also reported poor rail service when cement is transferred between a Class II or Class III railroad and a Class I railroad. Survey respondents identified 75 cement distribution terminals served by a Class II or Class III railroad that connects to either Union Pacific or Norfolk Southern. Of the respondents with cement terminals served by Class II or Class III railroads that connect to Union Pacific or Norfolk Southern, approximately 81 percent reported that cement shipments have been adversely impacted by unreliable Class I

service, including missed switches, inadequate manpower, and handoff problems. The proposed merger does not include any provisions to address improved carrier interchange practices.

D. CEMENT IS CAPTIVE AND SHIPPED MANIFEST

Although the majority of cement is shipped by rail, cement represents a small percentage of any Class I railroad's overall annual shipment volume. ACA members report that, as manifest shippers, they face greater challenges from poor rail service. For example, a survey respondent highlighted that for several manifest-served lanes, individual cars have experienced significant delays due to reclassification and missed connections at intermediate yards. This results in multi-day dwell times and high variability in transit times.

Many cement shippers are captive to a single Class I railroad and are often entirely dependent on rail transportation to move cement from a manufacturing or a grinding plant to a distribution terminal. The proposed merger threatens to deepen that captivity on affected lanes, reduce what limited practical competitive options remain, and leave cement shippers exposed to service deterioration and rate increases with limited recourse.

E. RAIL SHIPPING COST INCREASES

As an increasing share of cement is shipped by rail from manufacturing and grinding plants to distribution terminals, ACA members have experienced significant increases in the rates the Class I railroads charge. Rail shipping rates for cement have increased significantly, far above costs, the majority of all cement traffic is potentially captive, and cement rates have been increasing dramatically. Survey respondents report that these increases consistently outpace the Consumer Price Index, that they have little ability to negotiate shipping rates, and that the Class I railroads have sometimes increased rates more than once a year.

Cement is a commodity with relatively inelastic pricing, which means there are financial limits to what cement shippers can pay to ship their product from manufacturing and grinding

plants to distribution terminals. This is part of why cement manufacturers rely on rail: as noted above, truck transport of cement is not economically viable for the distances cement is shipped in the United States. Union Pacific seeks to pay a multi-billion-dollar premium for Norfolk Southern, yet its application does not reflect any realistic or meaningful cost savings or efficiency gains, let alone any that might be passed through to ACA members.

IV. MERGERS MUST BE CONSISTENT WITH THE PUBLIC INTEREST

The essential consideration in evaluating the merits of railroad transactions such as the one at issue here is whether the proposed transaction is in the public interest.[4] An examination of the public interest considerations involves assessing the competitive impacts of the transaction.[5] The STB in recent decisions also has recognized that mergers can cause significant operational and service harm. In fact, the possibility of service deterioration resulting from a merger transaction has been considered a form of "competitive harm." *See UP/SP*, 1 S.T.B. at 430 n. 191 ("merger–related competitive harm results when the merging parties gain sufficient market power profitably to raise rates and/or reduce service").

This important competitive and service protection theme is echoed in the National Rail Transportation Policy ("NRTP"), which influences the Board's determination under Section 11324. The NRTP directs the Board "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." 49 U.S.C. § 10101(4).

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[4] "The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." 49 U.S.C. § 11324(c).

[5] *See, e.g., Union Pac. Corp. – Control and Merger – Southern Pac. Rail Corp.*, 1 S.T.B. 233, 363 (1996) ("*UP/SP*") ("[t]o determine the public interest, [the STB] balance[s] the benefits of the merger against any competitive harm that cannot be mitigated by conditions"); *CSX Corp. – Control and Operating Leases/Agreements – Conrail Inc.*, 3 S.T.B. 196, 245 (1998).

The STB's "new" merger rules highlight the importance of competitive enhancements. In 2001, the Board substantially revised its merger rules governing that standard to impose a "heavier burden" on merger applicants. *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 546 (2001) ("*2001 Merger Rules*"). The Board found that future mergers, such as the one at present, present a risk of "significant service disruptions that could be nationwide in scope and would not be easily addressed" (*id.* at 558) and "anticompetitive effects . . . that are increasingly difficult to remedy" 49 C.F.R. § 1180.1(c). Under the *2001 Merger Rules*' heightened standard, "mergers serve the public interest only when substantial and demonstrable gains in important public benefits – such as improved service and safety, enhanced competition, and greater economic efficiency – outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms." *Id.*

To pass the public interest test, the applicants must show first that the transaction will enhance competition: "applicants should explain how the transaction and conditions they propose will enhance competition." *Id.* at § 1180.1(c)(2)(iv). Applicants must also establish that potential service disruptions will be avoided. The Board emphasized that "the quality of service is of vital importance," and requires applicants to demonstrate that post-transaction service levels are "reasonable and adequate." *Id.* at § 1180.1(h).

V. COMPETITIVE CONCERNS RAISED BY THE TRANSACTION

On close review of the application, ACA respectfully submits that the applicants have failed to sufficiently address the competitive and service harms associated with the transaction and that the application fails to meet the public interest test. Cement plays a critical role in the United States economy, and ACA is concerned that the proposed merger poses direct and substantial harm to cement shippers. The transaction presents substantial vertical foreclosure concerns, and the applicants have not proposed any enhancements to competition, which is a

critical new focus of the Board for addressing the impacts of mergers in the *2001 Merger Rules*. ACA has outlined the importance of reliable rail service to the efficient movement of cement from manufacturing and grinding plants to distribution terminals, a consistent track record of poor rail service, the impacts of poor rail service on meeting market demand for cement, and some of the unique challenges to shipping cement. Yet the applicants also propose no meaningful service protection provisions.

VI. THE PROPOSED TRANSACTION FAILS TO ENHANCE RAIL-TO-RAIL COMPETITION

The combined railroad would operate approximately 50,000 miles of track across 43 states, giving one railroad enormous influence over the nation's rail network that shippers, including cement manufacturers, rely upon to efficiently move products to market. This represents approximately 40 percent of Class I rail track mileage across the country and 40 percent of total rail ton-miles. ACA believes the merger application does not adequately assess how additional Class I rail mergers would affect the eventual structure of freight rail shipping options for shippers, including shippers whose current practical competition depends on gateways, interchange, and geographic alternatives rather than direct dual service at one facility. Applicants' core Committed Gateway Pricing ("CGP") proposal is not designed to enhance competition; it covers only limited gateways, it is in effect for only a very limited period of time (during the merger oversight period), and it establishes rates to gateways at levels that are far above competitive rates. Importantly, it applies to "less than 1% of all rail traffic" (CN-15 at 25-26), and it ***excludes*** exempt commodity shippers, including cement shippers, from coverage.

Under the Board's major merger rules, a proposed merger of Class I railroads must be evaluated based on whether there are substantial and demonstrable public benefits, including "substantial and demonstrable" competitive benefits (49 C.F.R. § 1180.1(a)) that outweigh

anticompetitive effects, potential service disruptions, and other merger-related harms. See 49 C.F.R. § 1180.1(c). ACA submits that the merger application and the supplementary information submitted to the Board do not demonstrate how the merger will enhance rail-to-rail competition for cement shippers in any way. Instead, the merger application focuses largely on enhanced competition between different modes of transportation with a focus on shifting freight currently shipped by truck to rail. As ACA has highlighted, shipping cement by truck for the distances over which cement moves from a manufacturing or grinding plant is not economically viable, so the proposed merger will not add meaningful shipping options for ACA members. ACA members already ship the majority of cement from manufacturing and grinding plants to distribution terminals by rail.

Ninety-one percent of survey respondents reported shipping over two Class I railroads in the same shipment every week, but most cement shippers are captive to a single railroad at origin or destination. All survey respondents who indicated that they ship with more than one Class I railroad from manufacturing and grinding plants to distribution terminals raised concerns that the proposed merger will further reduce the competition needed to efficiently ship cement to meet market demand. Respondents also noted that the potential to route cement shipments over multiple railroads through different interchange gateways may assist in maintaining competitive service and pricing. Survey respondents also expressed concerns about how the proposed merger will affect transfer times and reliability at these connection points.

Survey respondents highlighted that a further reduction in competition will reduce the availability and flexibility of specialized cement railcars by limiting routing options, which will reduce fleet efficiency. Respondents raise this concern because they have already seen similar

impacts in recent years during periods of reduced service. These service reductions led to delayed return of empty cars, longer cycle times, and localized car shortages.

Like other shippers, ACA members attempt to utilize rail competition when possible to efficiently ship cement from manufacturing and grinding plants to distribution terminals across the country. Besides excluding cement shippers from eligibility, Union Pacific/Norfolk Southern admit that CGP does not even seek to enhance competition: CGP "was not intended to create competition with post-merger single-line traffic." *See* UP-80/NS-78 *at 43.* As ACA has also highlighted, our members have experienced a significant increase in the rates they are charged to ship cement by rail because of a lack of meaningful competition. Further consolidation of the Class I railroads, to the point where one railroad controls 50,000 miles of track in 43 states, gives ACA members little confidence that there will be any relief from rate increases that already substantially exceed costs and outpace the Consumer Price Index.

The Board has recognized that "additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionally." *See* 49 C.F.R. § 1180.1(c). Union Pacific and Norfolk Southern's view, that **no** competition-enhancing conditions are necessary because the "merger itself will substantially enhance competition" (UP-80/NS-78 at 14) is evidence enough that the transaction fails to meet the public interest test.

VII. THE PROPOSED TRANSACTION HEIGHTENS CONCERNS ABOUT FURTHER EROSION OF SERVICE

ACA's survey respondents raised concerns that the proposed merger will further erode rail service and increase shipping costs. The applicants assert that their proposed targeted access program ("TAP") would enable the potential for reciprocal switching, and that their damages alternative dispute resolution ("ADR") program would offer arbitration to resolve monetary

damages for service failures. However, TAP establishes unfairly high triggering thresholds, and the damages ADR program offers a burdensome process that does not protect the supply chain, or provide sufficient financial damages (limited to $2 million per claim) to address serious service problems, and both are shut down after the merger oversight period.

The Board's *2001 Merger Rules* also require the Board to assess the downstream and cumulative effects of a proposed merger. ACA submits that the proposed merger will have significant downstream and cumulative effects on the efficient movement of cement. Specifically, as ACA has outlined, there is a long track record of poor rail service on the part of all Class I railroads. Each of the ways ACA members already experience poor rail service, including reductions and disruptions in rail service, delays in the movement of cement, and poor interaction of Class I railroads with Class II and Class III railroads, will likely be exacerbated by the proposed merger, and each represents a cumulative and downstream effect the Board must consider as part of its public interest review.

VIII. THE PROPOSED TRANSACTION FAILS TO ADEQUATELY ADDRESS PUBLIC AND NATIONAL DEFENSE NEEDS

The Board's *2001 Merger Rules* also require the Board to consider the needs of the "public and the national defense" to ensure "balanced and sustainable competition in the rail industry." 49 C.F.R. § 1180.1(a). In particular, "[r]ail mergers must not detract from the ability of the United States military to rely on rail transportation to meet the nation's defense needs." *Id.* § 1180.1(l). As ACA has outlined, cement is essential to the construction of public and national defense infrastructure. For example, cement is used in the construction of roads, bridges, rail and transit infrastructure, airports, military installations, ports, drinking water and wastewater infrastructure, energy facilities, factories, homes, schools, and hospitals. Additionally, cement is needed to rebuild after disasters, maintain defense facilities, and meet

periods of elevated demand without avoidable delay. Cement is the essential binding material in concrete. A dependable supply gives the United States the ability to build, repair, harden, and recover when time matters most. It is a matter of public safety, economic strength, disaster readiness, and national security. Again, cement plays an essential role in building infrastructure critical to the nation's public and defense needs, and the harms to competition and service presented by the proposed merger may jeopardize the reliable shipment of cement needed to meet those needs across the country. While the applicants argue that the transaction inherently advances defense and national security interests, intimating that "bigger is better," as discussed, combining two networks to control 40 percent of the nation's freight traffic actually creates less system redundancy and presents enhanced opportunities for post-merger integration failures, and monopoly pricing, on a large-scale basis.

IX. REQUEST FOR CONDITIONS SHOULD THE BOARD APPROVE THE APPLICATION

ACA asks the Board to reject the merger application as proposed because the Applicants have not demonstrated that the transaction will enhance rail-to-rail competition for cement shippers, prevent further service erosion, avoid higher costs for shipping cement, or protect public and national security interests dependent on reliable cement supply. ACA believes the merger could give the combined railroads greater ability to raise shipping rates, reduce service, or dictate terms to ACA members, all of whom depend on rail. Nevertheless, the Board has broad authority under 49 U.S.C. § 11324 to "impose conditions governing the transaction," and the Board under the *2001 Merger Rules* that govern this Transaction has authority to provide continuing oversight and impose appropriate ameliorative conditions. Accordingly, if the Board determines on balance that the Transaction is in the public interest, it still has broad authority to specify conditions to maximize the public interest benefits. Pursuant to this authority, ACA

requests that the Board impose the following conditions that will reduce the unacceptable loss of competition and/or deterioration in service that may otherwise occur as a result of the Transaction to ensure the merger supports the competitive and efficient rail transportation of cement.

A. ELIMINATE BOARD EXEMPTION OF OVERSIGHT OF HYDRAULIC CEMENT

Hydraulic cement has been exempt from Board oversight since 1995, when the exemption was granted by the Board's predecessor, the Interstate Commerce Commission. At that time, there were 110 cement manufacturing plants and eight grinding plants across 38 states, and there were 11 Class I railroads. In 1995, 77 million metric tons of cement were produced.[6]

The original intent of exempting commodities from Board oversight was to maintain competition between rail and truck transportation. As ACA has outlined, the quantity of cement shipped from manufacturing and grinding plants to distribution terminals today, and the distances it travels, make truck transportation economically infeasible. The market characteristics upon which the ICC relied in its 1995 exemption decision no longer exist; cement manufacturers are shipping cement over longer distances and from fewer plants, and competition among railroads and alternative shipping options has shrunk over time. Therefore, the original rationale for exempting hydraulic cement from Board oversight no longer applies to the movement of cement from manufacturing and grinding plants to distribution terminals.

Even as the share of cement shipped by rail from manufacturing and grinding plants to distribution terminals has grown, the exemption from Board oversight has remained in place. As discussed above, to meet the public interest test, the applicants must demonstrate the transaction

[6] https://d9-wret.s3.us-west-2.amazonaws.com/assets/palladium/production/mineral-pubs/cement/170495.pdf.

will "enhance competition." 49 C.F.R. § 1180.1(c)(2)(iv). Providing cement shippers with the same opportunities as any other non-exempt shipper to obtain reasonable rates and service terms should be a fundamental prerequisite to merger approval.

Should the merger application be approved, the Board should lift, waive or otherwise meaningfully address the exemption of hydraulic cement from Board oversight, at least with respect to the combined Union Pacific and Norfolk Southern service to ensure hydraulic cement shippers are afforded the opportunity to engage with the Board on shipping issues in the same way as other commodities shipped by rail. Additionally, without lifting the exemption from Board oversight of hydraulic cement, ACA members will not be able to take full advantage of the CGP components of the amended merger application.

B. IMPROVE COMMITTED GATEWAY PRICING

ACA recognizes that the applicants' July 2026 supplement to their merger application expands CGP, to cover additional unit train traffic and some dual-served facilities, yet it likely still covers only a de minimis share of overall traffic, and exempts hydraulic cement. ACA has serious concerns about the sufficiency of CGP as a remedy to enhance competition, and, as noted above, even the applicants have admitted that "CGP was not intended to create competition with post-merger single line service." UP-80/NS-78 at 43.

If the merger is to truly enhance competition, substantial amendments to Committed Gateway Pricing are needed.

First, the Board should require that CGP be extended to cover cement and other exempt commodities. Second, CGP should be expanded to all interchange points connecting the UP and NS networks, and not limited to only four connecting interchange locations. Third, applicants propose gateway pricing rates set at the 70th percentile of their own rates for comparable traffic – a far cry from true competitive rates, and designed to benefit only the most captive of customers

with the highest rates, and still saddle them with systematically uncompetitive pricing that Union Pacific and Norfolk Southern control. Gateway pricing must include true competitive rates. Fourth, under the applicants' proposal, CGP is only to be applied for a limited window of time, through the Board's oversight period. To be truly effective, and to address the structural competitive problems presented by the transaction, it must be made permanent.

C. IMPROVE SERVICE ASSURANCE PLAN

As ACA has highlighted, our members have experienced years of declining rail service and are concerned the proposed merger will lead to further declines in service. Every major rail merger has caused service disruptions, and this transaction would present substantial service-integration challenges, with a combined system of more than 50,000 route miles in 43 states. Union Pacific in recent years has had the most service problems, including through Precision Scheduled Railroading integration, and its steadfast pursuit of lower operating ratios to satisfy its investors' demands.

Under the Board's new Service Assurance Plan rules, at 49 C.F.R. § 1180.10, the applicants are required to identify the precise steps to be taken to ensure that projected service levels will be attainable and that key elements of the operating plan would improve service, as well as how it will meaningfully address and mitigate instances of degraded service. Union Pacific's and Norfolk Southern's "trust us" approach, and limited arbitration and damages awards proposal, combined with its limited TAP program, for the reasons discussed above, are insufficient and offer no fundamental safeguards against service disruptions.

For these reasons, ACA believes the Service Assurance Plan must include measurable standards, transparent reporting, and meaningful consequences for service failures, including standards for cycle time, transit time, switch performance, interchange dwell, car supply, and first-mile/last-mile coordination with Class II and Class III railroads. ACA members who ship

over Class I railroads that have previously merged have experienced deteriorated service in the aftermath of the merger, both during the agency oversight period and after.

Among other things, should there be a service disruption, Union Pacific-Norfolk Southern should provide each affected shipper with a service assurance plan for immediate service restoration, with injunctive relief and damages available for failure to meet the service plan. The Board should also consider appointing service liaison staff as an initial means of assisting in service restoration. Additionally, the Board should consider requiring Union Pacific-Norfolk Southern to make affected shippers and receivers whole for the harms caused by disruption in service that is attributable in significant part to the merger, and potentially require minimum service standards be maintained going forward, throughout the official merger oversight period, and beyond, if necessary.

D. IMPROVE THE COMMON CARRIER OBLIGATION

49 U.S.C. § 11101(a) provides that "a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request." As noted, if the proposed merger is approved, 50,000 miles of rail across 43 states would be controlled by one Class I railroad. This raises concerns about service reliability for cement shippers. ACA submits that the Board's rules implementing the common carrier obligation should be updated to better ensure a Class I railroad provides reasonable rail service. In addition to lifting the cement commodity exemption to enable the common carrier obligation and rules to apply to cement shipments, the Board should make clear that the common carrier obligation requires Union Pacific-Norfolk Southern to provide "reasonable" service standards, including cycle times. And, at a minimum, Union Pacific-Norfolk Southern should meet, maintain, and adhere to the reasonable service standards provided. Improving the Board's rules regarding the common carrier obligation would help provide greater certainty about

consistent rail service if the requirements of the Service Assurance Plan are not continued past the merger oversight period.

E. CONDUCT MEANINGFUL OUTREACH AND HOLD EDUCATIONAL CLASSES FOR SHIPPERS

As ACA has highlighted, many ACA members rely on the Class I railroads to cost-effectively and efficiently ship cement. Cement is not the only commodity that relies on the Class I railroads in this way. ACA asks the Board, regardless of whether it approves the merger application, to conduct meaningful outreach and host periodic educational classes for shippers to help shippers better understand the Board's rules and guidance, specifically with respect to merger conditions (should the Board decide to approve the merger), how these rules and guidance apply to different commodities, and how to use the Board's rules and guidance in their communication and interaction with Union Pacific-Norfolk Southern post-transaction and other Class I railroads.

ACA believes these educational classes will help shippers in their interactions with the applicants and other Class I railroads because shippers will be able to cite specific rules or guidance in their negotiations with the railroads. For example, ACA appreciates that the Board's 2020 Demurrage Guidance makes clear that it extends to exempt commodities. Even though the guidance is clear on this point, ACA members continue to receive demurrage bills from railroads even when our members are not at fault for their cars being delayed. Additionally, the education for shippers should focus on service performance, and the possible assistance by Board staff to engage in more proactive informal dispute resolution, and assisting shippers in obtaining relevant, meaningful, and specific information on service performance, service planning, and steps to mitigate service deterioration episodes.

F. ESTABLISH AN EXEMPT COMMODITY SHIPPER COMMITTEE

There was a time in the history of the agency (more specifically, in the history of its predecessor) in which the regulation of particular classes of railroad traffic imposed substantial burdens upon the carriers. Those burdens included onerous tariff-filing requirements. They also included the need to obtain agency approval for rate increases (as to which the carriers bore the burden of proof). Significantly, however, the days of such burdens are long gone. Accordingly, there is little-to-no immediate and/or broad consequence of an agency revocation decision. Additionally, requiring individual shippers to seek partial revocation in individual cases is not a practical solution, when the impact of a revoking the broader commodity exemption would be negligible upon the applicants and other railroads. Nevertheless, should the Board not lift the exemption on hydraulic cement and other exempt commodities as one of the conditions for approving the merger, the Board should establish an Exempt Commodity Shipper Committee and appoint a specific exempt commodity shipper liaison Board staff member. Such actions will help improve communication between the Board, exempt commodity shippers, and the railroads about the unique shipping challenges of exempt commodities; identify areas where, even without lifting the exemption, Board guidance could help exempt commodity shippers and the railroads improve their working relationships; and potentially develop best practices.

X. CONCLUSION

As the number of cement plants across the country has declined and cement is shipped longer distances from manufacturing and grinding plants to distribution terminals, ACA members have become more reliant on the Class I railroads to cost-effectively ship cement. ACA's anonymized survey of our members on the potential impacts of the proposed merger shows that our members are already experiencing rail service disruptions, limited competition, and rising costs. Survey respondents expressed concerns that the proposed merger will not

enhance competition but instead will lead to further increases in rail rates and erode rail service for cement shippers. Based on these findings and the analysis presented in these Comments, ACA urges the Board to reject the application as proposed. For the foregoing reasons, should the Board nevertheless decide to approve the application, it should impose ACA's requests for meaningful, enforceable conditions to protect cement shippers.

ACA appreciates the opportunity to file these Comments and urges the Board to give due consideration to the impact on the competitive and efficient movement of goods to market in considering the proposed merger of Union Pacific and Norfolk Southern.

Respectfully submitted,

/s/ Leah Pilconis
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Dated: November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2026, I caused copies of the foregoing Comments to be served by email or by first-class mail, postage prepaid upon all parties of record in this proceeding.

/s/ Peter A. Pfohl