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Office of Chief Counsel
November 18, 2026
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PUBLIC VERSION

November 18, 2026

BNSF-1

VIA E-FILING

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

Re: **STB Docket No. FD 36873 (Sub-No. 33), BNSF Railway Company—Trackage Rights—Norfolk Southern Corporation and Norfolk Southern Railway Company**

Dear Chief of Case Administration:

Enclosed for e-filing in the above-referenced proceeding is a public version of BNSF Railway Company's Responsive Application, with appropriate redactions that the Board can place in its docket. We are concurrently filing a highly confidential version of the Responsive Application, to be filed under seal.

The filing fee of $10,600 has been paid via pay.gov. Please contact me with any questions.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

Enclosures

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BNSF-1

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

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Dated: November 18, 2026

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Exhibit 13-A Operating Plan, Verified by Jon Gabriel, Group Vice President, Consumer Products at BNSF Railway Company.

Exhibit 13-B Supplement to the Operating Plan, Verified by Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

BNSF RAILWAY COMPANY'S RESPONSIVE APPLICATION

BNSF Railway Company ("BNSF") submits this responsive application ("Responsive Application") pursuant to 49 U.S.C. §§ 11323-25 and 49 C.F.R. Part 1180, seeking approval from the Surface Transportation Board ("STB" or "Board") for the grant of trackage rights on certain lines owned by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), between Chicago, IL and Bethlehem, PA. BNSF's trackage rights request, together with certain related BNSF requests, are collectively referred to herein as the "Pennsylvania Intermodal Condition," described in detail below.

On April 30, 2026, Union Pacific Corporation and Union Pacific Railroad Company (collectively, "UP") and NS[1] filed a revised application ("Revised Application") in Docket No. FD 36873, seeking Board approval for UP to acquire control of NS (the "Control Transaction"). BNSF does not believe the Control

[1] UP and NS are collectively referred to herein as "UP/NS" or "Applicants."

Transaction is in the public interest and urges the Board to deny the Revised Application. But if the Board decides to approve the Control Transaction, the Board should grant this Responsive Application, and the Board should impose the Pennsylvania Intermodal Condition as a condition of its approval of the Control Transaction.

I. EXECUTIVE SUMMARY

Pennsylvania is one of the most important areas in the United States for intermodal traffic. Today, BNSF and UP both move significant amounts of intermodal traffic, under interline arrangements with NS, between western locations and locations in Pennsylvania that are sole-served by NS.

From west-to-east, BNSF moves traffic from BNSF-served western locations, primarily Southern California, to Chicago, IL. In Chicago, BNSF interchanges the traffic with NS, and NS then moves the traffic to intermodal facilities in Pennsylvania. No other railroad competes with NS at these sole-served facilities. BNSF and NS also provide westbound service from NS facilities in Pennsylvania to BNSF-served western markets. UP similarly moves traffic between western markets and Chicago for interchange with NS.[2] NS is currently incentivized to work together with both BNSF and UP to provide this intermodal service to customers.

However, if the Board approves the Control Transaction, those incentives will change and BNSF will be excluded from competing with UP for intermodal

[2] (*See* UP/NS Rev. Appl., Vol. 2 at 638-39, 678.)

movements to Pennsylvania on NS. Indeed, the combined UP/NS plan to introduce new intermodal service options from western markets to the Northeast.[3] Thus, UP/NS would be incentivized to create as much density as possible on the new UP/NS single-line service routes by diverting traffic that currently moves under the BNSF/NS interline arrangement. Additionally, UP/NS would have both the ability and incentive to ensure that BNSF is not a competitive option for this traffic from a pricing and service perspective.[4] Over time, this would result in the elimination or reduction of competition for intermodal traffic moved between NS-served facilities in Pennsylvania and western markets.

As discussed in detail in BNSF's Comments ("BNSF's Comments"), filed concurrently in the Control Transaction docket, BNSF's position is clear: UP/NS's application is not in the public interest, and it should be denied by the Board. However, if the Board decides to approve the Control Transaction, the Board should impose the narrowly tailored conditions that BNSF is requesting, including the Pennsylvania Intermodal Condition, to mitigate at least some of the harm that would result from the Control Transaction.

With respect to the Pennsylvania Intermodal Condition, BNSF requests the following relief to preserve competition in the relevant market:

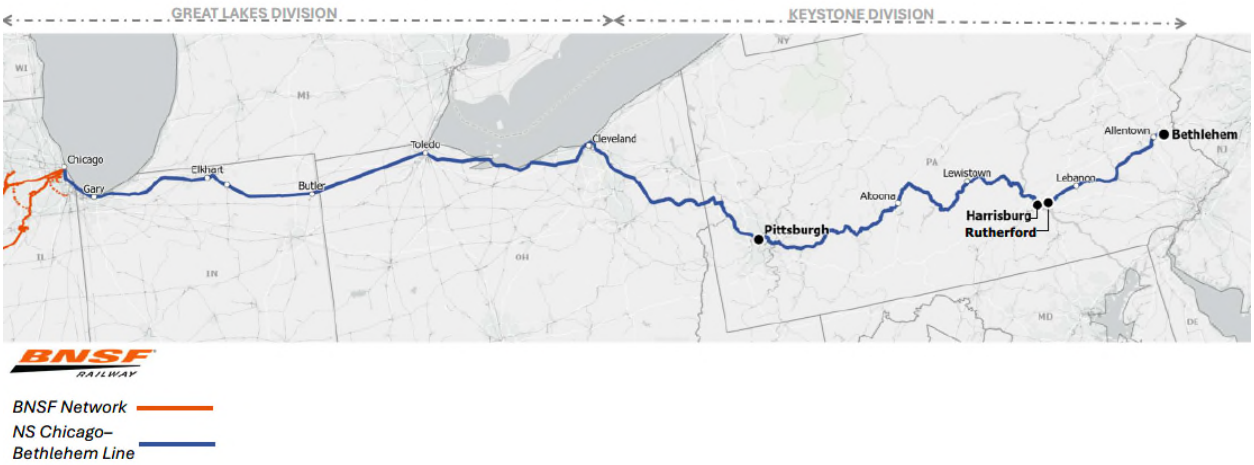
First, BNSF requests that the Board grant this Responsive Application, seeking trackage rights on certain NS lines between Chicago, IL and Bethlehem,

[3] (*See id.*, Vol. 2 at 692-93, 722-23.)

[4] (Ex. 12-A, V.S. Gabriel 15-23.)

PA. The subject lines are shown in Figure 1 below and are described in detail in Appendix 3 attached hereto. These trackage rights would be "overhead" with exceptions that would allow BNSF to access the four existing intermodal facilities described below, along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

Figure 1: Map of the Requested Trackage Rights on NS Lines From Chicago, IL to Bethlehem, PA



Second, in connection with the trackage rights request, BNSF is requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal facilities,[5] as those facilities may expand, change, or be modified in the future. BNSF also intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate

[5] BNSF is willing to discuss consolidation of Harrisburg and Rutherford traffic at Rutherford to streamline operational efficiency and impacts. *(Id.* at 6 n.6.)

commercial agreement with Phoenix Rail. A map showing the locations of these four facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem) (collectively, the "NS Sole-Served Facilities") is included in Exhibit 1. The NS Sole-Served Facilities are important intermodal destinations, and access to these facilities is critical to maintaining competitive intermodal service in Pennsylvania.

Third, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject NS lines between Chicago, IL and Bethlehem, PA, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs. A haulage arrangement would replicate BNSF's existing commercial access on a short-term basis by allowing BNSF to price the full movement between BNSF-served western markets and Pennsylvania, while UP/NS hauls the traffic for a limited period of time.

Collectively, these requests constitute the Pennsylvania Intermodal Condition sought by BNSF. This condition would enable BNSF to directly move traffic between BNSF-served western locations and key intermodal facilities in Pennsylvania—the NS Sole-Served Facilities—thereby preserving BNSF's ability to compete for intermodal traffic that today moves through the Chicago gateway under the BNSF/NS interline arrangement.

In addition to preserving competition, the Pennsylvania Intermodal Condition would also produce public benefits from service improvements that BNSF would be able to implement.

This Responsive Application is organized as follows: Section II explains why this Responsive Application should be classified as a minor transaction under 49 C.F.R. § 1180.2(c). Section III provides the information required under the Board's regulations at 49 C.F.R. Part 1180. While BNSF believes that this Responsive Application should be classified as minor, BNSF is submitting the information and exhibits required for a significant application, including the Market Analyses and Operating Plan.

BNSF's Market Analyses includes the following verified statements:

- Verified Statement of Jon Gabriel, Group Vice President, Consumer Products at BNSF (Exhibit 12-A);
- Verified Statement of Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc. (Exhibit 12-B);
- Verified Statement of Dennis W. Carlton, Ph.D., Senior Managing Director at Compass Lexecon (Exhibit 12-C); and
- Verified Statement of Nicholas Hill, Ph.D., Partner at Bates White Economic Consulting (excerpt attached as Exhibit 12-D).[6]

[6] BNSF is submitting the full version of the Verified Statement of Nicholas Hill, Ph.D. with its Comments in the Control Transaction docket. An excerpt from the Verified Statement is attached hereto as Exhibit 12-D.

In addition, BNSF is submitting an Operating Plan, verified by Jon Gabriel, Group Vice President, Consumer Products at BNSF (Exhibit 13-A). BNSF is also submitting a Supplement to the Operating Plan, verified by Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc. (Exhibit 13-B).

If the Board decides to approve the Control Transaction, BNSF respectfully requests that the Board grant this Responsive Application and impose the Pennsylvania Intermodal Condition as a condition of its approval of the Control Transaction.

II. THE RESPONSIVE APPLICATION SHOULD BE CLASSIFIED AS A MINOR TRANSACTION.

In this Responsive Application, BNSF is seeking the grant of trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. The Responsive Application should be classified as a minor transaction, as that term is defined in the Board's regulations at 49 C.F.R. § 1180.2(c).

The Board's regulations classify proposed transactions as "major," "significant," and "minor." The requested trackage rights are not a "major" transaction, as the request does not involve the control or merger of two or more Class I railroads. *See* 49 C.F.R. § 1180.2(a).

The requested trackage rights also are not a "significant" transaction. A "significant" transaction is a transaction "not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11325(a)(2) and (c)." 49 C.F.R. § 1180.2(b). The

Board's rules provide that a transaction is not significant (and therefore is minor), if a determination can be made either: "(1) [t]hat the transaction clearly will not have any anticompetitive effects, or (2) [t]hat any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs." 49 C.F.R. § 1180.2(b). The Board's rules further provide that "[a] transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can clearly be made." 49 C.F.R. § 1180.2(b)(2).

Here, the Board can make a determination that the requested trackage rights "clearly will not have any anticompetitive effects" or "any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs."

As described in detail in the Market Analyses (Exhibit 12), the requested trackage rights would preserve competition in the relevant market, allowing BNSF to continue competing for traffic that today moves through the Chicago gateway pursuant to the BNSF/NS interline arrangement and competes with similar service provided by UP and NS. The requested trackage rights would also produce public benefits from service improvements that BNSF would be able to implement.

Indeed, trackage rights arrangements between railroads are inherently pro-competitive. They allow the incumbent railroad and the tenant railroad to compete for business using the same line.[7] In short, the trackage rights requested here

[7] *See, e.g.*, *Union Pac. R.R. et al.—Trackage Rights Over CNW*, 7 I.C.C.2d 177, 186

"clearly will not have any anticompetitive effects," and thus the trackage rights are a "minor" transaction.

Nevertheless, BNSF is submitting the information and exhibits required for a "significant" application, in the event that the Board decides to evaluate the Responsive Application as a significant transaction.

III. INFORMATION PROVIDED IN RESPONSE TO BOARD REGULATIONS

Pursuant to the Board's regulations at 49 C.F.R. Part 1180, BNSF submits the following information:

Section 1180.6 Supporting Information

1180.6(a)(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

1180.6(a)(1)(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

In this Responsive Application, BNSF is seeking the grant of trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. The subject lines are shown in Figure 1 above and are described in detail in Appendix 3 attached hereto. These trackage rights would be "overhead" with exceptions that allow BNSF to access the four NS Sole-Served Facilities, along with any new intermodal facilities that are served by the subject lines, including through connection or interchange

(1990) (Trackage rights that approximate single-line service and allow the tenant to compete against single-line carriers "will significantly enhance competition.").

with any other carrier or private switching railroad serving such intermodal facilities.

In connection with the trackage rights request, BNSF has two related requests. First, BNSF is requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal facilities, as those facilities may expand, change, or be modified in the future. Key terms which define the scope of this NS facility access are provided and discussed further in the draft Trackage Rights Agreement submitted with this Responsive Application (Exhibit 2). BNSF also intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail.

Second, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject NS lines between Chicago, IL and Bethlehem, PA, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs. Key terms providing the scope of this haulage service are also listed in the draft Trackage Rights Agreement submitted with this Responsive Application (Exhibit 2).

The name, business address, and telephone number of the responsive applicant is:

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131
(817) 352-1000

Questions and correspondence concerning this Responsive Application may be addressed to:

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1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

BNSF expects to consummate the requested trackage rights as soon as possible following: 1) a Board decision granting the Control Transaction and this Responsive Application; and 2) completion of negotiations with UP/NS regarding the terms of a trackage rights agreement.

Exhibit 2 to this Responsive Application includes a proposed form of a Trackage Rights Agreement, pursuant to 49 C.F.R. § 1180.6(a)(7)(ii). BNSF requests that the Board order the parties to negotiate the trackage rights fee and other transaction terms, specifically including rights to equal access, priority, and ramp services necessary to provide the existing Expedited, Standard, and International intermodal services[8] at NS's Pittsburgh, Harrisburg, and Rutherford

[8] (Ex. 12-A, V.S. Gabriel 10-13, 19-21.)

intermodal facilities as detailed in the proposed Trackage Rights Agreement, within 90 days from the effective date of the Board's approval decision. If the parties cannot complete such negotiations prior to the expiration of that 90-day period, BNSF requests that the Board require the parties to submit any remaining disputed issues to the Board for determination.[9]

As discussed further below, in order for the Pennsylvania Intermodal Condition to achieve its intended purpose, the trackage rights fee and other transaction terms must be structured in a manner that provides an effective competitive service option for shippers.

1180.6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The requested trackage rights would result in operating economies and improved service for customers. If BNSF is granted the trackage rights, together with the Pennsylvania Intermodal Condition, BNSF would have the ability to directly move traffic between BNSF-served western markets and important intermodal facilities in Pennsylvania, thereby allowing BNSF to continue competing for traffic that today moves through the Chicago gateway pursuant to the existing BNSF/NS interline arrangement. Customers would experience the benefits of continued competition between UP and BNSF for intermodal service between

[9] The Board has previously accepted a similar approach in a responsive application proceeding. (*See* CN Responsive Appl. 9, Feb. 28, 2022, *Canadia Pac. Ry. Ltd.—Control—Kansas City S. ("CP/KCS")*, FD 36500; *CP/KCS,* FD 36500, slip op. at 7 (STB served July 1, 2022) (accepting for consideration CN's responsive application).)

western locations and Pennsylvania. Customers would also benefit from service improvements that BNSF would be able to implement.

The purposes sought to be accomplished by the requested trackage rights are further discussed in the Verified Statement of Jon Gabriel (Exhibit 12-A), which is incorporated herein by reference.

1180.6(a)(1)(iv) The nature and amount of any new securities or other financial arrangements.

There will be no new securities or other financial arrangements as a result of the requested trackage rights.

1180.6(a)(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

1180.6(a)(2)(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

The relevant market involves the market for intermodal traffic moving between intermodal facilities in BNSF-served western markets and NS-served intermodal facilities in Pennsylvania, including those in Pittsburgh, Harrisburg, Rutherford, and Bethlehem. This market includes traffic that today moves through the Chicago gateway pursuant to an existing BNSF/NS arrangement involving interline logistics.

If the Board approves the Control Transaction, UP/NS would have both the ability and incentive to ensure that BNSF is not a competitive option for traffic that currently moves under the existing BNSF/NS interline arrangement, from a pricing

and service perspective.[10] Over time, this would result in the elimination or reduction of competition in the relevant market.

The requested trackage rights are necessary to preserve competition in this market. This relief would enable BNSF to continue to serve customers moving traffic between BNSF-served western markets and NS-served facilities in Pennsylvania and would ensure that customers continue to have a meaningful competitive alternative for this traffic.

The overwhelmingly positive effects of the requested trackage rights on inter- and intramodal competition are discussed in detail in BNSF's Market Analyses (Exhibit 12), which includes the Verified Statement of Jon Gabriel (Exhibit 12-A), the Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski (Exhibit 12-B), the Verified Statement of Dennis W. Carlton, Ph.D. (Exhibit 12-C), and the Verified Statement of Nicholas Hill, Ph.D. (excerpt attached as Exhibit 12-D). These verified statements are incorporated herein by reference.

1180.6(a)(2)(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

The anticipated economies to be effected in operations, and effects related to traffic and revenues, are described in the verified statements contained in the Market Analyses.

[10] (Ex. 12-A, V.S. Gabriel 15-23.)

The financial considerations related to the requested trackage rights and associated facility access will be negotiated by the parties following any Board decision granting the Control Transaction and this Responsive Application and imposing the Pennsylvania Intermodal Condition as a condition of its approval of the Control Transaction. As explained above, BNSF requests that the Board provide for a 90-day negotiating period and that the Board resolve any disputed issues by further order.

Here, in order for the Pennsylvania Intermodal Condition to achieve its intended purpose, the trackage rights fee and other transaction terms must be structured in a manner that provides an effective competitive service option for shippers. Financial consideration must reflect the Board's well-placed concern that "unduly high rentals could undermine the efficacy of a trackage rights remedy that we think is essential to our approval of this merger."[11]

This issue is particularly important here, given UP's repeated attempts to increase the price of access to its network to restrain competition from other railroads. UP employs a "maximize price" strategy to raise the costs of rivals to a point where competition is ineffective. Since 2023, UP has been seeking substantially higher rates from BNSF by attempting to reopen trackage rights granted in connection with the UP/SP merger, haulage and switching agreements, and terminating other joint facility agreements to trigger the right to negotiate a

[11] *Burlington N. Inc. & Burlington N. R.R. Co.—Control & Merger—Santa Fe Pac. Corp. & The Atchison, Topeka & Santa Fe Ry. Co.*, 10 I.C.C.2d 661, 774 (1995).

new, higher rate.[12] Moreover, in September 2026, UP's CEO, Jim Vena, publicly stated at an investor conference that, if UP's competitors were granted trackage rights as part of the merger, he would just raise the trackage rights rates to make it more expensive.[13]

The effectiveness of the Pennsylvania Intermodal Condition, and BNSF's ability to receive fair and non-discriminatory treatment, will also depend on robust and continued Board oversight. As discussed further in the Verified Statement of Katie Farmer, BNSF's President & Chief Executive Officer, submitted with BNSF's Comments, UP's conduct in prior mergers shows that its commitments cannot be trusted.[14] UP has repeatedly dodged its UP/SP merger obligations through a pattern of obstructive conduct. In light of UP's history and its recent conduct, Board oversight will be critical to ensure the effectiveness of the Pennsylvania Intermodal Condition.

1180.6(a)(2)(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

BNSF currently has no plans to take on additional debt or incur any fixed charges in connection with the requested trackage rights.

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[12] (BNSF Comments, Section VII(A).)

[13] FreightWaves, *Union Pacific blasts rival railroads' trackage rights requests* (Sept. 18, 2026), https://www.freightwaves.com/news/union-pacific-blasts-rival-railroads-trackage-rights-requests (quoting Mr. Vena as stating, "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. . . . I thought about just agreeing because guess what: We would just reset the price higher for us.").

[14] (BNSF Comments, V.S. Farmer Section II(B).)

1180.6(a)(2)(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

The requested trackage rights would preserve key transportation services to the public. As explained in the Verified Statement of Jon Gabriel (Exhibit 12-A), BNSF and NS currently move a significant amount of intermodal traffic between BNSF-served western markets and NS-served Pennsylvania intermodal facilities through a BNSF/NS interline arrangement.[15] However, following consummation of the Control Transaction, UP/NS would have both the ability and incentive to ensure that BNSF is not a competitive option for this intermodal traffic from a pricing and service perspective.[16] The requested trackage rights would enable BNSF to directly move traffic between BNSF-served western markets and important intermodal facilities in Pennsylvania and to continue to provide competitive service to customers in this market.

1180.6(a)(2)(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

BNSF does not expect the requested trackage rights or the Pennsylvania Intermodal Condition to have any adverse impact on its employees. Currently, BNSF has no employees on the requested NS lines. Thus, if the Board grants the Control Transaction and the Responsive Application, and imposes the Pennsylvania

[15] (Ex. 12-A, V.S. Gabriel 11-12.)

[16] *(Id*. at 15-23.)

Intermodal Condition as a condition of its approval of the Control Transaction, no BNSF positions would be abolished or transferred.

BNSF anticipates it may need approximately 58 to 66 train conductor and engineer positions, split evenly between locomotive conductors and engineers, at three crew bases: Chicago, IL; Conway, PA; and Harrisburg, PA. Those crews would likely operate as follows: Chicago crews running between Chicago and Toledo from BNSF's existing crew facility (8 to 9 conductors and 8 to 9 engineers); Conway crews running both westbound to Toledo and eastbound to Harrisburg (15 to 17 conductors and 15 to 17 engineers); and Harrisburg crews running the round trip to Bethlehem and providing hours-of-service relief on eastbound trains (6 to 8 conductors and 6 to 8 engineers).

BNSF would likely not fill those positions in Year 1 following consummation of the Control Transaction. As explained in the Verified Statement of Jon Gabriel, submitted as Exhibit 12-A, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject lines, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs.[17] Additionally, cab signal requirements would be met before BNSF crews operate BNSF locomotives over the lines. BNSF anticipates that staffing and qualifications for positions at all three bases would

[17] *(Id*. at 28.)

open in Year 2. BNSF's Year 3 target is for BNSF crews to take over operations at all three bases and to have all 58 to 66 positions in service.

The anticipated labor impacts are limited to train crew positions because BNSF is requesting trackage rights and access to and use of certain intermodal facilities, rather than ownership or operation of the subject lines or facilities.

Figure 2 below provides a summary of anticipated BNSF crew bases and headcount. Figure 3 below provides a summary of anticipated impacts on BNSF employees, by location and year. These figures are also provided in Appendix 4 attached hereto.

Figure 2: Summary of Anticipated BNSF Crew Bases and Headcount

Crew base	**Territory**	**Headcount**	**Conductors**	**Engineers**	**Facilities**
Chicago	Chicago to Toledo (approx. 245 miles)	16-18	8-9	8-9	Existing BNSF crew facility; likely hotel lodging at Toledo
Conway	One pool to Toledo (approx. 210 miles) and to Harrisburg (approx. 230 miles)	30-34	15-17	15-17	Crew facility at Conway; likely hotel lodging at Toledo and Harrisburg
Harrisburg	Short pool to Bethlehem, plus hours-of-service relief on eastbound trains	12-16	6-8	6-8	No lodging required
Total		**58-66**	**29-33**	**29-33**	

Figure 3: Summary of Anticipated Impacts on BNSF Employees, by Location and Year

Location	Job Classification/ Craft	Jobs Transferred	Jobs Abolished	Jobs Created	Year
Chicago, IL	Conductor	None	0	8-9	Year 3
Chicago, IL	Engineer	None	0	8-9	Year 3
Conway, PA	Conductor	None	0	15-17	Year 3
Conway, PA	Engineer	None	0	15-17	Year 3
Harrisburg, PA	Conductor	None	0	6-8	Year 3
Harrisburg, PA	Engineer	None	0	6-8	Year 3
Total		**None**	**0**	**58-66**	

Currently, modifications to existing labor agreements, if required, have not been reached. The appropriate labor protective conditions for the requested trackage rights are those set out in *Norfolk & W. Ry. Co.—Trackage Rights—Burlington N., Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease & Operate—Cal. W. R.R.*, 360 I.C.C. 653 (1980).

1180.6(a)(2)(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

Not applicable.

1180.6(a)(3) Any other supporting or descriptive statements applicants deem material.

As described further below, this Responsive Application is supported by the following verified statements, submitted as part of BNSF's Market Analyses: (1) Verified Statement of Jon Gabriel, Group Vice President, Consumer Products at BNSF, attached as Exhibit 12-A; (2) Verified Statement of Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc., attached as Exhibit 12-B;

(3) Verified Statement of Dennis W. Carlton, Ph.D., Senior Managing Director at Compass Lexecon, attached as Exhibit 12-C; and (4) Verified Statement of Nicholas Hill, Ph.D., Partner at Bates White Economic Consulting, excerpt attached as Exhibit 12-D.

BNSF also incorporates by reference its Comments concurrently filed in Docket No. FD 36873 and the accompanying testimony.

1180.6(a)(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

The opinion of counsel is provided in Appendix 1 attached hereto.[18]

1180.6(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

BNSF owns approximately 23,000 route miles, including easements, in the United States in the following states: Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming.

[18] 49 C.F.R. § 1180.6 n.2 provides that "[a]n opinion of counsel is not required . . . in a responsive application for the party against whom relief is sought."

1180.6(a)(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

Maps are provided in Exhibit 1 attached hereto.

1180.6(a)(7) Explanation of the transaction.

1180.6(a)(7)(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

In this Responsive Application, BNSF is seeking the grant of trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. These trackage rights would be "overhead" with exceptions that would allow BNSF to access the four NS Sole-Served Facilities, along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

In connection with the trackage rights request, BNSF is requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal facilities, as those facilities may expand, change, or be modified in the future.[19] BNSF is also requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject NS lines between Chicago, IL and Bethlehem, PA, for the period of time necessary to allow

[19] As noted above, BNSF also intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail.

BNSF to establish its own service and commence operations consistent with customer needs.

The significant terms and conditions related to the transaction are described in the draft agreement submitted in Exhibit 2.

1180.6(a)(7)(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

Exhibit 2 contains a proposed form[20] of a Trackage Rights Agreement between UP, as grantor, and BNSF, as grantee.

1180.6(a)(7)(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

Not applicable.

1180.6(a)(7)(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

[20] Under the Board's rules at 49 C.F.R. § 1180.6 n.3, "[a] final signed contract or agreement need not be filed with a responsive application. However, a draft contract or agreement should be submitted containing the significant terms proposed."

1180.6(a)(7)(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

The property involved in this Responsive Application does not include all the property of BNSF. In this Responsive Application, BNSF is seeking the grant of trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. The subject lines are shown in Figure 1 above and are described in detail in Appendix 3 attached hereto.

In connection with the trackage rights request, BNSF is also requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal facilities, as those facilities may expand, change, or be modified in the future. BNSF also intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail. A map showing the locations of these NS Sole-Served Facilities is included in Exhibit 1.

1180.6(a)(7)(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

BNSF is seeking the grant of trackage rights on five NS lines that together form a continuous route of approximately 851 route miles from Chicago, IL to Bethlehem, PA, including: the Chicago Line (extending approximately 341 route miles from Chicago, IL to Cleveland, OH); the Cleveland Line (extending approximately 56 route miles from Drawbridge (Cleveland), OH to Alliance, OH); the Fort Wayne Line (extending approximately 83 route miles from Alliance, OH to

West Pitt, PA); the Pittsburgh Line (extending approximately 249 route miles from West Pitt, PA to Harrisburg, PA); and the Harrisburg Line (extending approximately 52 route miles from Harrisburg, PA to Wyomissing Junction, PA), together with segments of the Reading Line and the Lehigh Line east of Wyomissing Junction, PA (extending approximately 43 route miles). The subject lines are shown in Figure 1 above and are described in detail in Appendix 3 attached hereto.

Today, from west-to-east, BNSF moves intermodal traffic from BNSF-served Western markets to Chicago, IL where it interchanges the traffic with NS. NS then moves the traffic over its lines to intermodal facilities it serves in Pennsylvania. BNSF and NS also provide westbound service from NS facilities in Pennsylvania to BNSF-served western markets. For westbound service, NS moves loaded and empty cars from Pennsylvania to Chicago, where it interchanges the cars with BNSF for movement to BNSF-served western markets. The existing interchange is discussed further in BNSF's Operating Plan, verified by Jon Gabriel, Group Vice President, Consumer Products at BNSF, attached hereto as Exhibit 13-A.

The requested trackage rights would enable BNSF to directly move traffic between BNSF-served western markets and key intermodal facilities in Pennsylvania—Pittsburgh, Harrisburg, Rutherford, and Bethlehem—thereby preserving BNSF's ability to compete for intermodal traffic that today moves through the Chicago gateway pursuant to the BNSF/NS interline arrangement.

1180.6(a)(7)(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the requested trackage rights.

1180.6(a)(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report.

See Exhibit 4 attached hereto.

1180.6(b)(3) Change in control (exhibit 8). If an applicant carrier submits an annual report Form R-1, indicate any change in ownership or control of that applicant carrier not indicated in its most recent Form R-1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual report Form R-1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.

See Exhibit 8 attached hereto.

1180.6(b)(5) Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.

Not applicable.

1180.6(b)(6) Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family that includes a rail carrier. Such information may be referenced through notes to the chart.

See Exhibit 11 attached hereto.

1180.6(b)(7) If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.

Not applicable.

1180.6(b)(8) Intercorporate or financial relationships. Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of any such relationships, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph, "affiliates" has the same meaning as "affiliated companies" in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).

See Exhibit 11 attached hereto.

Section 1180.7 Market analyses

1180.7(a) For major and significant transactions, applicants shall submit impact analyses (exhibit 12) describing the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study of the implications of those data, and a description of the resulting likely effects of the proposed transaction on the transportation alternatives that would be available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition. Applicants must identify and address relevant markets and issues, and provide additional information as requested by the Board on markets and issues that warrant further study. Applicants (and any other party submitting analyses) must demonstrate both the relevance of the markets and issues analyzed and the validity of their methodology. All underlying assumptions must be clearly stated. Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal). They can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that would be

significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).

1180.7(c) For significant transactions, specific regulations on impact analyses are not provided so that the parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction. As a general guideline, applicants shall provide supporting data that may (but need not) include: current and projected traffic flows; data underlying sales forecasts or marketing goals; interchange data; market share analysis; and/or shipper surveys. It is important to note that these types of studies are neither limiting nor all-inclusive. The parties must provide supporting data, but are free to choose the type(s) and format. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from publicly available published sources, detailed citations will suffice.

Impact analyses describing the impacts of the requested trackage rights on inter-and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by BNSF and other carriers are provided in Exhibit 12. BNSF's Market Analyses includes the following verified statements, which are incorporated herein by reference:

Verified Statement of Jon Gabriel (Exhibit 12-A): The Verified Statement of Jon Gabriel, Group Vice President, Consumer Products at BNSF, provides an analysis, from a marketing perspective, of the anticipated impacts of the Control Transaction and the Pennsylvania Intermodal Condition on competition in the Pennsylvania intermodal market.

Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski (Exhibit 12-B): The Verified Statement of Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing

Director at FTI Consulting, Inc., analyzes the impacts of the Pennsylvania Intermodal Condition on freight flows, traffic patterns, and market shares.

Verified Statement of Dennis W. Carlton, Ph.D. (Exhibit 12-C): The Verified Statement of Dennis W. Carlton, Ph.D., Senior Managing Director at Compass Lexecon, concludes that Board approval of the requested trackage rights "would address, at least to some extent, the potential for harm arising from the [p]roposed [t]ransaction."[21]

Verified Statement of Nicholas Hill, Ph.D. (excerpt attached as Exhibit 12-D): In pertinent part, the Verified Statement of Nicholas Hill, Ph.D., Partner at Bates White Economic Consulting, concludes that the Pennsylvania Intermodal Condition is likely to mitigate the likelihood of vertical foreclosure for shippers within the service area of the Pennsylvania Intermodal Condition should the Control Transaction be approved by the Board.[22]

Section 1180.8 Operational Data

1180.8(b) For major and significant transactions: Operating plan (exhibit 13). Submit a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction. The plan should make clear the gains in service, operating efficiencies, and other benefits anticipated from the merger. The plan should include:

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[21] (Ex. 12-C, V.S. Carlton 16.)

[22] In his Verified Statement, Dr. Hill concludes that the proposed merger is likely to result in foreclosure, and that it should be blocked. He notes that, "[n]otwithstanding this view, BNSF has proposed conditions on the merger intended to partially mitigate the risk of harm should the Board permit the merger to proceed." (BNSF Comments, V.S. Hill 6 n.1.)

1180.8(b)(1) The patterns of service on the properties, including the proposed principal routes, proposed consolidations of main-line operations, and the anticipated traffic density and general categories of traffic (including numbers of trains) on all main and secondary lines in the system. Identify all yards expected to have an increase in activity greater than 20 percent. Changes in operations may be summarized in a pro forma density chart.

1180.8(b)(2) If commuter or other passenger services are operated over the lines of applicant carriers, detail any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations.

1180.8(b)(3) The anticipated equipment requirements of the proposed system, including locomotives, rolling stock by type, and maintenance-of-way equipment; plans for acquisition and retirement of equipment; projected improvements in equipment utilization and their relation to operating changes; and how these will lead to the financial and service benefits described in the summary.

1180.8(b)(4) A description of the effect of any deferred maintenance or delayed capital improvements on any road or equipment properties involved, the schedule for eliminating such deferrals, details of general system rehabilitation including rehabilitation relating to the transaction (including proposed yard and terminal modifications), and how these activities will lead to the service improvements or operating economies anticipated from the transaction.

BNSF is submitting an Operating Plan, verified by Jon Gabriel, Group Vice President, Consumer Products at BNSF, attached hereto as Exhibit 13-A. BNSF is also submitting a Supplement to the Operating Plan, verified by Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc., attached hereto as Exhibit 13-B.

1180.8(b)(5) Density charts (exhibit 14). Gross ton-mile traffic density charts shall be filed for applicant carriers containing a map geographically showing those lines handling 1 million gross ton-miles per mile road or more per year and respective densities, expressed in gross ton-miles per year, in each direction, in segments of such lines between major freight yards and terminals, including major intramodal and intermodal interchange points, using the corporate or political subdivision name of the points shown as well as the railroad station name. The mileage of each segment of line shall be provided, and should be shown on the chart. Data shown in the density chart shall be for the latest available full calendar year preceding the filing of the application. At applicants' option data may be shown on the density chart or an explanatory list.

See Exhibit 14 attached hereto.

IV. CONCLUSION

For the reasons set forth above, BNSF respectfully requests that, if the Board decides to approve the Control Transaction, the Board grant this Responsive Application and impose the Pennsylvania Intermodal Condition as a condition of its approval of the Control Transaction.

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for BNSF Railway Company

Dated: November 18, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

APPENDIX 1

OPINION OF COUNSEL

OPINION OF COUNSEL
(Section 1180.6(a)(4))

As counsel for BNSF Railway Company ("BNSF"), I am familiar with the foregoing Responsive Application by BNSF seeking the grant of trackage rights on certain lines owned by Norfolk Southern Corporation and Norfolk Southern Railway Company. It is my opinion that the transaction described in the Responsive Application meets the requirements of law and will be legally authorized and valid, if approved by the Surface Transportation Board.

/s/ Jill K. Mulligan

Jill K. Mulligan
Executive Vice President and
Chief Legal Officer
BNSF Railway Company

November 18, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

APPENDIX 2

SIGNATURES, OATHS, AND CERTIFICATIONS

SIGNATURES, OATHS, AND CERTIFICATIONS OF APPLICANT'S EXECUTIVE OFFICERS (Section 1180.4(c)(2)(i))

I, Thomas Williams, declare under penalty of perjury that I am Executive Vice President and Chief Marketing Officer at BNSF Railway Company; that I am one of the executive officers duly authorized to sign, to verify, and to file this Responsive Application on behalf of BNSF Railway Company; that I have knowledge of the matters contained in this Responsive Application; and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.

/s/ Thomas Williams

Thomas Williams
Executive Vice President and
Chief Marketing Officer
BNSF Railway Company

November 18, 2026

SIGNATURES, OATHS, AND CERTIFICATIONS OF APPLICANT'S EXECUTIVE OFFICERS (Section 1180.4(c)(2)(i))

I, Dustin J. Almaguer, certify that I am Vice President Compliance & Audit and Secretary of BNSF Railway Company, and that Thomas Williams, Executive Vice President and Chief Marketing Officer at BNSF Railway Company, is duly authorized to sign, to verify, and to file this Responsive Application on behalf of BNSF Railway Company.

/s/ Dustin J. Almaguer

Dustin J. Almaguer
Vice President Compliance & Audit
and Secretary
BNSF Railway Company

November 18, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

APPENDIX 3

DESCRIPTION OF THE TRACKAGE RIGHTS LINES

DESCRIPTION OF THE TRACKAGE RIGHTS LINES

In this Responsive Application, BNSF is requesting the grant of trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. As described in detail below, the subject lines consist of five NS lines that together form a continuous route of approximately 851 route miles from Chicago, IL to Bethlehem, PA, including the Chicago Line, the Cleveland Line, the Fort Wayne Line, the Pittsburgh Line, and the Harrisburg Line, together with segments of the Reading Line and the Lehigh Line east of Wyomissing Junction, PA. The lines are shown in Figure 1 below. These trackage rights would be "overhead" with exceptions that would allow BNSF to access four existing intermodal facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem), along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

Figure 1: Map of the Requested Trackage Rights on NS Lines Between Chicago, IL and Bethlehem, PA



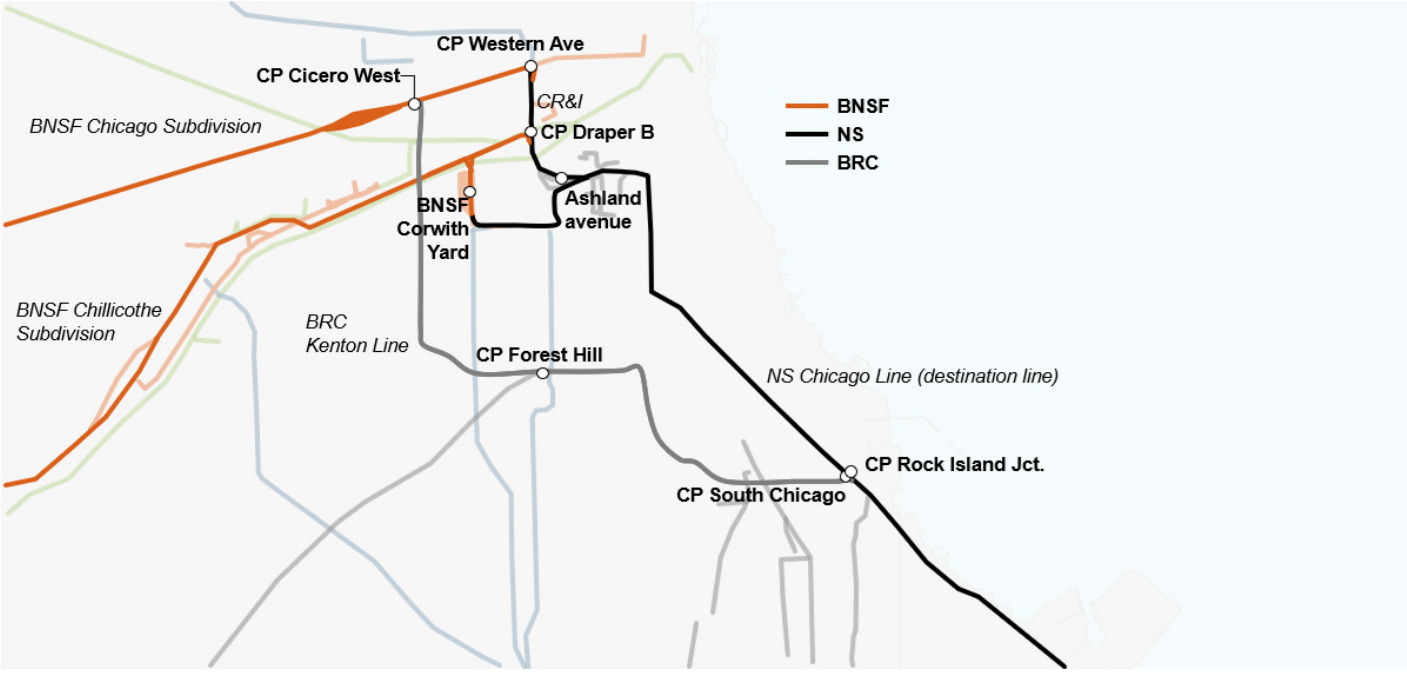
Under BNSF's Operating Plan, for eastbound traffic, crews would start on BNSF track in Chicago and enter the NS network in the Chicago terminal district.[1] BNSF is seeking two primary connections onto the NS Chicago Line, each of which mirrors an existing BNSF/NS interchange flow: (i) from the BNSF Chicago Subdivision, over the Chicago River & Indiana ("CR&I") Industrial Track at Western Avenue, with trackage rights commencing at CP Cermak (MP UW-4.77); and (ii) from the BNSF Chillicothe Subdivision, over the CR&I Industrial Track toward NS Ashland, with trackage rights commencing at CP Brighton Park. Figure 2 below shows the Chicago interchange pattern from BNSF to NS's Chicago Line.

[1] BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject lines, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs.

1. **Chicago Line.** The NS Chicago Line extends approximately 341.1 route miles from Chicago, IL to Cleveland, OH. The Chicago Line is the primary route for BNSF's proposed operation. The line is predominantly double-track. NS's Toledo / Walbridge intermodal facility, which BNSF has identified as a crew-change point, is located on this line. BNSF seeks trackage rights over the following segments:
    a. The line from MP KN-3.1 connecting to BNSF's Corwith Yard through MP KN-0.0 near Ashland Avenue Yard, IL (milepost equation KN-0.00/UW-1.60);
    b. The line from MP UW-4.77 near Cermak, IL through MP UW-0.0 at CP 518, IL (milepost equation UW-0.00 = CD-518.40);
    c. The line from MP CD-523.3 at Union Station (Chicago), IL through MP CD-193.9 at Berea, OH, including NS's interest in Amtrak's facilities between MP CD-520.8 and MP CD-523.3; and
    d. The line from MP CD-193.9 at Berea, OH through MP CD-181.9 at Drawbridge (Cleveland), OH.[2]

[2] BNSF would also use its existing right to operate over the BRC Kenton Line to enter or exit NS's Chicago Line. BNSF's request includes the right to enter or exit the NS lines at any connecting point BNSF has rights to operate over, including in order to make that connection.

Figure 2: Chicago Interchange Pattern from BNSF to NS Chicago Line



2. **Cleveland Line.** The NS Cleveland Line (NS milepost prefix "RD") extends approximately 56.2 route miles from Drawbridge (Cleveland), OH to Alliance, OH. The Cleveland Line would carry traffic from the Chicago Line to the Fort Wayne Line.[3] BNSF seeks trackage rights over the following segments:

   a. The line from MP RD-123.2 at Drawbridge (Cleveland), OH through MP RD-67.0 at Alliance, OH (milepost equation RD-123.21 = CD-181.92).

[3] Portions of the Cleveland Line are cab-signal territory. UP/NS's plan states that approximately $34 million of PTC investment will occur between Cleveland and Conway. (UP/NS Rev. Appl., Vol. 2 at 913-14, 932-33.)

3. **Fort Wayne Line.** The NS Fort Wayne Line (NS milepost prefix "PC") extends approximately 83.2 route miles from Alliance, OH to West Pitt, PA. NS's Conway Yard, which BNSF has identified as a crew-change point, is located on this line. BNSF seeks trackage rights over the following segments:
    a. The line from MP PC-83.2 at Alliance, OH through MP PC-25.9 at Rochester, PA (milepost equation PC-83.22 = RD-66.96); and
    b. The line from MP PC-25.9 at Rochester, PA through MP PC-0.0 at West Pitt, PA (milepost equation PC-25.85 = RD-0.00).
4. **Pittsburgh Line.** The NS Pittsburgh Line (NS milepost prefix "PT") extends approximately 248.5 route miles from West Pitt, PA to Harrisburg, PA, with an additional 19.1 miles for the double-stack cleared Bell-Perry-Wing route. NS's Pittsburgh (Wall) intermodal terminal and NS's Harrisburg intermodal terminal are located on this line. Under BNSF's Operating Plan, the Pittsburgh blocks would be set out at Pittsburgh, and the Harrisburg blocks at Harrisburg.[4] BNSF seeks trackage rights over the following segments:
    a. The line from MP PT-353.4 at West Pitt, PA through MP PT-290.7 at Conpit, PA (milepost equations PT-353.35 = PC-0.00 and PT-339.75 = JP-0.00);

[4] UP/NS's plan states that approximately $37 million of PTC investment will occur between Conway and Harrisburg. (UP/NS Rev. Appl., Vol. 2 at 913-14, 932-33.)

b. The line from MP ML-0.0 at Bell, PA through MP ML-16.2 at Perry, PA (milepost equation ML-0.0 = PC-4.80);

c. The line from MP JP-2.9 at Perry, PA through MP JP-0.0 at Wing, PA (milepost equations JP-2.90 = ML-16.20 and JP-2.89/ML-16.00); and

d. The line from MP PT-290.7 at Conpit, PA through MP PT-104.9 at Harrisburg, PA (milepost equation PT-290.68 = LC-0.00).

The segments described in items (c) and (d) above comprise the only routing through the Pittsburgh area currently cleared for double-stack traffic and are therefore essential to BNSF's proposed operation.

5. **Harrisburg Line and the Reading Line and Lehigh Line Segments to Bethlehem.** The NS Harrisburg Line (NS milepost prefix "HP") extends approximately 51.7 route miles from Harrisburg, PA to Wyomissing Junction, PA. East of Wyomissing Junction, BNSF's proposed route to Bethlehem continues over approximately 43.3 additional route miles over segments of NS's Reading Line and Lehigh Line. The Rutherford intermodal terminal is located on the Harrisburg Line, and the Bethlehem intermodal terminal is located at the east end of the requested trackage rights.[5] BNSF seeks trackage rights over the following segments:

[5] UP/NS's planned PTC investment reaches Harrisburg but does not extend to the Reading and Lehigh lines east of Harrisburg, which remain cab-signal territory.

a. The line from MP HP-112.9 at Harrisburg, PA through MP HP-61.2 at Wyomissing JCT, PA (milepost equation HP-112.90 = PT-104.90);

b. The line from MP TW-9.4 at Wyomissing JCT, PA through MP TW-8.1 at Tulp, PA (milepost equation TW-9.40 = HP-61.15);

c. The line from MP AF-8.15 at Tulp, PA through MP AF-5.4 at Belt, PA (milepost equation AF-8.15 = TW-8.10);

d. The line from MP TK-5.4 at Belt, PA through MP TK-0.0 at Blandon, PA (milepost equation TK-5.40 = AF-5.40);

e. The line from MP RV-7.5 at Blandon, PA through MP RV-35.1 near Burn, PA (milepost equation RV-7.50 = TK-0.00);

f. The line from MP EN-93.0 at Burn, PA through MP EN-88.6 at Bethlehem, PA (milepost equation EN-93.00 = RV-35.11); and

g. The line from MP LE-88.6 at Bethlehem, PA through MP LE-86.8 near Florence, PA (milepost equation LE-88.58 = EN-88.58).

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

APPENDIX 4

EFFECT OF THE PROPOSED TRANSACTION UPON BNSF'S EMPLOYEES

EFFECT OF THE PROPOSED TRANSACTION UPON BNSF'S EMPLOYEES

Table 1: Summary of Anticipated BNSF Crew Bases and Headcount

Crew base	Territory	Headcount	Conductors	Engineers	Facilities
Chicago	Chicago to Toledo (approx. 245 miles)	16-18	8-9	8-9	Existing BNSF crew facility; likely hotel lodging at Toledo
Conway	One pool to Toledo (approx. 210 miles) and to Harrisburg (approx. 230 miles)	30-34	15-17	15-17	Crew facility at Conway; likely hotel lodging at Toledo and Harrisburg
Harrisburg	Short pool to Bethlehem, plus hours-of-service relief on eastbound trains	12-16	6-8	6-8	No lodging required
Total		**58-66**	**29-33**	**29-33**	

Table 2: Summary of Anticipated Impacts on BNSF Employees, by Location and Year

Location	Job Classification/ Craft	Jobs Transferred	Jobs Abolished	Jobs Created	Year
Chicago, IL	Conductor	None	0	8-9	Year 3
Chicago, IL	Engineer	None	0	8-9	Year 3
Conway, PA	Conductor	None	0	15-17	Year 3
Conway, PA	Engineer	None	0	15-17	Year 3
Harrisburg, PA	Conductor	None	0	6-8	Year 3
Harrisburg, PA	Engineer	None	0	6-8	Year 3
Total		**None**	**0**	**58-66**	

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 1

MAPS

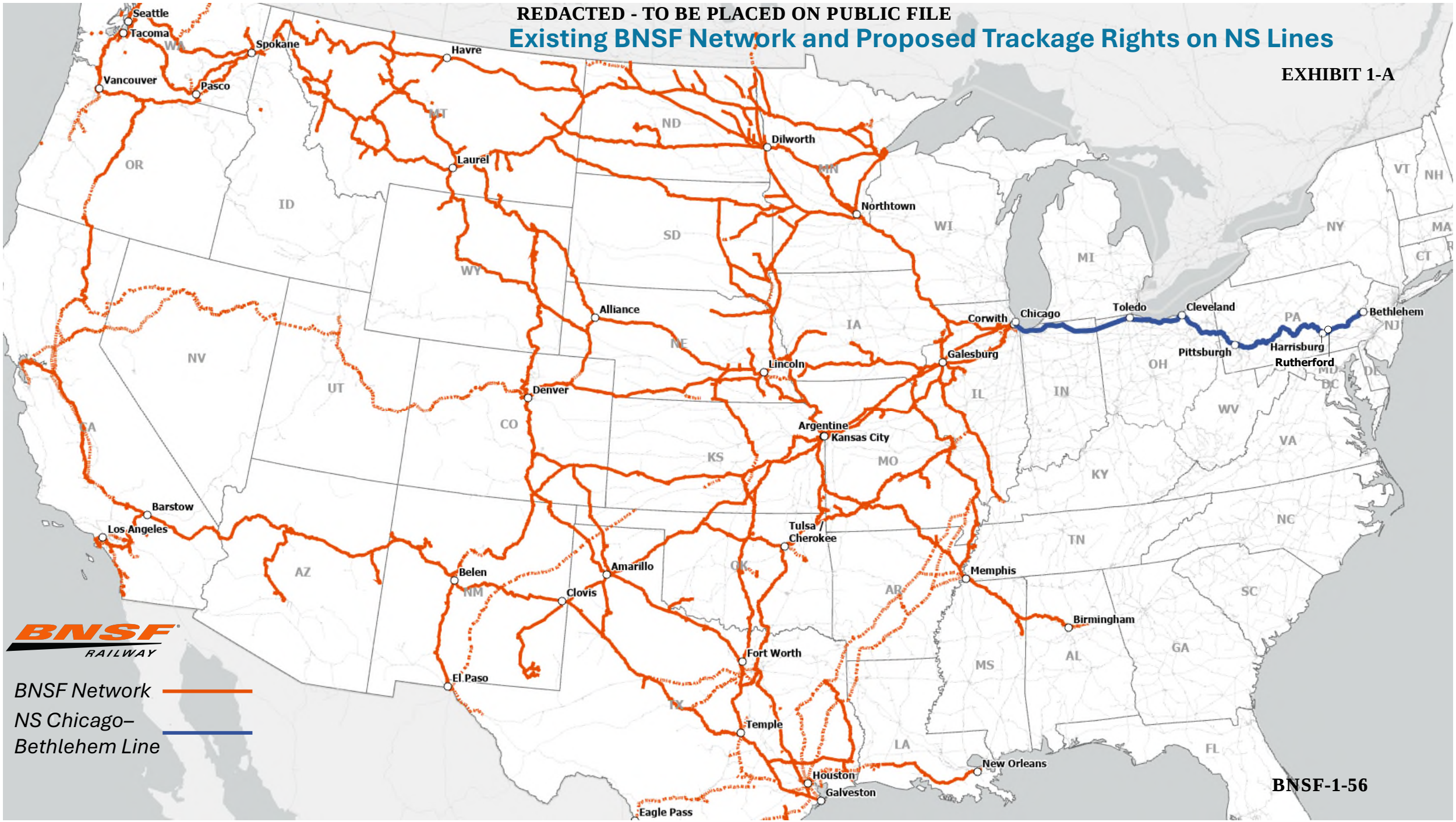
Maps

- Exhibit 1-A Existing BNSF Network and Proposed Trackage Rights on NS Lines
- Exhibit 1-B Requested Trackage Rights on NS Lines: Chicago, IL-Bethlehem, PA
- Exhibit 1-C Requested Trackage Rights on NS Lines and Other Rail Lines in the Territory
- Exhibit 1-D NS-Served Intermodal Facilities Included in BNSF's Proposal

REDACTED - TO BE PLACED ON PUBLIC FILE

Existing BNSF Network and Proposed Trackage Rights on NS Lines

EXHIBIT 1-A



BNSF RAILWAY

BNSF Network

NS Chicago–Bethlehem Line

BNSF-1-56

Requested Trackage Rights on NS Lines: Chicago, IL-Bethlehem, PA



GREAT LAKES DIVISION

KEYSTONE DIVISION



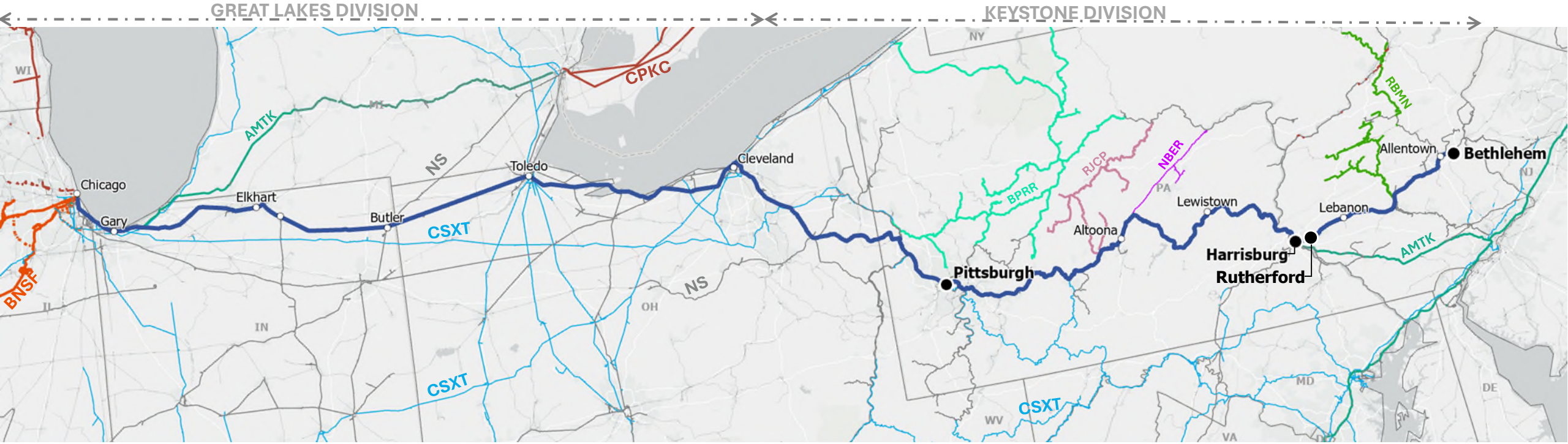
BNSF RAILWAY

BNSF Network

NS Chicago–Bethlehem Line

Requested Trackage Rights on NS Lines and Other Rail Lines in the Territory





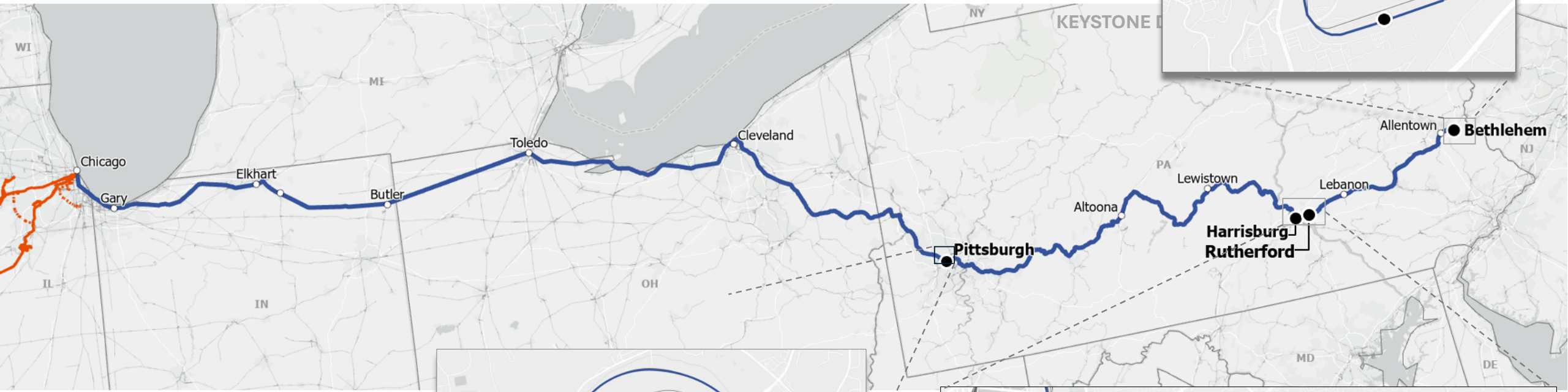
BNSF RAILWAY

BNSF Network

NS Chicago–Bethlehem Line

NS-Served Intermodal Facilities Included in BNSF's Proposal





BNSF RAILWAY

BNSF Network

NS Chicago–Bethlehem Line

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 2

DRAFT AGREEMENT

PENNSYLVANIA INTERMODAL TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT, ("**Agreement**") is entered into this _____ of _____ 2027, ("**Execution Date**") by and between **Union Pacific Railroad Company**, a Delaware corporation ("**UP**" or "**Owner**") and **BNSF Railway Company**, a Delaware corporation ("**BNSF**" or "**User**"); and

RECITALS:

WHEREAS, Norfolk Southern Corporation ("**NS**") is the owner and operator of 851 route miles from Chicago, IL to Bethlehem, PA, including: the Chicago Line (extending approximately 341 route miles from Chicago, IL to Cleveland, OH); the Cleveland Line (extending approximately 56 route miles from Drawbridge (Cleveland), OH to Alliance, OH); the Fort Wayne Line (extending approximately 83 route miles from Alliance, OH to West Pitt, PA); the Pittsburgh Line (extending approximately 249 route miles from West Pitt, PA to Harrisburg, PA); and the Harrisburg Line (extending approximately 52 route miles from Harrisburg, PA to Wyomissing Junction, PA), together with segments of the Reading Line and the Lehigh Line east of Wyomissing Junction, PA (extending approximately 43 route miles), hereinafter referred to as the "**Joint Trackage**";

WHEREAS, UP is seeking to acquire control of NS and its subsidiaries, following which UP and NS would be under common control of UP and their rail operations would be consolidated and, upon such acquisition, the NS lines would be operated by UP as part of a unified system ("**UP/NS Merger**");

WHEREAS, BNSF desires to obtain trackage rights over the Joint Trackage for the purpose of accessing existing intermodal facilities at Pittsburgh, Harrisburg, Rutherford, and Bethlehem, as those facilities may expand, change or be modified in the future (collectively, the "**NS Sole-Served Terminals**") as well as new intermodal facilities that are served by the Joint Trackage, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities ("**New Terminals**"); and

WHEREAS, UP is willing to grant BNSF trackage rights upon the Joint Trackage subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. GENERAL CONDITIONS

The trackage rights granted under this Agreement are subject to this Agreement and the general conditions set forth in **Exhibit "B"** ("**General Conditions**"). If the body of this Agreement conflicts with the General Conditions, the body of this Agreement controls. Capitalized terms not defined in the body of this Agreement have the meanings given in the General Conditions.

Section 2. TRACKAGE SUBJECT TO AGREEMENT

BNSF's trackage rights under this Agreement shall extend over the Joint Trackage as defined herein and more particularly described and depicted in **Exhibit "A"**. Joint Trackage shall include the track structure as described in this Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions, including any Capacity Improvements, to said track structure now or in the future.

Section 3. GRANT OF TRACKAGE RIGHTS

3.1 Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered Owner for the purposes of this Agreement.

3.2 User shall have the right to use the Joint Trackage to (i) access and serve existing NS Sole-Served Terminals and (ii) access and serve New Terminals, including in either case through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities or which may connect to such intermodal facilities. The rights granted herein shall apply to any and all intermodal traffic, including trailers, containers, swap bodies, chassis and other intermodal equipment, whether loaded or empty, transported in single-stack, double-stack or other customary intermodal configurations on flatcars, well cars or other equipment designed or adapted for intermodal service.

3.3 Except as set forth in Section 3.2, the parties understand and agree that BNSF shall not have the right to:

(a) Serve any industry, team or house track, or transload facility now existing or hereafter located along the Joint Trackage; or

(b) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided herein; or

(c) Permit or admit any third party to use all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage; or

(d) Enter into or make a contract or agreement for the handling of BNSF Equipment over or upon the Joint Trackage, or any portion thereof, or the Equipment of any third party which in the normal course of business would not be considered the Equipment of BNSF, including but not limited to BNSF performing haulage services for a third party; provided, however, that the foregoing shall not prevent BNSF, pursuant to a run-through

agreement with any other railroad, from using the locomotives of another railroad as its own under this Agreement; or

(e) Connect with any other railroad or other party at any location on or along the Joint Trackage; or

(f) Perform interchanges with any other railroad or other party on or along the Joint Trackage; or

(g) Provide any passenger service of any kind or handle or operate passenger trains on or along the Joint Trackage; or

(h) Transport Dimensional Traffic on or along the Joint Trackage; or

(i) Load or unload cars on or along the Joint Trackage, except as otherwise provided herein or incidental to cleaning derailments or other similar emergencies; or

(j) Stop its trains on or along the Joint Trackage without specific permission or direction of UP, except for emergency circumstances.

3.4 User shall have the right to connect, for movements in all directions, with any railroad line that User now or hereafter owns, leases, operates or has the right to use pursuant to trackage rights or any other operating right, at any point where such railroad line intersects with the Joint Trackage.

3.5 User shall have the right to establish crew change points along the Joint Trackage. Upon User's request, Owner shall lease to User reasonably available facilities, or property on which User may establish its own facilities, as reasonably necessary to support User's crews and comply with applicable regulatory requirements.

3.6 Upon User's request, in lieu of operation by User's own crews, Owner shall provide train and engine crews and reasonably necessary crew-related support personnel and services to operate User's trains over the Joint Trackage (the "**Crew Services**"). User shall reimburse Owner for the Crew Services on actual costs plus a reasonable additive, including reasonable incremental costs for lodging, crew transportation, guarantees, reserve board payments, and similar labor costs directly resulting from the Crew Services or changes in User's operations or traffic levels. Solely for purposes of the liability and indemnification provisions of this Agreement, Owner's employees providing Crew Services shall be treated as employees of User, and User's trains operated by such employees shall be treated as trains operated by User.

3.7 User agrees to perform its operations and handle its Equipment in a manner that will not unreasonably interfere with or impair the use of the Joint trackage by Owner or other parties.

Section 4. HAULAGE

4.1 Owner agrees, upon request by User, to handle User's business on a haulage basis for the period necessary to allow BNSF to establish its own service and commence operations consistent with customer needs, including hiring and training sufficient crews (the "**Haulage Service**"). Owner shall accept, handle, switch and deliver traffic moving under the Haulage Service without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in Owner's account.

4.2 The fee for such Haulage Service shall be $[x] per car mile in each direction (loaded or empty) ("**Haulage Fee**") plus an on/off fee of $[x] to cover handling at the interchange to/from User in Chicago ("**Chicago On/Off Fee**"). The Haulage Fee and Chicago On/Off Fee shall be adjusted upwards or downwards in accordance with Section 6 of this Agreement.

Section 5. NS OPERATED TERMINAL ACCESS AND SERVICES

5.1 BNSF shall have the right to access and use the Pittsburgh, Harrisburg, and Rutherford intermodal facilities (the "**NS Operated Terminals**") and to receive all access, capacity, facilities, infrastructure, equipment, personnel, and services reasonably necessary to conduct its intermodal operations at such terminals (collectively, the "**Intermodal Services**"). Intermodal Services shall include, without limitation, the right to originate and terminate BNSF intermodal trains and traffic; access to and use of all tracks, cranes and other intermodal equipment, loading and unloading areas, gates, parking and staging areas, equipment, lighting, systems including information systems, and other terminal facilities and infrastructure reasonably necessary for such operations; and services for receiving and releasing intermodal units, loading and unloading trains, staging and storing containers and chassis, providing empty containers and chassis to customers, assembling outbound trains in appropriate blocks, maintaining and providing required operating information, and coordinating train arrivals and departures. UP shall provide the Intermodal Services directly or through one or more third-party contractor(s); provided, however that UP's use of a third-party contractor shall not relieve UP of any obligation under this Agreement.

5.2 UP shall provide BNSF with Intermodal Services sufficient to accommodate BNSF's intermodal operations and anticipated traffic volumes, including seasonal and customer-driven fluctuations, and to enable BNSF to provide the Expedited, Standard, and International intermodal services offered by BNSF and NS as of the Execution Date. The Intermodal Services shall be provided on a fair and nondiscriminatory basis and, in no event, on terms or at service levels less favorable than those applicable to UP's own comparable intermodal operations. Intermodal Services for trains designated by BNSF as Expedited trains shall include scheduled "direct to spot" access to the facility for immediate unloading in accordance with customer needs on the same basis as UP's comparable expedited intermodal service products and shall not be unreasonably held, conditioned, or otherwise delayed by UP or its contractors. UP shall not reserve, prioritize, allocate, restrict, or otherwise manage terminal capacity, facilities, infrastructure, equipment, personnel, or services in a manner that materially impairs BNSF's ability to provide competitive intermodal service.

5.3 The Intermodal Services shall at all times be provided in accordance with the BNSF Intermodal Rules and Policies Guide and the BNSF Hub Operations Manual. UP and its contractor(s) shall be responsible for assembling loaded railcars for outbound BNSF trains grouped together in consecutive blocks by destination for train movement on such schedules established by BNSF in accordance with customer needs and shall input timely and accurate information regarding loaded and unloaded Intermodal Units into the applicable information systems for transmittal to BNSF. In the event of misloaded cars, UP shall (or shall cause its contractor(s) to) reasonably cooperate with BNSF and the affected customer in connection with arranging for the prompt delivery of the misloaded Intermodal Units to the correct destination, and shall be responsible for any direct costs incurred by BNSF or by BNSF's customers in connection with the delivery of such misloaded Intermodal Units.

5.4 As compensation for the Intermodal Services provided directly by UP, BNSF shall pay UP (i) $[x] per Lift (the "**Terminal Fee**"). For Intermodal Services provided by a third-party contractor, BNSF shall pay no more than the rates and charges applicable to UP for the same or comparable services, without markup or other additional charge by UP. At User's option, User shall have the right to negotiate a services contract directly with any third-party contractor providing Intermodal Services at the NS Operated Terminals. As used herein, an "**Intermodal Unit**" means intermodal trailers and containers, with or without chassis and "**Lift**" means either (i) receiving an Intermodal Unit at the NS Operated Terminal and loading it onto a BNSF train or a haulage train; or (ii) unloading an Intermodal Unit from a BNSF train or a haulage train at the NS Operated Terminal and staging the Intermodal Unit for out-gate by a motor carrier. UP shall invoice BNSF monthly based on the total Lifts performed that month, and BNSF shall pay each invoice within thirty (30) days after receipt. UP shall also receive [x] of all revenue collected by BNSF for storage of Intermodal Units at the NS Operated Terminals, net of any refunds or other adjustments in a BNSF customer's favor. BNSF shall collect storage charges under its standard practices and remit UP's share within thirty (30) days after each calendar quarter.

5.5 BNSF shall establish the free time, storage and other accessorial charges applicable to its Intermodal Units at the NS Operated Terminals consistent with BNSF's standard practices, and UP shall have no right to assess any charges directly to BNSF customers. No storage charges shall accrue during any period in which an Intermodal Unit cannot reasonably be removed from the terminal due to any act or omission of UP or any third-party contractor providing Intermodal Services. UP shall not impose or administer storage limitations, reservations, free-time requirements, or other terminal practices in a manner that discriminates against BNSF or materially impairs BNSF's ability to provide competitive intermodal service.

5.6 If UP fails to provide any Intermodal Services in accordance with this section, UP shall reimburse BNSF for all reasonable incremental costs incurred as a result and pay BNSF liquidated damages of $[x] for each affected train and $[x] per misloaded railcar. Repeated or continuing violations shall entitle BNSF to require such additional operational protections as are reasonably necessary to ensure compliance with this section, without limiting any other rights or remedies available to BNSF under this Agreement.

Section 6. COMPENSATION

6.1 In addition to other payments to be made under this Agreement, BNSF shall pay UP $[x] per GTM ("**GTM Rate**") on a monthly basis for its access to and use of the Joint Trackage. The GTM Rate includes Ordinary Maintenance and Programmed Maintenance, operating expenses, interest rental, depreciation and taxes.

6.2 For the purposes of computing the GTM Rate under this Section 6, the parties mutually agree that the distance between the designated points on the Joint Trackage is XX miles. In the event Capacity Improvements or Changes and/or Additions to the Joint Trackage result in changes to the mileage provided above, then the distances listed above will be adjusted up or down to reflect the new mileage and the new mileage will be used to calculate the GTM Rate effective as of commencement of train operations over such Capacity Improvements or Changes and/or Additions to the Joint Trackage.

6.3 The GTM Rate shall be adjusted July 1, 20XX and each July 1 thereafter, using 100 percent of the AAR's Annual Indexes of Chargeout Prices and Wage Rates (1977=100), for the Western District and specifically by the Material Prices, Wage Rates and Supplements Combined (excluding fuel) ("Index") for the year 20XX-2, which shall be used as the base year, compared to the calendar year immediately prior to the year in which the change is to be made effective. Thus, the percentage change from the year 20XX-2 to the year 20XX-1 will be used to adjust the charge July 1, 20XX.

Additionally, in calculating adjustments, (i) all published values will be rounded to a thousandth of an index point; (ii) all percent change calculations will be rounded to a tenth of a percent; and (iii) the GTM Rate will be rounded to the nearest thousandth of a cent. The Parties agree that the rounding rule used will be that any fraction less than one-half will be dropped, while any fraction equal to or greater than one-half will be rounded up to the next higher value.

In the event the AAR (or any successor organization) ceases to publish the Index, the Parties shall determine a substitute index. The substitute index shall be the index that most closely matches the Index. The substitute index shall be used for the remainder of the term of the Agreement. If the Parties cannot agree on a substitute index within ninety (90) days after the cancellation of the Index, either Party may submit the matter to be determined by binding arbitration.

Section 7. CAPACITY IMPROVEMENTS AND CHANGES IN AND/OR ADDITIONS TO THE JOINT TRACKAGE

7.1 In the event a connection track or tracks ("**BNSF Connection Tracks**") is requested or needed by BNSF to utilize the rights granted to BNSF herein, BNSF shall construct, maintain, repair, and renew, at BNSF's sole cost and expense, such BNSF Connection Tracks. BNSF shall own those portions of the connection tracks which connect the respective railroad lines of the parties at the termini of the Joint Trackage and which are located on the right-of-way or property of BNSF up to the clearance point in the right-of-way or property of BNSF. UP grants BNSF a nonexclusive, limited license over that portion of UP's right-of-way between the right-of-way line

and the clearance point for the maintenance of the BNSF Connection Tracks. UP shall construct, maintain, repair, and renew, at the sole cost and expense of BNSF, and shall own those portions of connection tracks between the headblock and clearance point which are located on the right-of-way or property of UP.

7.2 Except as provided in Section 7.1 above, expenditures for any future Changes and/or Additions to the Joint Trackage, including, but not limited to, construction of additional main trackage, crossovers, sidings, powered switches, signal facilities, centralized traffic control, grade separations, and future connections are required for the safe and efficient operation on, over or along the Joint Trackage or changes in applicable Legal Requirements shall be handled as follows:

(a) Owner shall bear the cost of all Capacity Improvements, Changes in and/or Additions to the Joint Trackage that are necessary to achieve the benefits of the consolidation of UP and NS as outlined in the application filed with the STB in Finance Docket No. 36873. The operating plan filed by UP and NS in support of that application shall be given presumptive weight in determining what Changes in and/or Additions to the Joint Trackage are necessary to achieve these benefits.

(b) Except as provided in Section 7.2(a) above, the cost of Capacity Improvements, Changes in and/or Additions to the Joint Trackage shall be shared by UP and User on the basis that the parties' respective number of GTMs operated over the Joint Trackage bear to total number of GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to UP for purposes of computing respective GTMs for purposes of this Section 7.

7.3 If this Agreement is terminated pursuant to the terms and conditions set forth herein, User will not be entitled to any refunds of amounts paid by User for Capacity Improvements, Changes in and/or Additions to the Joint Trackage.

Section 8. APPLICABLE LAW

This Agreement and any claims, disputes or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of Delaware, without regard to its conflicts of laws provisions.

Section 9. GOVERNMENTAL OR REGULATORY APPROVALS

Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder ("Government Approvals"). User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

Section 10. TERM AND TERMINATION

10.1 This Agreement shall remain in effect for a period of ninety-nine (99) years from the Execution Date of this Agreement, provided however, that this Agreement is conditioned upon and becomes effective upon the effective date contained in the necessary Government Approvals consenting to or authorizing the trackage rights granted hereunder.

10.2 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 11. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for BNSF:

AVP Contracts and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034
Email: OPRDLJointFacilities@BNSF.com

If intended for UP:

_____
_____
_____

Notice of address change may be given any time pursuant to the provisions of this Section 11.

Section 12. SURVIVAL

Termination of this Agreement shall not relieve, release or excuse either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

Section 13. ENTIRE AGREEMENT

This Agreement together with its exhibits or appendices constitutes the final agreement between the parties concerning the subject matter herein. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement.

Section 14. SEVERABILITY

If any provision in this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable. If any provision is held invalid, illegal or unenforceable, the parties agree to negotiate a revised or replacement provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Printed:_____

Title:_____

BNSF RAILWAY COMPANY

By: _____

Printed: _____

Title: _____

EXHIBIT A

1. **Chicago Line.** The NS Chicago Line extends approximately 341.1 route miles from Chicago, IL to Cleveland, OH. BNSF's trackage rights shall extend over the following segments:
    a. The line from MP KN-3.1 connecting to BNSF's Corwith Yard through MP KN-0.0 near Ashland Avenue Yard, IL (milepost equation KN-0.00/UW-1.60);
    b. The line from MP UW-4.77 near Cermak, IL through MP UW-0.0 at CP 518, IL (milepost equation UW-0.00 = CD-518.40);
    c. The line from MP CD-523.3 at Union Station (Chicago), IL through MP CD-193.9 at Berea, OH, including NS's interest in Amtrak's facilities between MP CD-520.8 and MP CD-523.3; and
    d. The line from MP CD-193.9 at Berea, OH through MP CD-181.9 at Drawbridge (Cleveland), OH.[1]
2. **Cleveland Line.** The NS Cleveland Line (NS milepost prefix "RD") extends approximately 56.2 route miles from Drawbridge (Cleveland), OH to Alliance, OH. BNSF's trackage rights shall extend over the following segments:
    a. The line from MP RD-123.2 at Drawbridge (Cleveland), OH through MP RD-67.0 at Alliance, OH (milepost equation RD-123.21 = CD-181.92).
3. **Fort Wayne Line.** The NS Fort Wayne Line (NS milepost prefix "PC") extends approximately 83.2 route miles from Alliance, OH to West Pitt, PA. BNSF's trackage rights shall extend over the following segments:

[1] BNSF shall have the right to enter or exit NS's Chicago Line from the BRC Kenton Line.

a. The line from MP PC-83.2 at Alliance, OH through MP PC-25.9 at Rochester, PA (milepost equation PC-83.22 = RD-66.96); and

b. The line from MP PC-25.9 at Rochester, PA through MP PC-0.0 at West Pitt, PA (milepost equation PC-25.85 = RD-0.00).

4. **Pittsburgh Line.** The NS Pittsburgh Line (NS milepost prefix "PT") extends approximately 248.5 route miles from West Pitt, PA to Harrisburg, PA, with an additional 19.1 miles for the double-stack cleared Bell-Perry-Wing route. BNSF's trackage rights shall extend over the following segments:

   a. The line from MP PT-353.4 at West Pitt, PA through MP PT-290.7 at Conpit, PA (milepost equations PT-353.35 = PC-0.00 and PT-339.75 = JP-0.00);

   b. The line from MP ML-0.0 at Bell, PA through MP ML-16.2 at Perry, PA (milepost equation ML-0.0 = PC-4.80);

   c. The line from MP JP-2.9 at Perry, PA through MP JP-0.0 at Wing, PA (milepost equations JP-2.90 = ML-16.20 and JP-2.89/ML-16.00); and

   d. The line from MP PT-290.7 at Conpit, PA through MP PT-104.9 at Harrisburg, PA (milepost equation PT-290.68 = LC-0.00).

5. **Harrisburg Line and the Reading Line and Lehigh Line Segments to Bethlehem.** The NS Harrisburg Line (NS milepost prefix "HP") extends approximately 51.7 route miles from Harrisburg, PA to Wyomissing Junction, PA. BNSF's trackage rights shall extend over the following segments:

   a. The line from MP HP-112.9 at Harrisburg, PA through MP HP-61.2 at Wyomissing JCT, PA (milepost equation HP-112.90 = PT-104.90);

b. The line from MP TW-9.4 at Wyomissing JCT, PA through MP TW-8.1 at Tulp, PA (milepost equation TW-9.40 = HP-61.15);

c. The line from MP AF-8.15 at Tulp, PA through MP AF-5.4 at Belt, PA (milepost equation AF-8.15 = TW-8.10);

d. The line from MP TK-5.4 at Belt, PA through MP TK-0.0 at Blandon, PA (milepost equation TK-5.40 = AF-5.40);

e. The line from MP RV-7.5 at Blandon, PA through MP RV-35.1 near Burn, PA (milepost equation RV-7.50 = TK-0.00);

f. The line from MP EN-93.0 at Burn, PA through MP EN-88.6 at Bethlehem, PA (milepost equation EN-93.00 = RV-35.11); and

g. The line from MP LE-88.6 at Bethlehem, PA through MP LE-86.8 near Florence, PA (milepost equation LE-88.58 = EN-88.58).

Figure 1: Map of BNSF Trackage Rights on NS Lines Between Chicago, IL and Bethlehem, PA



Figure 2: Chicago Interchange Pattern from BNSF to NS Chicago Line

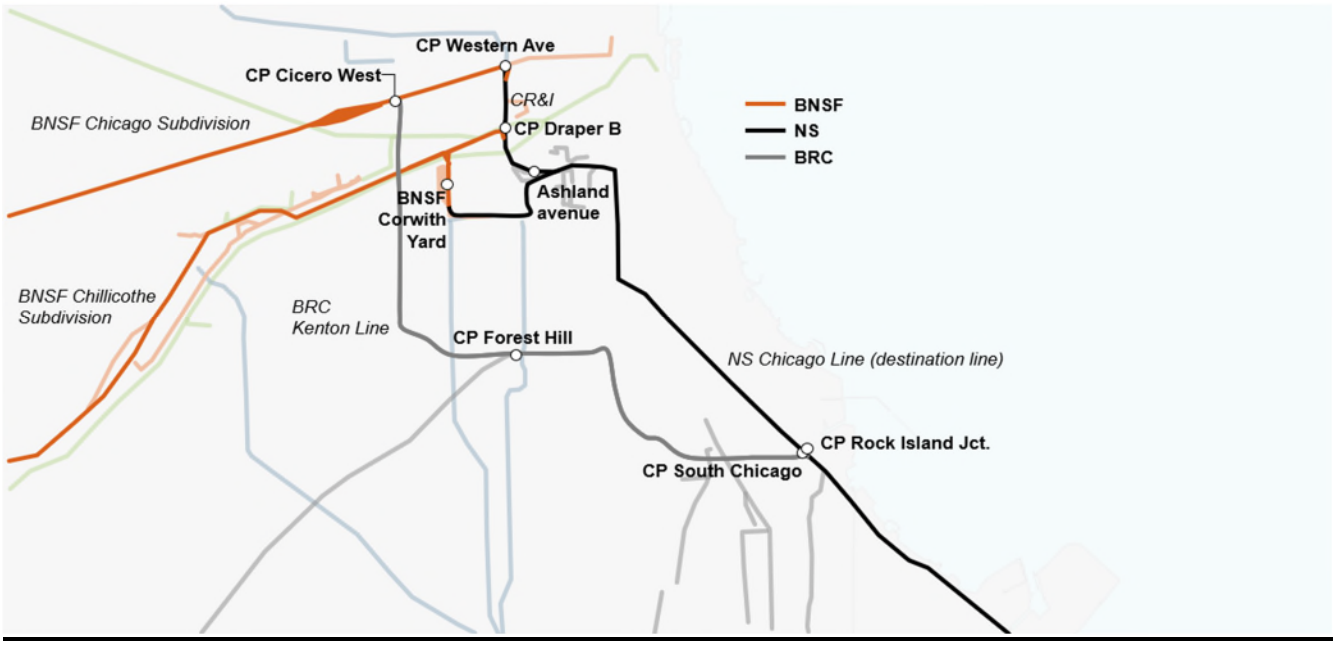


EXHIBIT B
GENERAL CONDITIONS

Section 1. DEFINITIONS

To the extent used in the Agreement and/or General Conditions, the following terms shall have the meanings indicated below:

1.1 "**AAR**" shall mean the Association of American Railroads.

1.2 "**Agreement**" shall mean that certain Trackage Rights Agreement between Owner and User dated _____, 2027, to which this Exhibit B is attached.

1.3 "**Annual**" shall mean a calendar year.

1.4 "**Capacity Improvements**" shall mean projects or improvements whose primary purpose is to increase the capacity or through-put over the Joint Trackage or a portion thereof and provide utility beyond ordinary and/or Programmed Maintenance, the cost of which is chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of the Agreement.

1.5 "**Car**" shall mean one (1) rail car except in the case of an articulated rail car where the number of cars shall be determined by the AAR Car Type Code as defined in the Universal Machine Language Equipment Register Specification Manual or such successor manual, if any. The second character in the Car Type Code field covering codes "Q" and "S" will be factors used to determine the car count for an articulated unit. For example, AAR Car Type Code S566 would be equal to five (5) cars as an articulated rail car with a Car Type Code of S566 has five wells capable of handling 40' to 48' containers in each well. Notwithstanding the foregoing, car count data for articulated units are subject to change upon further development of technology for separate units using car numbers. Each locomotive shall be counted as two (2) cars.

1.6 "**Changes in and/or Additions to**" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of the Agreement.

1.7 "**Environmental and Safety Requirements**" means and includes all Legal Requirements relating to the protection, preservation or conservation of the environment and/or public or worker health or safety including, without limitation, any Legal Requirements covering the handling, storage, treatment and disposal of Hazardous Materials.

1.8 "**Equipment**" shall mean (i) trains, locomotives, Cars (loaded or empty), Intermodal Units, and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks or right-of-way that, at the time of any occurrence, are being operated on, over or along the Joint Trackage, and/or (iii) vehicles and machinery that, at the time of any occurrence, are located on, over or along the Joint Trackage for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

1.9 "**GTM**" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.10 "**GTM Handled Proportion**" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage, Capacity Improvements or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.11 "**Hazardous Materials**" shall mean and include all toxic or hazardous substances, pollutants, waste or contaminants to which liability or standards of conduct may be imposed under any Environmental and Safety Requirements including, without limitation, (a) petroleum or petroleum based products or any derivatives or hazardous constituents thereof or any additives thereto, (b) fuels (including motor fuels, diesel, methane and other natural gas), (c) waste oils, lubricating oils and cleaning solvents, (d) ammonia, glycol and freon, (e) any "Hazardous Substances," "Hazardous Materials," "Regulated Substances" or "Toxic Substances," or similarly defined terms, as set forth in any Legal Requirements, and/or (f) any other substances at levels greater than those allowed by applicable Legal Requirements.

1.12 "**Legal Requirements**" means and includes all applicable statutes, laws, rules, regulations, ordinances, orders, codes, permits, licenses, and requirements (including consent decrees, judicial decisions and administrative orders) of all federal, state and local governments, departments, commissions, agencies and boards, including, without limitation, laws, statutes, regulations or rules respecting the operation, condition, inspection or safety of trains, locomotives, cars and equipment and all applicable Environmental and Safety Requirements, all as amended or supplemented.

1.13 "**Ordinary Maintenance**" shall mean usual and routine work or maintenance performed in the daily upkeep of the Joint Trackage, consistent with industry custom and practice, the cost of which is not chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of this Agreement. All compensation for Ordinary Maintenance is included in the GTM Rate.

1.14 "**Owner**" and "**UP**" shall each have the meaning given to such term in the Agreement and shall each include NS and its railroad subsidiaries and affiliates.

1.15 "**Programmed Maintenance**" shall mean work or maintenance that is normally pre-planned, non-periodic and generally involves substantial replacements or renewals of existing assets, the cost of which is chargeable to Property Accounts under STB accounting standards in effect as of the effective date of this Agreement. Further, the replacement or renewal should have the same utility as the asset replaced/renewed, without necessarily reproducing exactly any particular characteristic of the original asset or property. All compensation for Programmed Maintenance is included in the GTM Rate.

1.16 "**Property Accounts**" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the STB, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.17 "**STB**" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.18 "**User**" and **"BNSF"** shall have the meaning given to such term in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by Legal Requirements, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the effective date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), (iii) keep and maintain any Capacity Improvements and Changes in and/or Additions to the Joint Trackage, and (iv) be responsible for construction of any Capacity Improvements and Changes in and/or Additions to the Joint Trackage, the cost of which shall be subject to the cost sharing provisions of Section 7 of the Agreement, as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the effective date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner may, in Owner's sole discretion, make such Changes in and/or Additions to the Joint Trackage if funded in advance solely by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall have the exclusive right to perform all construction, operation, maintenance, repair and renewal of the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to Owner's use of the Joint Trackage. The management, operation (including

dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner. Additionally, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute (including, without limitation, Owner's General Code of Operating Rules). Notwithstanding Owner's direction and control of the Joint Trackage, Owner shall afford User treatment equal to that afforded Owner's trains, which shall necessarily include such treatment necessary to achieve service standards of a comparable service level for expedited services. At a minimum, User's trains shall be dispatched and granted facility access and Intermodal Services by Owner as necessary for User to be able to meet the same schedules and service levels of the Expedited, Standard, and International intermodal services offered by BNSF and NS as of the Execution Date. Such equal treatment shall apply to the management, operation, dispatching, and use of the Joint Trackage, including train priority, sequencing, meets and passes, recrews, holding and staging of trains, access to NS Sole-Served Terminals and New Terminals, and the imposition or application of operating restrictions, including any closure or limitation of customer access to and from the facility and any regulatory embargo or other limitations imposed by UP. Owner shall maintain records sufficient to demonstrate its compliance with the foregoing equal-treatment obligation, including dispatching records, train movement and delay data, and records reflecting train priority and sequencing. Upon reasonable request, Owner shall provide User access to such records as reasonably necessary to audit Owner's compliance with this Section.

2.5 If Owner fails to comply with its equal-treatment obligations under Section 2.4, User shall be entitled to recover liquidated damages of 75% of the then applicable GTM Rate for each train adversely affected by such failure, in addition to reimbursement of any incremental costs reasonably incurred by User as a result thereof. If Owner materially or repeatedly fails to comply with its equal-treatment obligations, User may, upon written notice to Owner, elect to assume dispatching responsibility for the Joint Trackage, at Owner's sole cost and expense, for such period as is reasonably necessary to ensure compliance with Section 2.4. Owner shall provide User with all access, systems, information, personnel cooperation, and other assistance reasonably necessary to effectuate such transfer of dispatching responsibility. The remedies provided in this Section are cumulative and shall not limit User's right to seek specific performance, injunctive relief, damages, or any other remedy available under this Agreement or applicable law.

2.6 User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities. Owner shall provide User with prior notice of the adoption or implementation of new communication or signaling systems on the Joint Trackage which have not generally adopted in the railroad industry as of the date of such adoption or implementation.

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks included in the Joint Trackage and delineated on Exhibit A to the Agreement, provided that User is at all times provided a continuous route of equal utility for the operation of its Equipment between the termini of the

Joint Trackage and to each of the four NS Sole-Served Terminals and any New Terminals. In the event of congestion, service disruption, or any change in Owner's operational practices, including the institution or modification of directional operations over any part of the Joint Trackage, Owner shall provide User with such substitute routing, detour, or other rerouting authority as may be reasonably necessary to avoid impairing User's ability to access any such intermodal terminal. In the case of directional operations, User shall retain the right to operate against the flow of traffic where reasonably necessary to access any such intermodal terminal, including, without limitation, where Owner operates against the flow of traffic with trains of the same or similar type. When substitute tracks, detour routes, or other rerouting are used as provided herein, the terms and conditions of this Agreement shall apply to User's access, and all charges for such movement shall be calculated based on the route User would have used but for the circumstances requiring the substitution, detour, or rerouting.

2.9 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train supplies and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party furnishes labor, fuel or train and other supplies to another party, then the receiving party shall promptly, upon receipt of billing therefor, reimburse the furnishing party for its reasonable costs thereof, including customary additives.

2.10 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing contained herein is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.11 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees. Before any employees of User are assigned or permitted to operate Equipment over the Joint Trackage, and from time to time thereafter as and when reasonably requested by Owner, such employees shall be required to pass the applicable rules examinations required for employees of Owner. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If Owner conducts examinations of User's employees, then User shall pay Owner a reasonable fee for each employee being examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement.

Notwithstanding any examination set forth herein, User shall be responsible for ensuring that its employees are certified and qualified in compliance with Legal Requirements and shall ensure that all its employees engaged in or connected with the operations of User on, over or along the Joint Trackage shall, at all times, be in compliance with Legal Requirements. Unless provided otherwise in the Agreement, pending qualification of train and engine crews of User or as requested by User thereafter, Owner shall furnish a pilot or pilots, at the sole expense of User, as deemed necessary by Owner to assist in operating trains of User on, over or along the Joint Trackage.

Upon request of User and at User's sole cost and expense, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall

further qualify employees of User engaged in or connected with User's operations on, over or along the Joint Trackage.

2.12 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on, over or along the Joint Trackage or Legal Requirements, such employee shall, upon written request of Owner, be prohibited by User from working on, over or along the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees participating in such investigation. Notice of investigations to User's employees pursuant to this Section shall be given by User's officers, and such investigations shall be conducted in accordance with the terms and conditions of schedule or labor agreements between User and its employees. If, in the judgment of Owner, the result of any investigation warrants that an employee of User be withdrawn from service on, over or along the Joint Trackage, then User shall withdraw such employee from such service upon Owner's written request for withdrawal. User releases, indemnifies, defends and holds Owner harmless from and against any and all claims and expenses arising from or related to any withdrawal pursuant to this Section.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on, over or along the Joint Trackage.

2.13 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, then such bad ordered Equipment shall be promptly repaired and removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User while performing repairs, moving Equipment or traveling to or from Owner's terminal pursuant to the preceding sentence. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than returning to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the AAR (**"Interchange Rules"**), in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. If any car owner refuses or otherwise fails to make payments for car owner responsibility items, then User shall be responsible for paying Owner for such repairs. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.14 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may, with BNSF's permission, re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission was granted by Owner. Any rerailing of Equipment by User shall be subject to, and User agrees to follow, directions of Owner. Owner reserves the right to determine whether to re-rail or clear Equipment of User when, in the sole judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked, or disabled Equipment and any Loss or Damage incidental thereto shall be borne by the parties in accordance with Section 5 of these General Conditions. Work and services performed under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.15 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.13), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.13), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option, without prejudice to any other rights or remedies which may be applicable, to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Work and services provided under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.16 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.17 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 User will furnish to Owner on or before the fifteenth (15th) day of each month a statement giving the number of GTMs operated by User over the Joint Trackage for the preceding

month in a format mutually agreed to by the parties. Such data shall include sufficient detail for the Owner to verify the GTMs supplied.

3.2 Invoices and billings under the Agreement shall be in a mutually agreed upon format. Each invoice shall contain sufficient detail to permit computation of payments due thereunder. Invoices shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay Owner, at such location designated by Owner from time to time, all compensation and charges that User is required to pay pursuant to the terms and conditions of the Agreement. User shall pay invoices in United States money within thirty (30) days after the invoice date. Invoices shall include a statement of the amount due and services rendered during the applicable billing time period. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date, then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.3 Errors or disputed items in any invoice shall not be deemed a valid excuse for delaying payment of undisputed portions of such invoice. User shall notify Owner in writing of any errors or disputed items within fifteen (15) days after such receipt of Owner invoices. User and Owner shall work together in good faith to resolve any billing errors or disputes within thirty (30) days of Owner receiving User's written notice setting forth such errors and/or disputes. If the parties are unable to resolve the billing errors or disputes in accordance with this provision, the parties may proceed to arbitration. Notwithstanding the foregoing, no dispute or exception to any invoice shall be honored, recognized, or considered after the expiration of three (3) years from the last day of the calendar month during which the invoice is rendered and no invoice shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.4 Books, accounts, and records of each party that are reasonably related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties.

3.5 If any amount becomes payable by Owner to User under the Agreement, the provisions of Section 3 of the General Conditions shall apply to Owner as the paying party.

3.6 If User fails to make any undisputed payment when due and such failure continues for a period of ten (10) days after notice in writing of such failure is given by Owner to User, or if User fails to cure a User default within the time period set forth below or in the Agreement, then

Owner may, as its election, exclude User from using or operating on, over or along the Joint Trackage until such failure is cured by User. The parties also agree that any failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed a default hereunder, pending the final decision in such arbitration or litigation. In the event User is excluded from use of the Joint Trackage, User shall surrender to Owner all said Joint Trackage and shall have no claim or demand against Owner for such exclusion.

Owner may waive any default of User hereunder, but no action of Owner in waiving any default shall affect or impair any other rights of Owner resulting therefrom.

Section 4. COMPLIANCE

4.1 With respect to operation of Equipment on, over or along the Joint Trackage, User shall comply with all Legal Requirements. If any failure by User to comply with Legal Requirements shall result in a fine, penalty, cost or charge being imposed or assessed on or against BNSF, BNSF shall give prompt notice of such fine, penalty, cost or charge to User and User shall promptly reimburse, indemnify, defend and hold BNSF harmless from and against any such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith.

4.2 User also agrees to comply fully with all Environmental and Safety Requirements. User shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner that User is in compliance with this Section 4.

User shall be responsible for filing any reports required under Legal Requirements for any derailment, accident, incident, vandalism, bad ordered Equipment, wreck (hereinafter collectively called, for purposes of Section 4 and Section 5, "**Derailment**") involving Hazardous Materials on or along any segment of the Joint trackage in connection with User's Equipment and/or Equipment operated by or on behalf of User. User shall advise Owner and the owner/shipper of the Hazardous Materials involved in the Derailment immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all Legal Requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of the released Hazardous Materials, if any, and the cleanup effort. Any costs related to the cleanup and removal of Hazardous Materials shall be governed by Section 5 of these General Conditions.

If a Hazardous Materials release is caused by a Derailment involving Equipment of User, or by Equipment operated by User, and such release results in the contamination of real property or water on, along or adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), then Owner shall assume initial responsibility for emergency cleanup of such Hazardous Materials so as to mitigate further damage. After Owner's initial clean up efforts, User shall be responsible for performing the appropriate remedial measures in compliance with Legal Requirements. Any costs associated with cleaning up real property or water on, along

or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be governed by Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment involving Equipment of User, or by Equipment operated by or on behalf of User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials and any costs associated with such transfer shall be governed by Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Section 4 of these General Conditions.

Section 5. LIABILITY

5.1 **General**. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 **Definitions and Covenants**. The parties agree that for the purposes of this Section 5:

(a) The term "**Employee(s)**" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified.

(b) "**Sole Employees**" and "**Sole Property**" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive

benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties.

(c) "**Joint Employee**" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties.

(d) "**Joint Property**" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service.

(e) "**Loss and/or Damage**" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, over or along the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall also include all costs and expenses incidental to any claims, suits, demands and judgments (including, without limitation, attorneys' fees, court costs and other costs of investigation and litigation), the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or Derailment and any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or Derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties.

(f) Operating employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit.

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4 shall be deemed the Sole Employees of the employing party and the Sole Property of the using party.

(h) Except as otherwise provided in Section 5.2(i) below, any railroad allowed to use of any portion of the Joint Trackage, now or in the future, that is not a party to this Agreement shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage.

(i) For the purpose of this Section 5, Equipment of any foreign railroad company being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 **Reimbursement and Defense**. The parties agree that:

(a) Each party hereto shall promptly pay for any Loss and/or Damage arising out of or connected with the liability assumed by such party under the provisions of this Section 5, and shall indemnify, defend and hold the other party harmless from and against such Loss and/or Damage. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand the other party for any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement.

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by a third party or parties to the contrary notwithstanding, and will forever indemnify, defend and hold harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto.

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims, and the sole right to defend or cause to be defended all suits, for Loss and/or Damage for which such party is solely liable under the provisions of this Section 5.

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence.

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("**Co-Liable**"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties who is Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so Co-Liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars ($100,000) shall be made by or for any party who is Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars ($100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with this Section 5. No party shall unreasonably withhold its consent to a settlement proposed by the other party pursuant to this Section 5; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In the event a claim or suit is commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: (i) if the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; (ii) if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and (iii) if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident.

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all

matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 **Wrecks and Derailment**. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne in accordance with Section 5.5. All employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 **Allocation of Liability for Loss and/or Damage**.

(a) **Each party shall bear all costs of, and shall indemnify, defend and hold the other party harmless from and against, any Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees WITHOUT REGARD TO WHICH PARTY WAS AT FAULT.**

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay for, and shall indemnify, defend and hold the other party harmless form and against, any such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, each party shall bear and pay for, and shall indemnify, defend and hold the other party harmless from and against, any such Loss and/or Damage in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party **WITHOUT REGARD TO LAWS LIMITING RECOVERY IF ONE PARTY IS MORE THAN FIFTY PERCENT (50%) AT FAULT.**

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, User shall not bear or incur any liability for Loss and/or Damage resulting from environmental contamination of or Hazardous Materials on or released from the

Joint Trackage, except contamination or a release of Hazardous Materials from User's Equipment or Equipment operated on User's behalf or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions herein.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees.

5.6 **EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS AND/OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY LEGAL REQUIREMENTS BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, THE CLEAN WATER ACT, THE OIL POLLUTION ACT, AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS, ALL AS AMENDED FROM TIME TO TIME; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.**

5.7 Notwithstanding any provision to the contrary in this Agreement, liability and indemnity for Loss and/or Damage to Joint Employees shall be governed by the terms of Section 1 of that certain letter agreement between Owner and User, dated January 24, 2003 (the "**Letter Agreement**") for so long as the Letter Agreement remains in effect. Accordingly, for purposes of the application of Section 1 of the Letter Agreement, this Agreement shall be deemed to be an agreement identified in Exhibit A of the Letter Agreement.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within thirty (30) days of written notice of a desire to meet; if it cannot be resolved within thirty (30) days of the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the Parties shall be governed by the rules and procedures set forth in this Section 6. The Parties intend that any dispute arising out of

this Agreement that cannot be resolved through negotiation as provided above must be resolved through binding arbitration as set forth in this Section 6, provided however, that nothing in this Section shall be construed as preventing or prohibiting either Party from seeking review, enforcement, or adjudication of this Agreement or any issue related thereto, or of any terms, conditions, or other rights provided in the UP/NS Merger proceeding in an action or other proceeding before the STB.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the parties, upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed in the same manner hereto before stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and

counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. For purposes of this Section 6, the term "**Prime Rate**" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. ABANDONMENT

7.1 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and/or maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.2 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice of such abandonment to User. Owner shall, concurrent with any notice of abandonment, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments. If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently

make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.3 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from fire, flood, earthquake or other acts of God, or acts of vandalism, riots, insurrection, terrorist attack or events of a similar nature, for any amount in excess of One Hundred Thousand Dollars ($100,000) for each occurrence shall be billed to User in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of such occurrence, or if occurring prior to the first twelve (12) months of permanent User operations for the twelve (12) month period immediately after the month the event occurred.

Section 9. ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. User shall not assign, transfer, convey or sublease any interest in this Agreement (by contract or by operation of law) or undertake any transaction or series of transactions which would result in a transfer of this Agreement or any interest therein, in whole or in part, without Owner's prior written consent. Notwithstanding anything to the contrary herein, Owner may assign this Agreement without obtaining User's consent. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 10. DEFAULT

10.1 Notwithstanding the provisions of Section 3 of these General Conditions, any party hereto claiming a default of any of the provisions of the Agreement (including these General Conditions) shall furnish the other party with written notice of such default, including specific information regarding the default and the particular Section or Sections of the Agreement which have allegedly been breached, along with a demand or request specifying the desired curative action.

10.2 If the default continues and is not cured for an additional period of thirty (30) days after receipt of such written notice and demand, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, then either party shall have the right to terminate the Agreement upon ___ ( ) days written notice to the other party for material default and/or pursue any other rights or remedies under this Agreement or available at law or in equity.

10.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 11. OTHER CONSIDERATIONS

11.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

11.2 All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by authorized representatives to the parties hereto.

11.3 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

11.4 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

11.5 The terms of this Agreement have been arrived after considerable arms length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 3

COURT ORDER

COURT ORDER

Not applicable

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 4

ENVIRONMENTAL INFORMATION

ENVIRONMENTAL INFORMATION

Pursuant to the procedural schedule adopted in Docket No. FD 36873, BNSF Railway Company submitted a letter to Danielle Gosselin, Director of the Surface Transportation Board's Office of Environmental Analysis, on November 13, 2026, noting that the proposed trackage rights are categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 8

CHANGE IN CONTROL

CHANGE IN CONTROL

BNSF Railway Company ("BNSF") filed its most recent Annual Report Form R-1 on September 22, 2026 for the year ending on December 31, 2025. Since the September 22, 2026 filing, there has been no change in ownership or control of BNSF. The tables below identify the principal officers of BNSF and its majority-owned rail carrier subsidiaries.

BNSF Railway Company

Ownership	100%	
Principal Officers	Name	Title
	Katie Farmer	President & CEO
	Craig Morehouse	Chief Operations Officer & EVP
	Paul Bischler	Chief Financial Officer & EVP
	Tom Williams	Chief Marketing Officer & EVP
	Jill Mulligan	Chief Legal Officer & EVP
	Judy Carter	Chief Human Resource Officer & SVP

Los Angeles Junction Railway Company

Ownership	100%	
Principal Officers	Name	Title
	Grant Haag	Chairman, President & CEO
	Olivia Power	Vice President
	Scot Bates	Assistant Vice President
	Mark Bracker	Treasurer
	Dustin Almaguer	Secretary
	Jami Wisel	Assistant Secretary

Santa Fe Pacific Railroad Company

Ownership	100%	
Principal Officers	Name	Title
	Candace Palmarozzi	President
	Tyler White	Vice President & General Counsel
	Scot Bates	Assistant Vice President
	Mark Bracker	Treasurer
	Dustin Almaguer	Secretary
	Jami Wisel	Assistant Secretary

Star Lake Railroad Company

Ownership	100%	
Principal Officers	Name	Title
	Mike Engstrom	President
	Scot Bates	Assistant Vice President
	Mark Bracker	Treasurer
	Dustin Almaguer	Secretary
	Jami Wisel	Assistant Secretary
	Gary Kline	General Director-Tax

The Wichita Union Terminal Railway Company

Ownership	66.67%	
Principal Officers	Name	Title
	[To be determined]	Director
	Mike Frisinger	Director
	Jon Helm	Director
	Olivia Power	Director
	Melissa Grosz	Director (UP)
	Coleman Bell	Director (UP)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 10

ISSUES

ISSUES

Not applicable.

BEFORE THE
SURFACE TRANSPORTATION BOARD

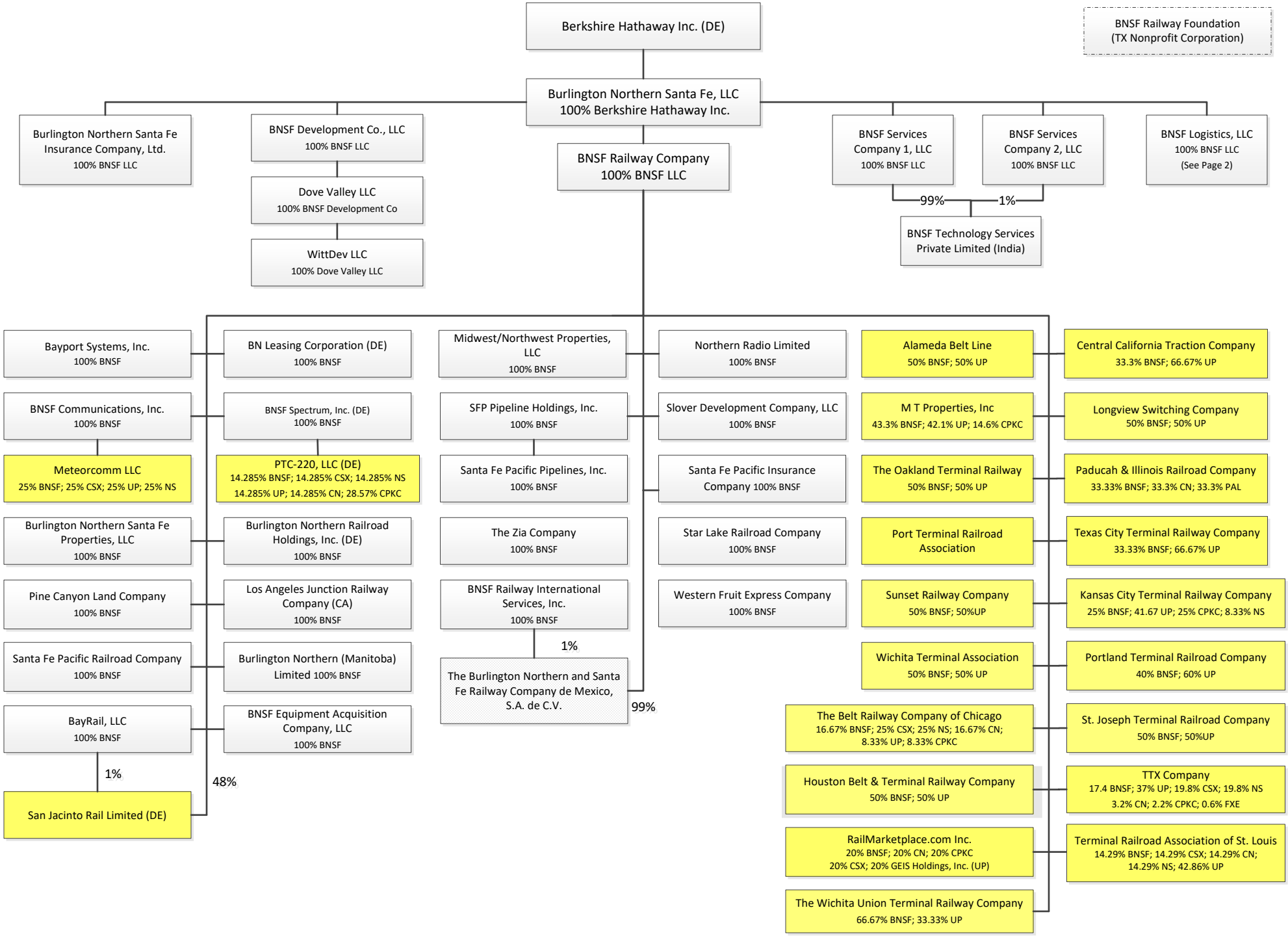
FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 11

CORPORATE CHARTS

REDACTED - TO BE PLACED ON PUBLIC FILE



BNSF-1-104

TABLE 11.1

OFFICER/DIRECTOR OVERLAPS BETWEEN BNSF CORPORATE FAMILY AND OTHER RAILROAD CORPORATE FAMILIES

Alameda Belt Line
(50% BNSF/50% UP)

Name	Title	Corporate Family
Olivia Power	Director, President	BNSF Representative
Richard Dennison	Director, Vice President	BNSF Representative
Carl Garrison	Director, Vice President	UP Representative
David Hughes	Director, Vice President	UP Representative
Ronald Wendel	Chief Financial Officer & Treasurer	Alameda Belt Line Representative
Dustin Almaguer	Secretary	BNSF Representative

Central California Traction Company
(33.33% BNSF/66.67% UP)

Name	Title	Corporate Family
David Hughes	Director, President	UP Representative
Richard Dennison	Director, Vice President	BNSF Representative
Dusin Almaguer	Secretary	BNSF Representative
John Manicucci, Jr.	Assistant Secretary	UP Representative
Michael Schmidt	Assistant Secretary	UP Representative
Blake Young	Treasurer and Controller	UP Representative
Justin Barager	Director	UP Representative
Tony DiMartino	Director	UP Representative
Brandon Filer	Director	UP Representative
Olivia Power	Director	BNSF Representative

Houston Belt & Terminal Railway Company
(50% BNSF/50% UP)

Name	Title	Corporate Family
David Hughes	Director, President	UP Representative
Tyson Moeller	General Manager	HB&T Representative
Blake Young	Treasurer	UP Representative
Jason Hayley	Secretary	HB&T Representative
Derek Hinds	Director	UP Representative
Olivia Power	Director	BNSF Representative
Grant Haag	Director	BNSF Representative

Kansas City Terminal Railway Company
(25% BNSF/41.67% UP/25% CPKC/8.33%NS)

Name	Title	Corporate Family
Chris Knox	Chair of the Board, President	NS Representative
Melissa Grosz	Vice Chair of the Board, Secretary	UP Representative
Brad Peek	General Manager	KCTRC Representative
Paula Fields	Director of Finance	KCTRC Representative
Grant Haag	Director	BNSF Representative
Drew Mayer	Director	BNSF Representative
Olivia Power	Director	BNSF Representative
Brandon Billingsley	Director	CPKC Representative
Matthew Long	Director	CPKC Representative
Steve Simmons	Director	CPKC Representative
Coleman Bell	Director	UP Representative
Tony DiMartino	Director	UP Representative
David Hughes	Director	UP Representative
Marvin Kohles	Director	UP Representative

Longview Switching Company
(50% BNSF/50% UP)

Name	Title	Corporate Family
Olivia Power	Director, President	BNSF Representative
John Turner	Director, Vice President	BNSF Representative
Blake Young	Treasurer	UP Representative
George Sanders	General Manager/Secretary	UP Representative
Tania Bryan	Secretary	
Nathan Dudley	Manager of Train Operations	BNSF Representative
David Hughes	Director	UP Representative
Sara Johnson	Director	BNSF Representative

Meteorcomm LLC
(25% BNSF/25% CSX/25% UP/25% NS)

Name	Title	Corporate Family
Rakesh Mulhotra	President	Meteorcomm
Clark Palmer	Chief Technology Officer	Meteorcomm
Pat Heinz	Treasurer/Controller	Meteorcomm
Gwenna Wootress	Secretary	Meteorcomm
Silvina Petersilge	Management Committee Member	BNSF Representative
Mark Bracker	Management Committee Member	BNSF Representative
Carl Walker	Management Committee Member	CSX Representative
Kevin Stokes	Management Committee Member	CSX Representative
Jared Hopewell	Management Committee Member	NS Representative
Daniel Gold	Management Committee Member	NS Representative
Alison Hearn	Management Committee Member	UP Representative
David Hillyard	Management Committee Member	UP Representative

M T Properties, Inc.
(43.3% BNSF/42.1% UP/14.6% CPKC)

Name	Title	Corporate Family
Jon Helm	Director, President	BNSF Representative
Kelly Scanian	Executive Vice President & Secretary	MT Properties Representative
Blake Young	Treasurer and Chief Financial Officer	UP Representative
Melissa Grosz	Director	UP Representative
Jacob Rinnels	Director	CPKC Representative
Daniel Peltier	Engineering Representative	BNSF Representative

Paducah & Illinois Railroad Company
(33.3% BNSF/33.3% CN/33.3% Paducah and Louisville Railway)

Name	Title	Corporate Family
Olivia Power	Director, President	BNSF Representative
Elie Dakhoul	Director, Vice President	CN Representative
Thomas Greene	Director, Vice President	PAL Representative
Mark Bracker	Treasurer	BNSF Representative
Julia Frank	Assistant Treasurer	BNSF Representative
Dustin Almaguer	Secretary	BNSF Representative
Michael Orlikowski	Director	BNSF Representative
Nicole James	Director	CN Representative
Floyd Bishop	Director	PAL Representative

Portland Terminal Railroad Company
(40% BNSF/60% UP)

Name	Title	Corporate Family
David Hughes	Director, President & Chief Executive Officer	UP Representative
Sara Johnson	Director, Vice President	BNSF Representative
Blake Young	Treasurer	UP Representative
Brad Hodo	Secretary & General Manager	UP Representative
Kristin Willis	Manager of Train Operations	UP Representative
Tania Bryan	Manager of Finance	BNSF Representative
Olivia Power	Director	BNSF Representative
John Turner	Director	UP Representative

PTC-220, LLC
(14.285% BNSF/14.285% CSX/14.285% UP/14.285% NS/14.285% CN/ 28.57% CPKC)

Name	Title	Corporate Family
Andrew C. Edens	President	NS Representative
Pierre Leclerc	Corporate Secretary & Spectrum Coordinator	PTC-220 Representative
Kelechi Nwogu	Chairman, Spectrum Management Committee	UP Coordinator
Norbert Chan	Chairman, Technical Advisory Committee	CPKC Representative
Silvana Petersilge	Not Applicable	BNSF Representative
Mark Bracker	Not Applicable	BNSF Representative

Railmarketplace.com Inc.
(20% BNSF/20% CN/20% CPKC/20% CSX/20% GEIS Holdings, Inc. (UP))

Name	Title	Corporate Family
Troy Jones	Chairperson, President, Treasurer	UP Representative
Casey Gourley	Vice President, Secretary	BNSF Representative
Todd Podell	Director	BNSF Representative
JJ Dratva	Director	CN Representative
Rhea Adama	Director	CPKC Representative
Spence Glotzbach	Director	CSX Representative
Mina De Oliveira	Director	NS Representative
Jackie Corletto	Director	NS Representative
Sandy Edmundson	Director	Railmarketplace Representative

St. Joseph Terminal Railroad Company
(50% BNSF/50% The St. Joseph and Grand Island Railway (UP))

No Recent Board Meeting—Members need to be Appointed and Voted In

Name	Title	Corporate Family
Scot Bates	President, Director	BNSF Representative
Justin Barager	Vice President, Director	UP Representative
[To be determined]	Superintendent	[To be determined]
Mark Bracker	Treasurer	BNSF Representative
David Hughes	Assistant Treasurer, Director	UP Representative
Dustin Almaguer	Secretary	BNSF Representative
Todd Rynaski	Auditor	
Olivia Power	Director	BNSF Representative

Sunset Railway Company
(50% BNSF/50% UP)

Name	Title	Corporate Family
David Hughes	Director, President	UP Representative
Justin Barager	Director, Vice President	UP Representative
Richard P Dennison	Director, Vice President	BNSF Representative
Olivia Power	Director, Vice President	BNSF Representative
Ashley Marshall	Treasurer	UP Representative
Michael Schmidt	Secretary	UP Representative
Dustin Almaguer	Assistant Secretary	BNSF Representative

Terminal Railroad Association of St. Louis
(14.29% BNSF/14.29% CSX/14.29% CN/14.29% NS/42.86% UP)

Name	Title	Corporate Family
Brent Wood	President	TRRA Representative
Charles Cioffi	Treasurer	TRRA Representative
Kelly Gibbons	Secretary	TRRA Representative
Sara Johnson	Director	BNSF Representative
Jeffrey Exline	Director	CSX Representative
Elie Dakhoul	Director	IL Central Representative
Ed Boyle	Director	NS Representative
Melissa Grosz	Director	UP Representative
Mike Santa Maria	Director	UP Representative
Rod Doerr	Director	UP Representative

Texas City Terminal Railway Company
(33.33% BNSF/66.67% UP)

Name	Title	Corporate Family
Tyson Moeller	President and Executive Director	TCT Representative
Jason Hayley	Vice President and Secretary	TCT Representative
Blake Young	Treasurer	UP Representative
Grant Haag	Director	BNSF Representative
Olivia Power	Director	BNSF Representative
David Hughes	Director	UP Representative
Derek Hinds	Director	UP Representative

The Belt Railway Company of Chicago
(16.67% BNSF/25% CSX/25% NS/16.67% CN/8.33% UP/8.33% CPKC)

Name	Title	Corporate Family
Jerry Peck	President	BRC Representative
Edward DeVries	General Counsel, Secretary	BRC Representative
Archie Listenbee	Chief Financial Officer	BRC Representative
Farah Lawler	Director	BNSF Representative
Michael Orlikowski	Director	BNSF Representative
Christopher Maffett	Director	CSX Representative
James Schwichtenberg	Director	CSX Representative
Rodney Brown	Director	CSX Representative
Nichole James	Director	CN Representative
Cassandra Mullee	Director	CN Representative
Randall Hunt	Director	NS Representative
Jaspreet Pannu	Director	NS Representative
Yannik Thomas	Director	NS Representative
Nicholas Walker	Director	CP Representative
David Hughes	Director	UP Representative

The Oakland Terminal Railway
(50% BNSF/50% UP)

Name	Title	Corporate Family
David Hughes	Director, President	UP Representative
Oliva Power	Director, Vice President	BNSF Representative
Justin Barager	Director, Vice President	UP Representative
Richard Dennison	Director, Vice President	BNSF Representative
Mark Bracker	Treasurer	BNSF Representative
Dustin Almaguer	Secretary	BNSF Representative

The Wichita Union Terminal Railway Company
(66.67% BNSF/33.33% UP)

No Board Meeting since 2022—No New Members have been Voted In

Name	Title	Corporate Family
Mike Frisinger	Director, President	BNSF Representative
Melissa Grosz	Director, Vice President	UP Representative
[To be determined]	Secretary & Treasurer	[To be determined]
[To be determined]	Director	BNSF Representative
Jon Helm	Director	BNSF Representative
Eric Hamilton	Director	BNSF Representative
Olivia Power	Director	BNSF Representative
Coleman Bell	Director	UP Representative

TTX Company
(17.4% BNSF/37% UP/19.8% CSX/19.8% NS/3.2% CN/2.2% CPKC/0.6% FXE)

Name	Title	Corporate Family
Marty Thomas	President and Chief Executive Office	TTX Representative
Shannon Bagato	Vice President Law, General Counsel & Corporate Secretary	TTX Representative
Scott Howland	Vice President and Chief Human Resource Officer	TTX Representative
Jonathan Perez	Vice President and Chief Financial Officer	TTX Representative
William Sheehan	Vice President of Fleet Management	TTX Representative
Chad Thompson	Vice President of Equipment	TTX Representative
Tom G. Williams	Director	BNSF Representative
Patrick Whitehead	Director	CN Representative
Michael Foran	Director	CPKC Representative
Sean Pelkey	Director	CSX Representative
Jorge Manual Marquez Abreu	Director	FXE Representative
Claude Elkins	Director	NS Representative
Jennifer Hamann	Director	UP Representative

Wichita Terminal Association
(50% BNSF/50% UP)

Name	Title	Corporate Family
Adam Burks	Superintendent	UP Representative
Steven Persichette	Secretary	UP Representative
Drew Mayer	Director	BNSF Representative
Eric Hamilton	Director	BNSF Representative
Melissa Grosz	Director	UP Representative
Coleman Bell	Director	UP Representative

Additional Notes:

- Port Terminal Railroad Association – BNSF does not own Port Terminal Railroad Association. BNSF is a member of the board, along with Port of Houston, UP, KCS, and Houston Belt and Terminal Railway Company.

TABLE 11.2

CARRIER STATUS LIST

Company	Carrier
Alameda Belt Line	Yes
Bayport Systems, Inc.	No
BayRail, LLC	No
Berkshire Hathaway Inc.	No
BN Leasing Corporation	No
BNSF Communications, Inc.	No
BNSF Equipment Acquisition Company, LLC	No
BNSF Railway Company	Yes
BNSF Railway International Services, Inc.	No
BNSF Spectrum, Inc.	No
Burlington Northern (Manitoba) Limited	No
Burlington Northern Railroad Holdings, Inc.	No
Burlington Northern Santa Fe, LLC	No
Burlington Northern Santa Fe Properties, LLC	No
Central California Traction Company	Yes
Houston Belt and Terminal Railway Company	Yes
Kansas City Terminal Railway Company	Yes
Longview Switching Company	Yes
Los Angeles Junction Railway Company	Yes
M T Properties, Inc.	Yes
MeteorComm LLC	No
Midwest/Northwest Properties, LLC	No
Northern Radio Limited	No
Paducah & Illinois Railroad Company	Yes
Pine Canyon Land Company	No
Port Terminal Railroad Association	Yes
Portland Terminal Railroad Company	Yes
PTC-220, LLC	No
Railmarketplace.com, Inc	No
San Jacinto Rail Limited	Yes
Santa Fe Pacific Insurance Company	No
Santa Fe Pacific Pipelines, Inc.	No
Santa Fe Pacific Railroad Company	Yes
SFP Pipeline Holdings, Inc.	No
Slover Development Company, LLC	No
St. Joseph Terminal Railroad Company	Yes
Star Lake Railroad Company	Yes
Sunset Railway Company	Yes

Company	Carrier
Terminal Railroad Association of St. Louis	Yes
Texas City Terminal Railway Company	Yes
The Belt Railway Company of Chicago	Yes
The Burlington Northern and Santa Fe Railway Company de Mexico, S.A. de C.V.	No
The Oakland Terminal Railway	Yes
The Wichita Union Terminal Railway Company	Yes
The Zia Company	No
TTX Company	No
Western Fruit Express Company	No
Wichita Terminal Association	Yes

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 12

MARKET ANALYSES

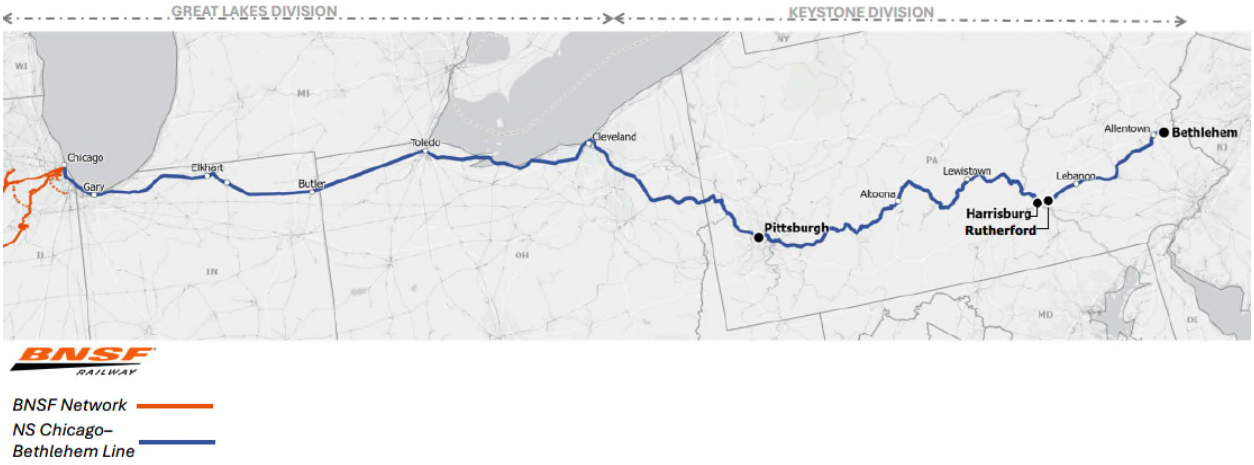
Market Analyses Overview

Pursuant to the Board's[1] market analyses requirements under 49 C.F.R. § 1180.7, BNSF is submitting this Exhibit 12 in support of its Responsive Application.

In the Responsive Application, BNSF is seeking trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. The lines are shown in Figure 1 below and are described in detail in Appendix 3 to the Responsive Application. These trackage rights would be "overhead" with exceptions that would allow BNSF to access the four existing intermodal facilities described below, along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

[1] Unless otherwise defined in this Exhibit, the acronyms and defined terms used in this Exhibit are the same as those used in BNSF's Responsive Application.

Figure 1: Map of the Requested Trackage Rights on NS Lines Between Chicago, IL and Bethlehem, PA



In connection with its trackage rights request, BNSF has two related requests. First, BNSF is requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal facilities,[2] as those facilities may expand, change, or be modified in the future. BNSF also intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail. Second, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject NS lines between Chicago, IL and Bethlehem, PA, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs. The trackage rights request, together

[2] BNSF is willing to discuss consolidation of Harrisburg and Rutherford traffic at Rutherford to streamline operational efficiency and impacts. (Ex. 12-A, V.S. Gabriel 6 n.6.)

with the related requests, are collectively referred to herein as the "Pennsylvania Intermodal Condition."

The Board's rules at 49 C.F.R. § 1180.7(a) provide that, for major and significant transactions, "applicants shall submit impact analyses (exhibit 12) describing the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers." The rules further provide that, "[f]or significant transactions, specific regulations on impact analyses are not provided so that the parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction." 49 C.F.R. § 1180.7(c).

While BNSF believes that its Responsive Application should be classified as a "minor" transaction, as that term is defined in 49 C.F.R. § 1180.2(c), BNSF is submitting the information and exhibits required for a "significant" application, including the Market Analyses, in the event that the Board decides to evaluate the Responsive Application as a "significant" transaction.

BNSF's Market Analyses include the following verified statements:

Verified Statement of Jon Gabriel (Exhibit 12-A): The Verified Statement of Jon Gabriel, Group Vice President, Consumer Products at BNSF, provides an analysis, from a marketing perspective, of the anticipated impacts of the merger transaction and the Pennsylvania Intermodal Condition on competition in the Pennsylvania Intermodal market. Mr. Gabriel describes the "Pennsylvania

Intermodal market" as "the market for intermodal traffic moving between intermodal facilities in BNSF-served western markets and NS-served intermodal facilities in Pennsylvania, including those in Pittsburgh, Harrisburg, Rutherford, and Bethlehem."[3] He states that this market includes "traffic that today moves through the Chicago gateway pursuant to an existing BNSF/NS arrangement involving interline logistics."[4]

Mr. Gabriel establishes that the existing BNSF intermodal network and BNSF's existing interline relationship with NS enable BNSF to serve traffic destined for Pennsylvania.[5] He explains that, following consummation of the merger transaction, the combined UP/NS would have both the ability and incentive to ensure that BNSF is not a competitive option for Pennsylvania intermodal traffic from a pricing and service perspective.[6] Mr. Gabriel further explains that the Pennsylvania Intermodal Condition would preserve competition in the Pennsylvania Intermodal market because this condition "would enable BNSF to continue to serve customers moving traffic between BNSF-served western markets and NS-served facilities in Pennsylvania and would ensure that customers continue to have a meaningful competitive alternative for this traffic."[7]

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[3] (*Id.* at 2.)

[4] (*Id.*)

[5] (*Id.* at 7-12.)

[6] (*Id.* at 15-23.)

[7] (*Id.* at 27.)

Additionally, Mr. Gabriel explains that a loss of a significant volume of intermodal traffic by BNSF would have lasting effects. He explains that, once a railroad loses a particular category of traffic, the railroad will typically reallocate resources to other business segments, and thus, when future bid opportunities arise, the railroad may not have the infrastructure in place to effectively move that category of traffic or sufficient density on the relevant lines to make that service cost-effective.[8] Intermodal transportation in particular takes a significant amount of time to establish a viable service. If BNSF were to be foreclosed from the Pennsylvania Intermodal market, it would be very difficult for BNSF to reenter that market.[9] As a result, the combined UP/NS would have even more market power.[10]

Furthermore, Mr. Gabriel establishes that, in addition to preserving competition, the Pennsylvania Intermodal Condition would provide additional public benefits, such as allowing BNSF to use its extensive experience in intermodal transportation to develop improved service offerings and more reliable service.[11]

Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski (Exhibit 12-B): The Verified Statement of Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc., analyzes the impacts of the Pennsylvania

[8] (*Id.* at 23.)

[9] *(Id.*)

[10] (*Id.*)

[11] (*Id.* at 29.)

Intermodal Condition on freight flows, traffic patterns, and market shares.[12] Messrs. Baranowski and Zebrowski explain that the Pennsylvania Intermodal Condition "will affect long haul freight transportation services between the western United States and Pennsylvania,"[13] and they present information on "market size, modal share, and rail service options for long haul transportation flows to and from the impacted regional markets in eastern and western Pennsylvania."[14]

Messrs. Baranowski and Zebrowski address the traffic effects of the proposed UP/NS merger, concluding that "it is reasonable to expect that the proposed merger would result in the significant reduction, if not outright elimination, of all intermodal service options between Pennsylvania and the western United States except those offered by UP."[15] They further conclude that "[t]he proposed merger would therefore eliminate the existing competition between UP and BNSF for the western portion of these intermodal movements," and "[a]s a result, UP/NS would dominate this important intermodal corridor, with CSXT not being a viable eastern alternative because its existing network does not provide access to the same key intermodal facilities in Pennsylvania as NS."[16]

Additionally, Messrs. Baranowski and Zebrowski explain that "UP/NS's expert provides a rail-to-rail diversion modeling framework that may be used to

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[12] (Ex. 12-B, V.S. Baranowski & Zebrowski 1.)

[13] (*Id.* at 7.)

[14] (*Id.* at 14.)

[15] (*Id.* at 21.)

[16] (*Id.*)

demonstrate that UP-NS single-line route would displace {{ [redacted] }} BNSF/NS interline traffic between the western United States and Pennsylvania."[17] Figure 7 in the Baranowski and Zebrowski Verified Statement, copied below, shows "the predicted pre- and post-merger traffic distributions among route options."[18]

Figure 7: Existing and Predicted Post-Merger Traffic Distributions Between the Western United States and Pennsylvania {{



}}

Furthermore, Messrs. Baranowski and Zebrowski address the impacts of traffic flow changes, explaining that "[t]he reduction or loss of existing BNSF-NS services between the western United States and Pennsylvania is of itself a harm for shippers."[19] Messrs. Zebrowski and Baranowski also address the traffic effects of the Pennsylvania Intermodal Condition, concluding that this condition "would

[17] (*Id.* at 25.)

[18] (*Id.* at 26.)

[19] *(Id.* at 28.)

preserve the competitive landscape underlying existing intermodal traffic patterns on BNSF-NS and UP-NS routes between the western United States and Pennsylvania."[20] Figure 8 in their Verified Statement, copied below, summarizes predicted current and post-merger traffic assuming that the Pennsylvania Intermodal Condition is granted.

Figure 8: Pre- and Post-Merger UP-NS and BNSF-NS Intermodal Shares for Top Western Markets to and from Eastern Pennsylvania {{



}}

[20] (*Id*. at 31.)

Verified Statement of Dennis W. Carlton, Ph.D. (Exhibit 12-C): The Verified Statement of Dennis W. Carlton, Ph.D., Senior Managing Director at Compass Lexecon, analyzes the way in which BNSF's request for trackage rights on the subject NS lines could address potential harm to the rail network from the proposed merger.

Dr. Carlton explains that BNSF's intermodal volume related to the Pennsylvania Intermodal Condition is significant, and that, "[t]o the extent a combined UP/NS can foreclose BNSF from serving these routes, the [p]roposed [t]ransaction would have the potential to adversely affect {{ ■ }} of BNSF's revenues from corridors related to the Pennsylvania Intermodal Condition."[21]

Additionally, Dr. Carlton finds that "a combined UP/NS could harm its rivals in a myriad of ways; for example, by imposing conditions on interline service at interchange points that would increase the cost and/or degrade the quality of the service that BNSF (and other competing carriers) offer to shippers throughout their networks."[22] He explains that, "[a]s a result of foreclosure, the volume of traffic those competing carriers transport will decline and . . . this could harm shippers and competition throughout the rail network."[23]

Dr. Carlton also addresses UP/NS's commitments to maintain gateways open at commercially reasonable terms. He concludes that UP/NS's "commitment to keep

[21] (Ex. 12-C, V.S. Carlton 7.)

[22] (*Id.* at 12.)

[23] (*Id.*)

gateways open is not a sufficient guarantee to mitigate concerns about potential foreclosure effects from the [p]roposed [t]ransaction in corridors related to the Pennsylvania Intermodal Condition."[24]

Furthermore, Dr. Carlton finds that "t]he approval of the trackage rights BNSF is requesting would address, at least to some extent, the potential for harm arising from the [p]roposed [t]ransaction, as it would preserve at least some of the ability BNSF currently has today to serve its intermodal shippers to the area covered by the Pennsylvania Intermodal Condition."[25] He concludes that "[t]he approval of BNSF's request for trackage rights will likely allow BNSF to address, at least to some extent, the large loss of volume that would otherwise occur and that could make it a less effective competitor throughout the network because of diminished incentives to invest and maintain service quality."[26] He finds that, as a result, "the approval of the requested trackage rights would address, at least to some extent, the risk of negative impact of competition on BNSF for the area covered by the Pennsylvania Intermodal Condition and resulting harm to the rail network."[27]

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[24] (*Id.* at 16.)

[25] (*Id.*)

[26] (*Id.* at 17.)

[27] (*Id.*)

Verified Statement of Nicholas Hill, Ph.D. (excerpt submitted as Exhibit 12-D):[28] In pertinent part, the Verified Statement of Nicholas Hill, Ph.D., Partner at Bates White Economic Consulting, concludes that the Pennsylvania Intermodal Condition would likely mitigate the risk of foreclosure due to the merger."[29]

Dr. Hill finds that "[t]he part of Pennsylvania that would be affected by the Pennsylvania Intermodal Condition . . . is an important location for intermodal traffic," noting that "interline intermodal shipments originating or terminating in the affected area generated {{ [redacted] }} in revenue in 2023, accounting for {{ [redacted] }} of total United States interline intermodal revenue."[30] Dr. Hill further finds that "[t]he corridors originating or terminating in the affected area of Pennsylvania are also particularly important to BNSF," noting that, "in 2023, BNSF's interline intermodal revenue in the area was {{{ [redacted] }}}, or {{{ [redacted] }}} of BNSF's total interline intermodal revenue (and {{{ [redacted] }}} of BNSF's total interline revenue)."[31]

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[28] BNSF is submitting the full version of the Verified Statement of Nicholas Hill, Ph.D. with its Comments in Docket No. FD 36873. An excerpt from the Verified Statement is attached to this Responsive Application as Exhibit 12-D.

[29] (BNSF Comments, V.S. Hill 6.) In his Verified Statement, Dr. Hill concludes that the proposed merger is likely to result in foreclosure and that it should be blocked. He notes that, "[n]otwithstanding this view, BNSF has proposed conditions on the merger intended to partially mitigate the risk of harm should the Board permit the merger to proceed." (*Id.* at 6 n.1.)

[30] *(Id.* at 42.)

[31] (*Id.*)

Additionally, Dr. Hill finds that the Pennsylvania Intermodal Area, as that term is used in the Verified Statement, "is also at material risk of foreclosure."[32] He states that, "[i]n this area, {{{ [redacted] }}} of BNSF's interline intermodal revenue involved NS in 2023, indicating that there are few competitive alternatives to NS in this area."[33]

Dr. Hill concludes that "[t]he Pennsylvania Intermodal Condition would mitigate harm by lowering the probability that BNSF—which accounts for {{{ [redacted] }}} of total interline intermodal revenue in the Pennsylvania Intermodal Area—would be foreclosed from serving shippers."[34] He further concludes that "[t]his would help preserve competition and benefit shippers."[35]

* * *

Collectively, these impact analyses establish that the merger transaction has the potential to harm competition in the relevant market, and that the anticipated UP/NS single-line service options would displace {{ [redacted] }} BNSF/NS interline traffic between the western United States and Pennsylvania. Additionally, these analyses establish that the requested trackage rights and the Pennsylvania Intermodal Condition would, at a minimum, preserve competition in this market and produce public benefits.

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[32] (*Id.*)

[33] (*Id.*)

[34] (*Id.*)

[35] (*Id.*)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 12-A

VERIFIED STATEMENT OF JON GABRIEL

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VERIFIED STATEMENT OF JON GABRIEL

1. Introduction.

My name is Jon Gabriel. I am Group Vice President, Consumer Products for BNSF Railway Company ("BNSF"). My current role includes responsibility for BNSF's intermodal and automotive business. I was appointed to my role in 2024.

I joined BNSF in Consumer Products Marketing in 2006 and then held several positions in Service Design. In 2012, I shifted to Transportation, where I have served in various leadership roles with increasing responsibility. In 2017, I was named General Manager of the Montana Division, before serving as General Manager of the Northwest Division, and then serving as General Superintendent of BNSF's Network Operations Center in Fort Worth. I then served as Vice President, South Region, before serving as Vice President, Service Design and Network Strategy, where I had responsibility for all network planning, capital expansion, operations research, and innovation.

I have been involved in BNSF's evaluation and analysis of the proposed Union Pacific ("UP") and Norfolk Southern ("NS") merger (the "Merger Transaction").[1] Additionally, I am familiar with BNSF's existing intermodal network and the existing BNSF/NS interline movement of intermodal traffic between BNSF-served western markets and Pennsylvania.

I am submitting this Verified Statement in support of BNSF's responsive application (the "Responsive Application") seeking trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. BNSF's trackage rights request, together with certain related BNSF requests, are collectively referred to herein as the "Pennsylvania Intermodal Condition." The Pennsylvania Intermodal Condition is described further below.

[1] UP and NS are collectively referred to herein as "Applicants" or "UP/NS."

The purpose of this Verified Statement is to provide an analysis, from a marketing perspective, of the anticipated impacts of the Merger Transaction and the Pennsylvania Intermodal Condition on competition in the Pennsylvania Intermodal market. When I refer to the "Pennsylvania Intermodal market," I am referring to the market for intermodal traffic moving between intermodal facilities in BNSF-served western markets and NS-served intermodal facilities in Pennsylvania, including those in Pittsburgh, Harrisburg, Rutherford, and Bethlehem. This market includes traffic that today moves through the Chicago gateway pursuant to an existing BNSF/NS arrangement involving interline logistics.

Intermodal rail service is an essential part of the nation's freight transportation system, providing the capacity to move large volumes of consumer goods efficiently over long distances while reducing reliance on already-congested highways. It also provides significant environmental benefits: BNSF trains can move one ton of freight nearly 500 miles on a single gallon of diesel fuel, reducing fuel consumption and emissions while relieving highway congestion.

In this Verified Statement, I provide an overview of BNSF's existing intermodal network and service offerings, as well as the existing BNSF/NS interline movement of intermodal traffic between BNSF-served western markets and Pennsylvania. Additionally, I analyze from a marketing perspective the anticipated competitive effects of the Merger Transaction and the Pennsylvania Intermodal Condition on the Pennsylvania Intermodal market. I also describe the public benefits that would be realized by the Pennsylvania Intermodal Condition.

2. Background and Summary.

Pennsylvania is one of the most important intermodal markets in the U.S. Today, BNSF and NS jointly move a significant amount of intermodal traffic between BNSF-served western markets, primarily Southern California, and NS-served facilities in Pennsylvania through an interline arrangement that facilitates the hand-off of traffic between BNSF and NS at Chicago.

From west-to-east, BNSF moves the traffic from intermodal facilities in BNSF-served western markets to Chicago, IL, where it interchanges the traffic with NS. NS then moves the traffic from Chicago to intermodal facilities it serves in Pennsylvania. BNSF and NS also provide westbound service from NS facilities in Pennsylvania to BNSF-served western markets. For westbound service, NS moves loaded and empty cars from Pennsylvania to Chicago, where it interchanges the cars with BNSF for movement to BNSF-served western markets.

Today, BNSF and UP compete directly for intermodal traffic moving from western markets to the Northeast, including traffic that each carrier interchanges with NS in Chicago for movement to NS-served facilities in Pennsylvania.[2] As an eastern rail carrier unaffiliated with a western carrier, NS is incentivized to work together with BNSF and with UP to provide this intermodal service from Chicago to its intermodal facilities in Pennsylvania. And BNSF and UP compete vigorously today to provide efficient service that is attractive to intermodal customers located on NS's lines in Pennsylvania.

However, following consummation of the Merger Transaction, Applicants would have both the ability and incentive to ensure that BNSF is not a competitive option for this NS-served intermodal traffic from a pricing and service perspective. Notably, Applicants have announced that they plan to introduce single-line intermodal service options from western locations to

[2] (*See* UP/NS Rev. Appl., Vol. 2 at 678, 680.)

Pennsylvania and the Northeast, including a Southern California-Northeast service and a Northern California-Northeast service.[3] Applicants will have a strong incentive to create as much density as possible on the single-line service routes by diverting traffic that currently moves on BNSF from BNSF-served western markets to the Northeast, including the Pennsylvania locations. The Merger Transaction would thus transform NS from BNSF's interline partner into its principal competitor for this traffic. This would eventually result in BNSF's exclusion from the market.

As explained in the Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski (Exhibit 12-B), "[t]here is no corridor in the United States where a railroad carrier currently offers interline intermodal service competing against its own local services."[4] Messrs. Baranowski and Zebrowski conclude that the Merger Transaction would thus "result in the significant reduction, if not outright elimination, of all intermodal service options between Pennsylvania and the western United States except those offered by UP."[5] Based on my experience with intermodal competition, I agree.

Applicants have nominally committed to keep the Chicago gateway open for the interchange of traffic with BNSF for movement between Pennsylvania and other eastern locations. But Applicants would be positioned post-merger to take steps to ensure that the BNSF/NS interline option is viewed by customers as uncompetitive in pricing and service compared to Applicants' single-line option on the UP/NS network. Over time, this would result in the elimination or reduction of competition in the Pennsylvania Intermodal market. As I

[3] (*See id.*, Vol. 2 at 692, 722.)

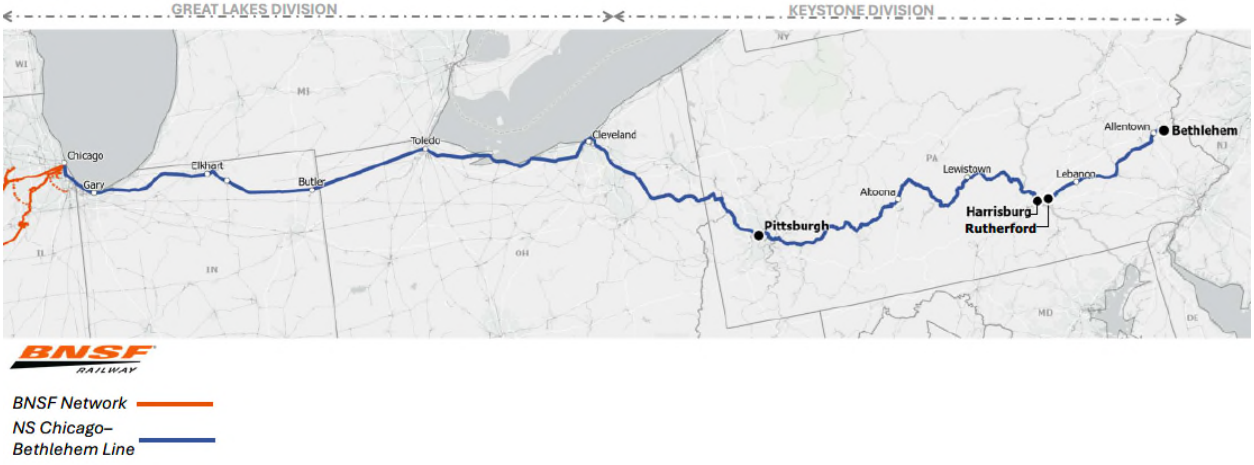
[4] (Ex. 12-B, V.S. Baranowski & Zebrowski 21.)

[5] *(Id.*)

explain below, the Pennsylvania locations that I address here cannot effectively be reached through an interchange with other rail carriers, particularly CSX Transportation, Inc. ("CSXT"). Therefore, a merged UP/NS would have increased market power over the customers at these locations who no longer would have effective competitive alternatives.

To preserve competition in this market, BNSF is seeking trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA (the "Lines"). The Lines are described in detail in Appendix 3 to the Responsive Application and are shown in Figure 1 below. These trackage rights would be "overhead" with exceptions that would allow BNSF to access the four existing intermodal facilities described below, along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

Figure 1: Map of the Requested Trackage Rights on NS Lines Between Chicago, IL and Bethlehem, PA



In connection with our request for trackage rights on the Lines, BNSF has two related requests. First, BNSF is requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal facilities,[6] as those facilities may expand, change, or be modified in the future. BNSF intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail. These four intermodal facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem) (collectively, the "NS Sole-Served Facilities") are important intermodal destinations and access to them is critical to maintaining competitive intermodal service in Pennsylvania. BNSF is not seeking access here to other NS intermodal facilities on the Lines – including Toledo and Cleveland – where BNSF can reach the area through an interline move with CSXT to a nearby CSXT intermodal facility.

It is necessary for the Board to grant BNSF trackage rights and access to the NS Sole-Served Facilities because there is no competitive rail option to these destinations. The nearest CSXT intermodal facility is located more than 50 miles away from each of the four NS Sole-Served Facilities. From my perspective, CSXT does not compete in the Pennsylvania intermodal markets served by these NS Sole-Served Facilities because drayage to/from the nearest CSXT facility is not economically feasible for customers. In my experience, a significant portion of customers choose to ship intermodal if the truck portion of the intermodal move is within 50 miles from a rail terminal. I understand that UP views the market similarly. UP's consultant found that 82% of customers dray 50 miles or less for first- and last-mile service.[7] My colleague, Craig Morehouse, BNSF's Executive Vice President and Chief Operations Officer, describes in

[6] BNSF is willing to discuss consolidation of Harrisburg and Rutherford traffic at Rutherford to streamline operational efficiency and impacts.

[7] (*See* UP/NS Rev. Appl., Vol. 2 at 516.)

his Verified Statement submitted with BNSF's Comments in Docket No. FD 36873 a recent situation where NS ran out of 53-foot chassis at its Harrisburg and Rutherford terminals in Pennsylvania.[8] Customers had few alternatives, since CSXT's nearest terminal is 55 miles away.[9]

Second, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the Lines, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs.

If the Board grants the Merger Transaction and imposes the Pennsylvania Intermodal Condition as a condition of its approval, BNSF would have the ability to directly move traffic between BNSF-served western markets and important NS-served intermodal facilities in Pennsylvania (Pittsburgh, Harrisburg, Rutherford, and Bethlehem), thereby allowing BNSF to continue competing for traffic that today moves through the Chicago gateway pursuant to the BNSF/NS interline arrangement. This would preserve competition in the Pennsylvania Intermodal market and produce public benefits.

3. BNSF's Existing Intermodal Network and Established Interline Relationship with NS Enable It to Serve Traffic Destined for NS-Served Facilities in Pennsylvania.

3.1 BNSF's Existing Intermodal Network.

BNSF is a leader in the domestic and international intermodal markets. The BNSF rail network consists of approximately 32,500 route miles in 28 states and three Canadian provinces. It is the largest intermodal railroad in North America. Figure 2 below shows existing BNSF intermodal traffic flows, and Figure 3 below shows BNSF's existing intermodal network.

[8] (BNSF Comments, V.S. Morehouse 23.)

[9] (*Id.* at 23-24.)

Figure 2: Map of Existing BNSF Intermodal Traffic Flows

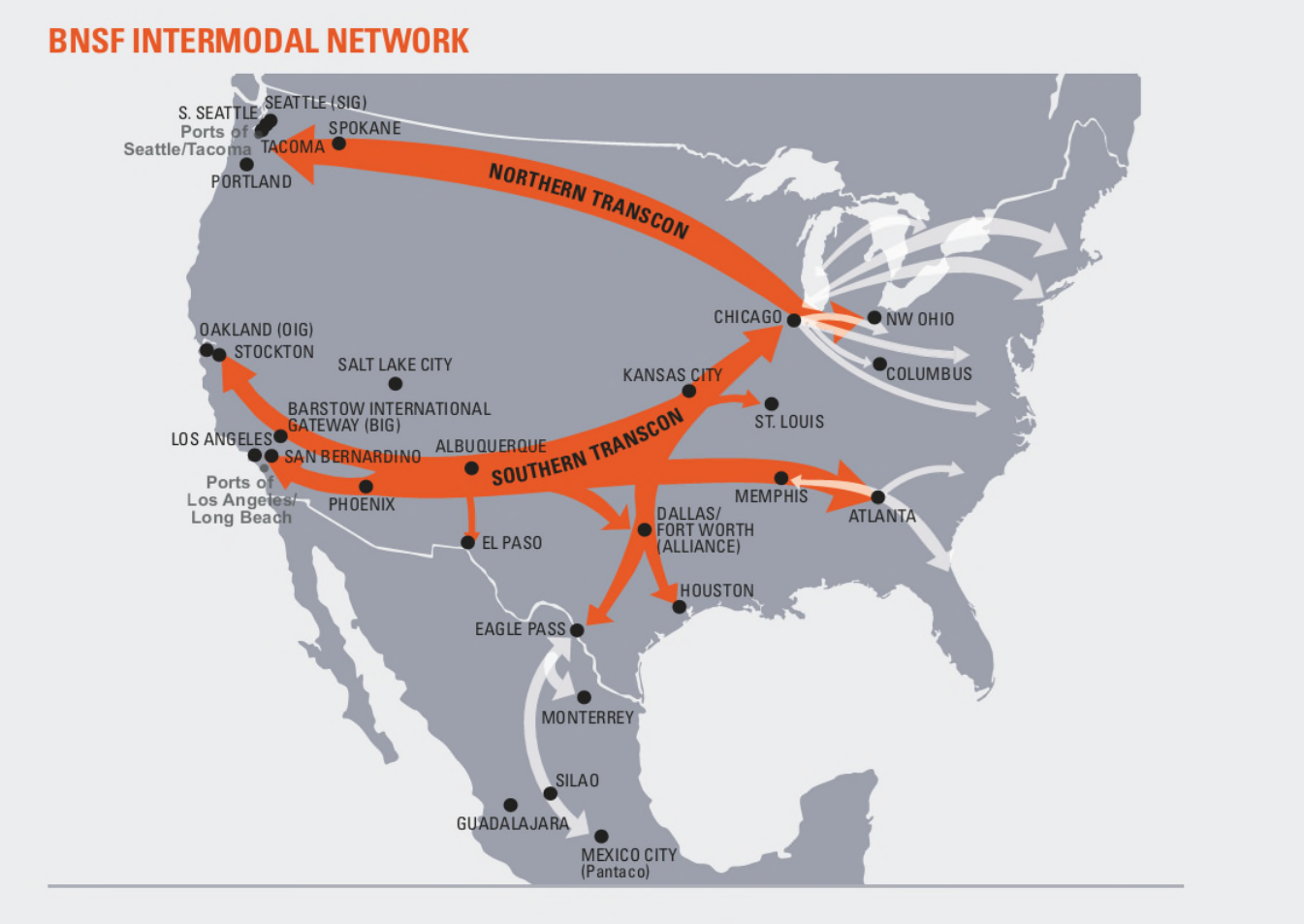
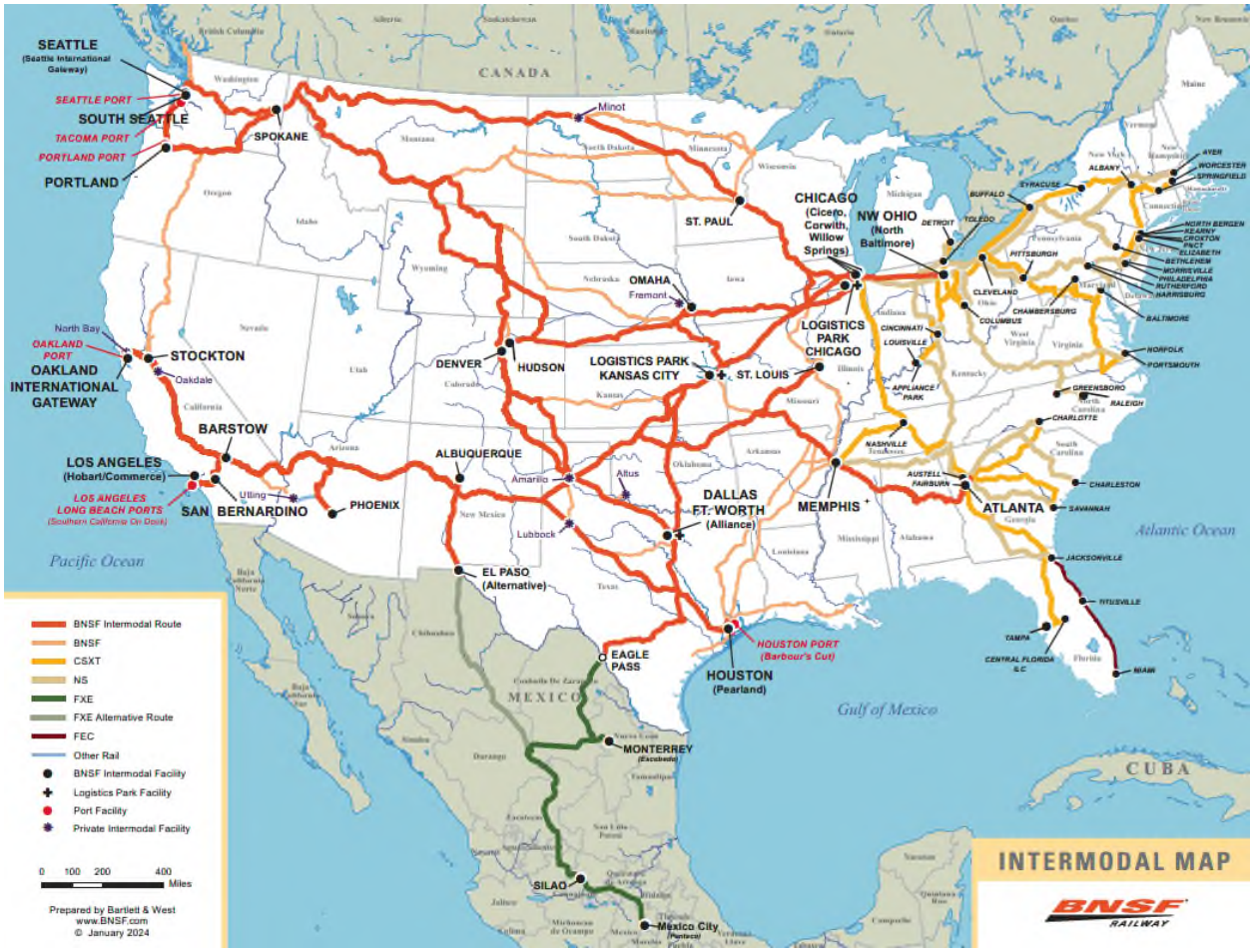


Figure 3: Map of the Existing BNSF Intermodal Network



BNSF's Southern Transcon line extends approximately 2,200 miles between Los Angeles, CA and Chicago, IL. It is the primary route for BNSF's intermodal franchise and the fastest intermodal route between Southern California and the Midwest. The Southern Transcon line is 99.8% double-tracked.

BNSF's Northern Transcon line runs between Seattle, WA and Chicago, IL, with other service options connecting the Pacific Northwest to Texas or Northwest Ohio and their surrounding markets. Additionally, BNSF serves all major U.S. West Coast ports and has relationships with over 40 port authorities across North America.

Although BNSF's rail lines do not extend to the eastern U.S., BNSF currently reaches eastern U.S. markets through interline relationships with major eastern rail carriers, principally NS and CSXT. One such arrangement is the existing BNSF/NS interline arrangement for the movement of intermodal traffic between BNSF-served western markets and NS-served intermodal facilities in Pennsylvania through Chicago. The existing BNSF/NS interline movement is described in greater detail below.

Additionally, BNSF's intermodal network is made up of some of the largest and most modern intermodal hub facilities in the industry. BNSF's largest intermodal operations are in Southern California, where millions of containers funnel off ocean vessels and through the Ports of Los Angeles and Long Beach each year. In addition, BNSF handles substantial volumes of domestic intermodal freight. In fact, BNSF's Hobart and Commerce facilities (near downtown Los Angeles) together handle the world's largest amount of domestic intermodal freight.

BNSF's intermodal business is its largest and most truck-competitive segment. In 2025, BNSF moved 5.3 million intermodal shipments, which was more than any other North American railroad. Today, intermodal represents approximately half of all of BNSF volume by units.

BNSF offers a full range of intermodal service options, including Expedited, Standard, and International. BNSF's Expedited domestic service is ideal for time-sensitive freight, including parcel, promotional, temperature-controlled and direct-to-store shipments. The Expedited service averages approximately 800 miles per day. It is the fastest intermodal service in the industry as measured by miles per hour. A container can move on BNSF's Expedited service from Los Angeles to Chicago (ramp-to-ramp) in just 78 hours. BNSF's Standard domestic service maximizes value while reaching key markets. It averages approximately 600 miles per day. BNSF's International service is designed to transport 20- and 40-foot import boxes

to and from West Coast ports and major inland markets. It cuts transit time by as much as three and a half days, depending on the service line.

In sum, BNSF's existing intermodal network and service capabilities, combined with its existing interline arrangement with NS, make it a significant competitive option for customers moving intermodal traffic from BNSF-served western markets to NS-served facilities in Pennsylvania.

3.2 The Existing BNSF/NS Interline Movement of Intermodal Traffic Between BNSF-Served Western Markets and Pennsylvania.

Today, BNSF and NS jointly move a significant amount of intermodal traffic between BNSF-served western markets and NS-served facilities in Pennsylvania through an interline arrangement. From west-to-east, BNSF moves the traffic from its intermodal facilities in BNSF-served western markets eastward over its lines to Chicago. The majority of this traffic originates in Southern California. BNSF also moves traffic that originates in other BNSF-served western markets, including Texas, the Pacific Northwest, Minnesota, and other locations.

BNSF interchanges the traffic with NS in Chicago. The Chicago interchange is described further in BNSF's Operating Plan, submitted as Exhibit 13-A to this Responsive Application. The existing Chicago interchange is very efficient, with Expedited trains typically interchanged between BNSF and NS in less than one hour. After the interchange is complete, NS moves the traffic over its lines from Chicago to intermodal facilities in Pennsylvania.

BNSF and NS also provide east-to-west service from NS-served intermodal facilities in Pennsylvania to BNSF-served western markets. For this westbound service, NS moves loaded and empty cars from Pennsylvania to Chicago, where it interchanges the cars with BNSF for movement to BNSF-served western markets.

This BNSF/NS interline movement has been very successful. The coordination and cooperation between BNSF and NS have given customers a high quality and efficient intermodal service. NS is currently incentivized to work with BNSF to provide this seamless intermodal service to customers.

The traffic moving under the BNSF/NS interline arrangement consists predominantly of domestic intermodal shipments, including Expedited and Standard traffic. The current volume of intermodal traffic moved under this arrangement is discussed in detail in the Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski, submitted as Exhibit 12-B to the Responsive Application.[10]

With respect to rates, BNSF and NS {{ [redacted] }}

3.3 BNSF's Existing Pennsylvania Intermodal Market Customers.

BNSF currently has established relationships with intermodal customers moving freight between BNSF-served western markets and NS-served facilities in Pennsylvania. BNSF's largest customers moving Pennsylvania intermodal traffic are {{ [redacted] }} BNSF also moves traffic on this corridor for {{ [redacted] }}

[10] (Ex. 12-B, V.S. Baranowski & Zebrowski 34-35.)

{{ [redacted] }}

[11] (*See* BNSF Comments, V.S. Williams ¶¶ 33-36.)

[12] (Ex. 13-A, Operating Plan at 15.)

[13] {{ [redacted] }}

[redacted] }}

With respect to contracts, BNSF typically enters into {{ [redacted] }} These contracts generally include {{ [redacted] }}

4. BNSF Currently Competes with UP for Intermodal Traffic Moving between Western Markets and NS-served Pennsylvania Intermodal Facilities.

Today, BNSF and UP compete directly for intermodal traffic moving between western markets to NS-served intermodal facilities in Pennsylvania, including traffic that each carrier interchanges with NS in Chicago for movement to those Pennsylvania facilities.[14]

UP currently provides intermodal transportation destined to and from the Northeast between Southern California and Chicago through two principal routes: UP's Chicago to Southern California route extends between Chicago and Southern California via North Platte, Granger, Ogden, Las Vegas, and Los Angeles; and UP's Southern California to Kansas City/St. Louis/Chicago route extends between Southern California and Chicago via El Paso and Kansas City.[15] Both UP routes carry large volumes of international and domestic intermodal traffic.[16] UP also moves intermodal transportation destined to and from the Northeast through additional

[14] (*See* UP/NS Rev. Appl. Vol. 2 at 678, 680.)

[15] (*See id.*, Vol. 2 at 638, 641.)

[16] (*Id.*, Vol. 2 at 639, 642.)

routes, including its Chicago-Pacific Northwest route and its Chicago-Northern California route.[17]

This BNSF/UP competition for service to and from the Pennsylvania Intermodal market sharpens our offerings to intermodal customers. Because BNSF and UP compete directly for this traffic, customers benefit not only from competitive pricing, but also from high-quality service options tailored to meet their transportation needs. In my experience, key intermodal customers in this lane primarily value speed and flexibility. The shortest route does not always win. Instead, customers also depend on a railroad's investment in infrastructure and the ability to maintain sufficient capacity to prioritize intermodal trains. To compete effectively for this traffic, BNSF invests heavily in its network and maintains capacity to ensure efficient, reliable operations. But as discussed below, a merger between UP and NS would severely undermine the existing competition.

5. Following Consummation of the Merger Transaction, UP/NS Would Have the Ability and Incentive to Ensure That BNSF Is Not a Competitive Option for Pennsylvania Intermodal Traffic from a Pricing and Service Perspective.

If the Board approves the Merger Transaction, UP/NS would have both the ability and incentive to ensure that BNSF is not a competitive option, from a pricing and service perspective, for intermodal traffic moving between BNSF-served western markets and NS-served facilities in Pennsylvania. This will result in higher costs to shippers and the U.S. consumer.

5.1 The Merger Transaction Would Enable UP/NS to Directly Serve Traffic Moving Between Western Markets and NS-Served Facilities in Pennsylvania.

NS currently relies on western railroads, principally BNSF and UP, to reach western U.S. markets. For intermodal traffic moving between western markets and its facilities in

[17] (*See id.*, Vol. 2 at 632-38; *id.*, Vol. 2 at 680.)

Pennsylvania, NS generally interchanges traffic with BNSF or UP in Chicago, with NS providing the transportation to and from the Pennsylvania facilities.

If the Board approves the Merger Transaction, Applicants plan to provide a Southern California-Northeast service and a Northern California-Northeast service.[18] Thus, post-merger, the combined UP/NS would have the ability to move traffic directly between western markets and the NS-served facilities in Pennsylvania. NS would no longer need to connect with an independent western railroad to serve traffic moving between western markets and Pennsylvania. And since a merged UP/NS would be initiating single-line service options, it would have an incentive to move as much traffic as possible on those routes. This would inevitably lead to the foreclosure of BNSF's existing service through Chicago, as UP/NS would force that traffic onto its own single-line routes, and it would result in the elimination of competition between BNSF and UP for the western portion of these movements that exists today.

5.2 The Merger Transaction Would Alter NS's Incentives to Maintain the BNSF/NS Interline Arrangement.

As explained in detail above, {{ [redacted] }} of the traffic that moves under the existing BNSF/NS interline arrangement {{ [redacted] }}

[18] (*See id.*, Vol. 2 at 692, 722.)

The Merger Transaction would fundamentally alter NS's incentives regarding the continuation of the current BNSF/NS interline arrangement. NS currently benefits from cooperating with BNSF because it {{ [redacted] }} Post-merger, UP/NS would be incentivized to encourage customers to move traffic via UP/NS's single-line service, {{ [redacted] }}. Accordingly, the Merger Transaction would transform NS from BNSF's interline partner into its principal competitor for this traffic. This would result in increased transportation costs for customers, who would have to pay higher fees to use the combined UP/NS service or higher drayage costs with no competitive alternative.

As noted above, {{ [redacted] }} of the traffic currently moving between Southern California and NS-served facilities in Pennsylvania is subject to {{ [redacted] }}. Therefore, with respect to timing, BNSF would not anticipate significant changes to the Pennsylvania Intermodal market in the first year following consummation of the Merger Transaction, but would be transitioned by UP/NS during {{ [redacted] }}. BNSF is primarily concerned about changes that could occur in the next five years and thereafter, as {{ [redacted] }}.[19]

5.3 Post-Merger, UP/NS Could Undermine BNSF's Ability to Offer Competitive Pricing.

Following consummation of the Merger Transaction, UP/NS would be incentivized to take various steps to ensure that BNSF is not a competitive option for Pennsylvania intermodal

[19] BNSF understands that the majority of major contracts in place today, including those of BNSF and other Class Is, {{ [redacted] }}.

traffic from a pricing perspective. BNSF would still be dependent on NS to provide the eastern portion of the movement, but UP/NS would have the ability to manipulate the NS rates to make a BNSF/NS movement unattractive. For example, UP/NS could refuse to {{ [redacted] }} for traffic moving under the BNSF/NS interline arrangement. Additionally, even if UP/NS agree to continue the interline arrangement and to {{ [redacted] }} for this traffic, UP/NS would be incentivized to disadvantage BNSF by, for example, {{ [redacted] }} offering less favorable contract rates or terms for BNSF interline traffic; declining to provide long-term pricing commitments for BNSF interline traffic; or imposing volume requirements, minimum charges, or other provisions that may make the BNSF option commercially unattractive.

By manipulating {{ [redacted] }} UP/NS would ensure that the BNSF/NS interline option is viewed by customers as uncompetitive in pricing. UP/NS could also foreclose a BNSF/NS movement by offering favorable bundled pricing to customers who commit to moving traffic on UP/NS lanes from the West Coast to Pennsylvania and additional traffic on UP/NS lanes. This would result in increased costs for customers and would preclude competitive alternatives.

As an example, if a potential customer requests a rate from BNSF and from UP/NS to move traffic from Southern California to Pennsylvania post-merger, BNSF would {{ [redacted] }} as it does today. UP/NS, on the other hand, could present numerous pricing options to the customer, such as {{ [redacted] }} or a lower through rate if the customer agrees to bundle UP/NS's single-line service from Southern California to Pennsylvania with other traffic

on UP/NS lanes. Given these options, a customer would be forced into paying more for BNSF's interline service than they do today, rendering the BNSF/NS interline option uncompetitive. This would result in the elimination of the competitive dynamic that exists today. BNSF would have no visibility into UP/NS's pricing strategies, and no ability to counteract such strategies.

5.4 Post-Merger, UP/NS Could Reduce BNSF's Ability to Offer Competitive Service.

UP/NS would also be incentivized to use control over the physical interchange service itself to make an interline movement with BNSF unattractive. As discussed above, the existing BNSF/NS interline arrangement has been successful, and the Chicago interchange has been very efficient, with Expedited trains typically interchanged in under an hour. However, these efficiencies have been achieved only through coordination and cooperation between BNSF and NS. Following consummation of the Merger Transaction, UP/NS would be in a position to degrade service provided under the current BNSF/NS interline arrangement.

This could be done in many ways. Post-merger, UP/NS could refuse to interchange traffic with BNSF in Chicago and insist on completing the interchange at a less favorable location on the UP/NS network. Additionally, notwithstanding UP/NS's nominal commitment to keep the Chicago gateway open, UP/NS could undermine the efficiency of the BNSF interline option through its control over, for example, interchange windows and train connections in Chicago; train schedules and frequency between Chicago and Pennsylvania; capacity allocated to BNSF-originated traffic; and priority assigned to BNSF interchange traffic. Similarly, UP/NS could reduce capacity and priority allocations of the deramping of BNSF traffic at the terminals it controls (Pittsburgh, Harrisburg, and Rutherford). UP/NS could take actions that would degrade the transit time, reliability, and consistency of the BNSF interline option, making that option less attractive to customers relative to UP/NS's competing single-line service. As a result, customers

would pay more than they do today for a less reliable service product and reduced competitive options.

The fact that UP/NS could take actions to reduce BNSF's ability to offer competitive service is particularly concerning because intermodal service is a unique product offering that requires specific, measured service commitments. To illustrate this, consider BNSF's Expedited service product to parcel customers like {{ [redacted] }} Therefore, for rail to serve as a viable competitive product to truck, rail transportation must meet stringent transit requirements tailor-built for these customers. Parcel traffic is often the last to in-gate and be loaded before the cutoff time for train assembly and departure. Trains must then move on a priority expedited basis – ahead of carload and other non-priority traffic – in order to meet the strict arrival schedule mandated by parcel customers' service terms. Trains arriving late mean that the parcel customer has dray carriers standing by and employees waiting idle at its sorting facility; trains arriving early back up the rail network with trains holding for open unloading capacity at the ramp. Inbound trains must arrive "direct to spot" meaning that there must be an open unloading track ready to receive the train as it arrives; parcel customers often have their dray fleet standing by for the scheduled arrival so they can transport containers directly to the sorting facility upon arrival.

For instance, BNSF's Expedited service for {{ [redacted] }} Trains that miss the arrival window due to delays in transit or that aren't able to unload immediately at the scheduled arrival time mean that {{ [redacted] }} also misses the

delivery commitment they make to their own customers. Every rail carrier who provides these priority service products builds them to meet these demands. Accordingly, the trackage rights sought by BNSF in this Responsive Application must necessarily include the right to receive the same kind of priority dispatch, handling, and acceptance "direct to spot" upon arrival in order to provide shippers with the same competitive service product that they receive competitively from NS today.

Moreover, a customer that currently uses the BNSF/NS interline service to move traffic from Southern California to Rutherford, PA would expect that service to continue post-merger under existing contracts. However, even if the interline arrangement continues following the merger, UP/NS could take steps to subtly degrade that interline option, such as reducing service priority for BNSF interline traffic, changing current service schedules, and reducing coordination on service recovery during disruptions. As with pricing, BNSF would have limited ability to detect or counteract service degradation. It would also be difficult for BNSF to distinguish any subtle deprioritization of its interchange traffic from ordinary operational fluctuations. In my experience, the result of such degraded service would be that the customer would view the BNSF interline option as less competitive with the UP/NS single-line alternative. After the customer's {{ [redacted] }} and using the UP/NS single-line service going forward.

Messrs. Baranowski and Zebrowski explain in their Verified Statement that "BNSF-NS interline services between the western United States and Pennsylvania would be largely, if not entirely, displaced by UP-only service if the UP/NS merger is approved without mitigating conditions."[20]

[20] (Ex. 12-B, V.S. Baranowski & Zebrowski 22.)

* * *

Thus, the Merger Transaction would enable UP/NS to directly serve traffic moving between BNSF-served western markets and NS-served facilities in Pennsylvania, and it would fundamentally alter NS's incentives regarding the continuation of the BNSF/NS interline arrangements. Following consummation of the Merger Transaction, UP/NS would have both the ability and incentive to reduce BNSF's ability to offer competitive pricing and service.[21] Service could be priced and offered in such a way that many customers would have little incentive to choose the BNSF interline option over UP/NS's competing single-line service, {{ [redacted] }} Over time, this would result in the elimination or reduction of competition in the Pennsylvania Intermodal market and increased costs for customers.

It is important to note that a loss of a significant volume of intermodal traffic by BNSF would have lasting effects. In my experience, once a railroad loses a particular category of traffic, the railroad will typically reallocate resources to other business segments. As a result, when future bid opportunities arise, the railroad may not have the infrastructure in place to effectively move that category of traffic or sufficient density on the relevant lines to make that service cost effective. Intermodal transportation in particular takes a significant amount of time to establish a viable service, as we have seen result from prior mergers.

Restoring a service that has been discontinued or significantly reduced is much more complicated than merely flipping a switch. To restore a service, a railroad may need to reallocate

[21] Notably, other carriers have expressed similar concerns. (*See, e.g.*, CSXT Description of Anticipated Responsive Appl. 7-8, Sept. 9, 2026 ("Post-transaction, a combined UP/NS would have a powerful and direct financial incentive to exploit NS's Eastern Pennsylvania dominance by degrading interchange with BNSF—through differential pricing, slower service, less favorable scheduling, and preferential routing—to divert transcontinental traffic that currently moves on BNSF's western lines onto UP/NS single-line service.").)

assets, rebuild crew bases, hire and train employees, and requalify personnel. Even after making those investments, the railroad must reestablish its credibility with its customers, which is difficult without the density necessary to support a competitive service offering.

Here, if BNSF loses a significant volume of intermodal traffic destined for NS-served facilities in Pennsylvania, it would be very difficult for BNSF to break back into that market in the future. As a result, the combined UP/NS would have even more market power. Furthermore, a loss of this traffic would reduce competitive options and increase change costs for customers that have built their network near BNSF facilities. Costs to cargo customers would also increase, either because the BNSF/NS interline option would be economically foreclosed or because customers would be forced to utilize a longer and more costly dray to an alternative ramp, likely resulting in a truck move across the country in lieu of intermodal service.

6. Applicants' Open Gateway Commitments are Insufficient To Preserve Competition in the Pennsylvania Intermodal Market.

Although Applicants have committed to "keeping all existing gateways open for eligible traffic on commercially reasonable terms," and have "voluntarily agree[d] to all the gateway commitment provisions" that the Board imposed in the Canadian Pacific/Kansas City Southern ("*CP/KCS*") merger proceeding,[22] these commitments are insufficient to preserve competition in the Pennsylvania Intermodal market. Applicants have made no specific commitments relating to pricing. And Applicants' commitments are particularly inadequate with respect to intermodal service, where service reliability, transit times, interchange efficiency, and other performance metrics are crucial.

[22] (UP/NS Rev. Appl., Vol. 1 at 91; *see also id.*, Vol. 1 at 347-50.)

As described above, post-merger, UP/NS could take steps to ensure that the BNSF interline service is not attractive to customers, without formally closing the Chicago gateway. Efficient interline service for intermodal traffic requires cooperation between the interline partners, so a simple commitment to keep a gateway open would not be sufficient to ensure the continued availability of efficient intermodal service. And even if a general open gateway commitment could preserve intermodal options for customers, an open gateway commitment would only be meaningful if it includes clear and enforceable standards related to measurable performance metrics. Applicants' proposed commitments contain no such standards and therefore are insufficient to preserve competition in the Pennsylvania Intermodal market.[23]

The Board has experience from prior mergers showing that open gateway commitments will not preserve existing competitive options. As discussed in the Verified Statement of Thomas Williams, submitted with BNSF's Comments in the primary docket, prior mergers justify BNSF's concerns regarding the harmful impact of the Merger Transaction on the existing BNSF/NS Chicago interchange.[24]

[23] (Ex. 12-C, V.S. Carlton at Section III.D.)

[24] (BNSF Comments, V.S. Williams ¶ 62.)

7. CSXT's Existing Network Cannot Substitute for the Relief BNSF is Requesting Through the Pennsylvania Intermodal Condition.

Without the Pennsylvania Intermodal Condition that BNSF requests, a UP/NS merger would leave intermodal customers at NS-served facilities in Pennsylvania without competitive rail options. Notably, CSXT's existing network cannot be considered a substitute for the relief BNSF is requesting through the Pennsylvania Intermodal Condition. The relief requested by BNSF includes trackage rights on certain NS lines that would allow BNSF to access the four NS Sole-Served Facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem), along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities. As noted above, from my perspective, a BNSF-CSXT interline movement cannot compete in the Pennsylvania intermodal markets served by these NS Sole-Served Facilities because drayage to/from the nearest CSXT facility is not economically feasible for customers that rely on the NS facilities. In my experience, a competitive intermodal terminal option must be located within 50 miles from a rail terminal.

Although CSXT owns and operates lines in the Northeast, CSXT's existing network does not provide access to the same key intermodal facilities in Pennsylvania as NS. The NS facilities are in close proximity to customer warehousing and infrastructure. Additionally, CSXT's network does not replicate the corridor access and facility reach that makes the NS route competitively significant. A map showing the locations of the NS Sole-Served Facilities and CSXT's intermodal facilities in Pennsylvania is attached hereto as Appendix 1.

Messrs. Zebrowski and Baranowski further explain in their Verified Statement that CSXT is not "a viable eastern alternative because its existing network does not provide access to the same key intermodal facilities in Pennsylvania as NS."[25]

Applicants themselves acknowledge that NS "has the most extensive intermodal network in the Eastern United States."[26] CSXT similarly acknowledges that "NS dominates Eastern Pennsylvania," and that "NS is the only Class I that owns tracks serving this market."[27] In fact, CSXT has indicated in this proceeding that it anticipates seeking trackage rights over certain NS lines in Eastern Pennsylvania.[28] BNSF will evaluate any such CSXT request and respond accordingly.

Thus, Applicants' and CSXT's own statements demonstrate that the existing CSXT network cannot reasonably be viewed as a substitute for the relief BNSF is requesting through the Pennsylvania Intermodal Condition.

Additionally, Applicants repeatedly state in their application that, following the announcement of the proposed merger, BNSF and CSXT have announced new intermodal service alliances.[29] They assert that "[t]hat is how exactly how competition is supposed to work."[30] While it is true that BNSF and CSXT have launched new intermodal schedules that offer customers coast-to-coast transportation solutions,[31] this partnership is only effective in

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[25] (Ex. 12-B, V.S. Baranowski & Zebrowski 21.)

[26] (UP/NS Rev. Appl., Vol. 2 at 658.)

[27] (CSXT Description of Anticipated Responsive Appl. 7.)

[28] (*Id.*)

[29] (*See, e.g.*, UP/NS Rev. Appl., Vol. 1 at 45, 345.)

[30] (*Id.*, Vol. 1 at 345.)

[31] *See, e.g.*, Trains, *BNSF and CSX team up for faster coast-to-coast domestic intermodal service* (Oct. 19, 2026), https://www.trains.com/pro/freight/intermodal/bnsf-and-csx-team-up-for-faster-

markets served by CSXT. However, as explained above, CSXT does not serve the markets that NS reaches through the four intermodal facilities that are the subject of BNSF's request (Pittsburgh, Harrisburg, Rutherford, and Bethlehem).

8. The Pennsylvania Intermodal Condition Would Preserve Competition in the Pennsylvania Intermodal Market.

The Pennsylvania Intermodal Condition is necessary to preserve competition in this market. This condition would enable BNSF to continue to serve customers moving traffic between BNSF-served western markets and NS-served facilities in Pennsylvania and would ensure that customers continue to have a meaningful competitive alternative for this traffic. Customers would benefit from the preservation of competition in the Pennsylvania Intermodal market.

Preserving a BNSF competitive option for this traffic would help ensure that customers continue to benefit from competitive pricing, rather than facing a market in which UP/NS has the ability to raise rates with little risk of losing the traffic. Additionally, preserving a BNSF competitive option would benefit customers because BNSF and UP/NS would each be incentivized to offer high-quality service in order to win and retain business.

In order for the Pennsylvania Intermodal Condition to achieve its intended purpose, the trackage rights fee and other transaction terms must be structured in a manner that provides an effective competitive service option for shippers. The effectiveness of the Pennsylvania Intermodal Condition, and BNSF's ability to receive fair and non-discriminatory treatment, will depend on robust and continued Board oversight.

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coast-to-coast-domestic-intermodal-service/ (discussing the launch of a BNSF/CSX transcontinental premium intermodal train linking Los Angeles and South Kearny, N.J.).

As noted above, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the Lines, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs. BNSF anticipates that if the Board grants BNSF's trackage rights request, BNSF may not be able to begin trackage rights service immediately without the ability to utilize UP/NS crews and locomotives. A haulage arrangement would replicate BNSF's existing commercial access on a short-term basis by allowing BNSF to price the full movement between BNSF-served western markets and NS-served facilities in Pennsylvania, while UP/NS hauls the traffic for a limited period of time.

That said, haulage is not an effective long-term solution for the Pennsylvania Intermodal market, because the combined UP/NS would have the incentive and ability to prioritize their own movements over BNSF's haulage movements, which could impact the customer experience for these time-sensitive movements. For the reasons I've described throughout this statement, only cost-effective trackage rights can provide a long-term solution for this competitive issue.

9. In Addition to Preserving Competition, the Pennsylvania Intermodal Condition Would Provide Additional Public Benefits.

The Pennsylvania Intermodal Condition would provide additional public benefits, in addition to the preservation of competition in the Pennsylvania Intermodal market. Key public benefits are summarized below.

9.1 Customers Would Benefit from Improved Service Reliability.

If the Board imposes the Pennsylvania Intermodal Condition as a condition of any approval of the Merger Transaction, BNSF would leverage its extensive experience in intermodal transportation to develop improved service offerings and more reliable service for customers moving traffic between BNSF-served western markets and NS-served facilities in Pennsylvania. BNSF would have strong incentives to compete aggressively for this traffic by enhancing service performance, maintaining competitive transit times, and continuing to invest in the infrastructure necessary for this service. The competition that exists today between BNSF and UP for the western portion of the movement would be preserved by giving BNSF the opportunity to compete directly with the single-line UP/NS service that would be available post-merger. Customers would continue to have competitive options for service between BNSF-served western markets and NS-served markets in Pennsylvania, as they do today.

9.2 The Pennsylvania Intermodal Condition Would Not Have Any Adverse Environmental Effects.

BNSF anticipates that the Pennsylvania Intermodal Condition would have no adverse environmental effects. Operations on the Lines are not expected to change in ways that could negatively impact the environment. Rather, BNSF's proposed operations on the Lines would generally replace NS's existing movement of traffic from Chicago to Pennsylvania.[32]

In fact, BNSF expects that the Pennsylvania Intermodal Condition would actually produce environmental benefits. BNSF's intermodal service is efficient and sustainable, and those efficiencies would be extended to the entire BNSF routes between BNSF-served western markets and Pennsylvania. Additionally, BNSF's intermodal service reduces carbon emissions:

[32] (Ex. 13-A, Operating Plan at 22-23.)

as noted above, a BNSF intermodal train can move one ton of freight nearly 500 miles on just one gallon of diesel fuel. Furthermore, BNSF has committed to reducing absolute scope 1 and 2 Greenhouse Gas ("GHG") emissions, and the well-to-wheel GHG emissions associated with its locomotives, by 30% by 2030 (from a baseline year of 2018). In 2025, BNSF had already reduced its GHG emissions 20 percent since 2018.

9.3 The Pennsylvania Intermodal Condition Would Not Have Any Adverse Impact on BNSF's Employees.

BNSF does not expect the Pennsylvania Intermodal Condition to have any adverse impact on its employees. Rather, if the Board grants BNSF the requested relief, BNSF anticipates it may need approximately 58 to 66 train conductor and engineer positions. The effects of the Pennsylvania Intermodal Condition on BNSF employees are explained further in the Responsive Application.[33]

9.4 The Pennsylvania Intermodal Condition Would Not Have Any Adverse Impact on Passenger Service.

As I discuss further in BNSFs Operating Plan, BNSF's proposed operation would have no impact on commuter and other passenger rail service on the subject NS lines. BNSF would operate its own trains in lieu of the traffic that NS carries and interchanges with BNSF at Chicago today. Thus, BNSF does not anticipate adverse effects on the scheduling or on-time performance of any passenger service on the subject lines.[34]

[33] (BNSF Responsive Appl. 17-20; *id.* at app. 4.)

[34] (Ex. 13-A, Operating Plan at Section 5.7.)

10. Conclusion.

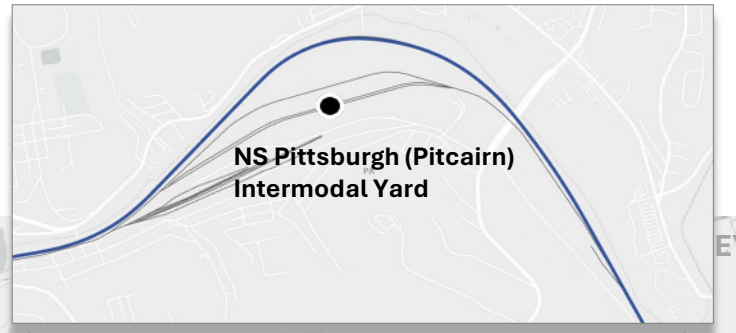
If the Board authorizes the Merger Transaction, I urge the Board to grant this Responsive Application and impose the Pennsylvania Intermodal Condition as a condition of its approval of the Merger Transaction. This condition would preserve competition in the Pennsylvania Intermodal market and produce public benefits.

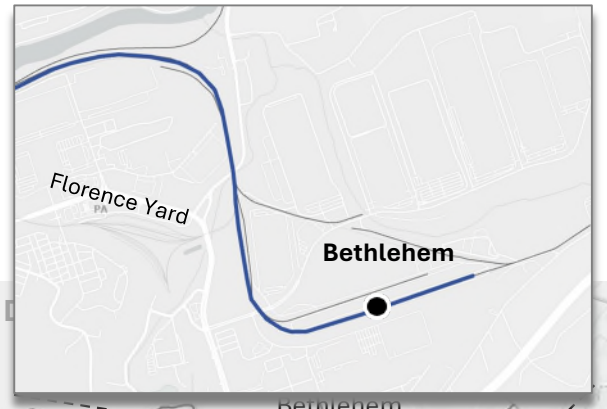
APPENDIX 1

MAP

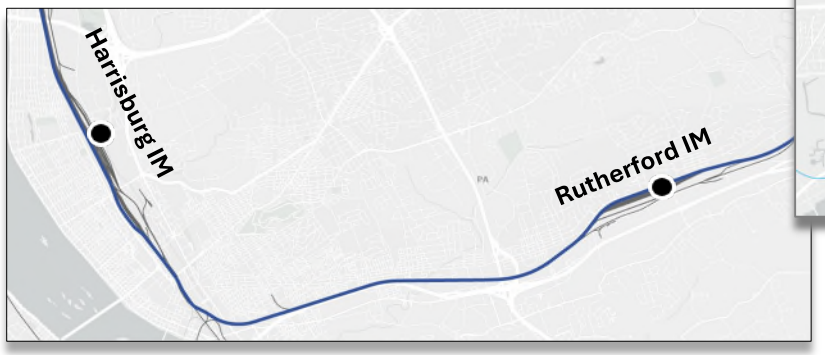
NS-Served Intermodal Facilities Included in BNSF's Proposal and Existing CSX Facilities in Pennsylvania

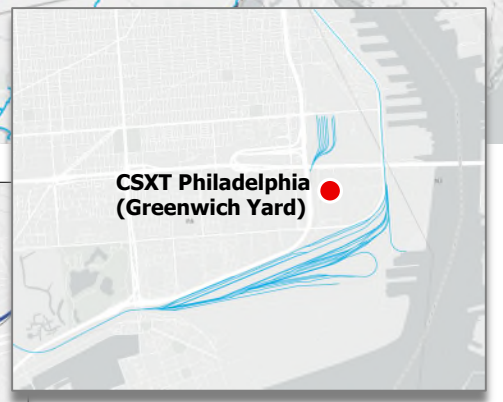












BNSF RAILWAY

BNSF Network

NS Chicago–Bethlehem Line

BNSF-1-165

VERIFICATION

I, Jon Gabriel, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on November 18, 2026.

/s/ Jon Gabriel

Jon Gabriel

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 12-B

VERIFIED STATEMENT OF MICHAEL R. BARANOWSKI AND NATHANIEL S. ZEBROWSKI

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Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski

1. Introduction

1. We are Michael R. Baranowski and Nathaniel S. Zebrowski of FTI Consulting. Mr. Baranowski is a Senior Managing Director and leader of FTI's Network Industries Strategies practice. He has over forty years of experience in the railroad industry including submitting testimony in numerous matters before the STB, federal courts, and arbitration panels. Mr. Zebrowski is a Senior Managing Director in FTI's Network Industries Strategies practice. He has over fifteen years of experience analyzing freight transportation markets and railroad operations including developing numerous evidentiary submissions to the STB, federal courts, and arbitration panels. Details of our background and qualifications are set forth in Exhibits 1 and 2 to this Verified Statement.

2. In the event that the Surface Transportation Board (STB) approves the proposed merger between Union Pacific Railway Company (UP) and Norfolk Southern Railway Company, BNSF Railway Company (BNSF) requests that the STB condition approval on, among other things, a requirement for UP to grant overhead trackage rights to BNSF on certain NS rail lines between Chicago and eastern Pennsylvania (Pennsylvania intermodal trackage rights condition, or "PAIM condition"). Specifically, BNSF requests overhead trackage rights on approximately 851 route miles of NS rail lines between Chicago, IL and Pennsylvania, including the rights to operate trains to and from certain existing intermodal facilities in Harrisburg, Rutherford, Bethlehem, and Pittsburgh, and establish and operate over new rail connections to this trackage line.

3. Counsel for BNSF has asked us to analyze the impacts of the PAIM condition on freight flows, traffic patterns, and market shares consistent with the requirements of 49 CFR §

1180.7. In this statement, we provide impact analyses and demonstrate why granting BNSF the PAIM condition is necessary for preserving existing intermodal competition in one of the most significant intermodal markets in the United States. Our analysis is informed by the operating plan presented by BNSF's witness Jon Gabriel and relies primarily on 2023 Transearch data for truck freight flows and 2019-2025 traffic tape data for rail freight flows.[1]

2. Executive Summary

4. Based on our analysis and review, we have reached the following conclusions.

- Part I: Pennsylvania is a major NS-dependent intermodal market where today BNSF and UP offer competing joint services with NS.
  - The NY/PA/NJ region generates the most intermodal-competitive long haul freight in the United States ({{[redacted]}} of {{[redacted]}} million annual units) and is the third largest intermodal hub (over {{[redacted]}} units).
  - NS alone serves the eastern Pennsylvania warehouse district and the Pittsburgh area, where over {{[redacted]}} and {{[redacted]}} of drays, respectively, occur in NS-dependent counties. CSXT's Chambersburg terminal is not a viable substitute.
  - The primary freight corridors are between Pennsylvania and ({{[redacted]}}), where rail holds over {{[redacted]}} share, split about {{[redacted]}} BNSF, {{[redacted]}} UP, and {{[redacted]}} other.
- Part II: Without the PAIM condition, UP/NS service would largely, if not entirely, displace BNSF-NS service.
  - No U.S. railroad offers interline intermodal service competing against its own local service, and {{[redacted]}} corridor carries more than 5% on dependent interline routes.
  - After the CP/KCS merger, KCSM's interline service with {{[redacted]}} {{[redacted]}} despite open gateway commitments.
  - UP/NS's own diversion model shows UP-NS displacing {{[redacted]}} BNSF-NS traffic, and their operating plan cuts {{[redacted]}} of {{[redacted]}} daily Chicago–Harrisburg trains carrying it.
  - Shippers would lose options with no offsetting benefit: Chicago interchange takes under {{[redacted]}} and costs about {{[redacted]}} per container versus a {{[redacted]}} average rate. Resulting upward rate pressure would harm eastern Pennsylvania's {{[redacted]}} warehousing industry and the northeast supply chain.

[1] Consistent with UP's selection of a 2023 base year in its Application, most of our analyses also use 2023 data. However, to more accurately reflect current conditions, final estimates of traffic that BNSF would move over the trackage rights which are reflected in the operating plan are based on 2025 data.

- Part III: The PAIM condition would preserve existing competition and traffic patterns.
    - With the PAIM condition, UP/NS and BNSF-NS routes would remain {{[redacted]}}, and BNSF's operating plan provides daily service between Chicago and the Pennsylvania terminals. Current traffic distributions are therefore projected to continue, contingent on reasonable trackage rights rates and equal dispatching.

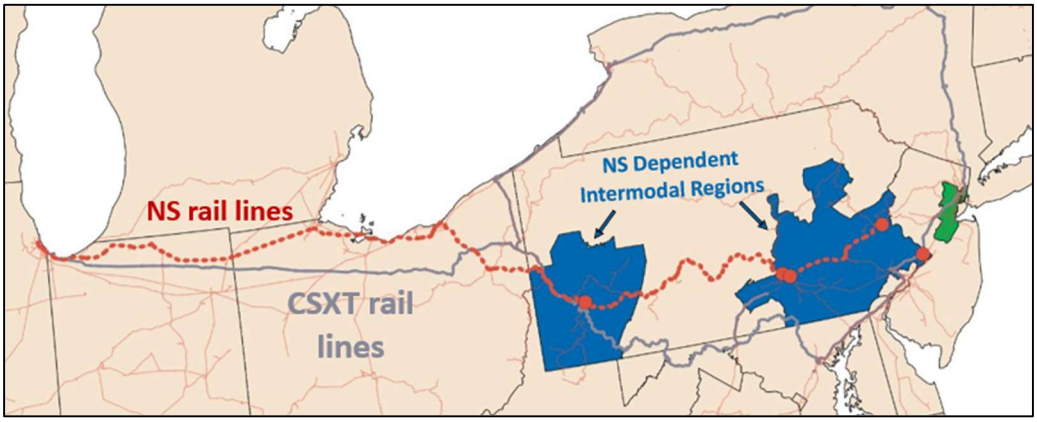
3. Description of trackage rights and market overview

5. The PAIM condition primarily impacts long haul freight transportation between the western United States and eastern Pennsylvania, which through its massive warehousing industry impacts the supply chain serving the population of the northeastern United States. As reflected in BNSF's operating and marketing plans submitted with this application, the PAIM condition is designed to preserve existing intermodal services BNSF currently offers jointly with NS should the proposed merger be approved. Specifically, BNSF would replace current interline services offered jointly with NS with similar services running its own trains over the same NS lines to reach largely the same intermodal terminals in Pennsylvania.

3.1. Description of NS line between Chicago and Harrisburg/Bethlehem

6. The below map depicts the NS lines over which BNSF is requesting trackage rights, the NS-only regions in Pennsylvania where the NS trackage lines provide rail access, and the NS intermodal terminals and surrounding counties in eastern (Harrisburg and Bethlehem area) and western (Pittsburgh area) Pennsylvania where BNSF and NS jointly offer intermodal service today which BNSF seeks to preserve with the PAIM condition.

Figure 1: Pennsylvania Intermodal Trackage Rights Condition Map



7. The eastern Pennsylvania warehouse district is a critical link in the supply chain serving the northeastern United States that, despite being located in the middle of a region in Pennsylvania where NS is the only railroad option, benefits from its current intermodal service options for accessing the western United States via both UP and BNSF. Consumer goods coming through eastern Pennsylvania supply major markets in the northeast including Boston, New York, Philadelphia, Baltimore, and Washington D.C. Because the investment in warehousing infrastructure in eastern Pennsylvania is fixed in place, as are the rail lines that support it, changes of operators, service options, and commercial incentives have the potential to cause significant disruption and harm. The western Pennsylvania area surrounding Pittsburgh is also heavily dependent on NS for intermodal service and benefits from UP-NS and BNSF-NS intermodal service options for accessing the western United States.

3.2. Overview of the long haul freight transportation in the northeastern United States

8. As summarized on the following chart, approximately {{[redacted]}} million of {{[redacted]}} million annual long haul intermodal competitive freight units travel to or from Pennsylvania,

New York, or New Jersey, which makes this region responsible for generating the largest amount of intermodal-competitive long haul freight in the United States.[2]

Figure 2[3] {{



}}

9. The NY/PA/NJ region is one of the five principal hubs for the U.S. intermodal rail network. The below chart shows that of these five principal U.S. intermodal rail hubs, which handle over 85% of all intermodal rail shipments to or from the major US regional hubs shown in Figure 2, the NY/PA/NJ region is the third largest and handles over {{ }} intermodal units each year.

[2] Because BNSF is requesting overhead trackage rights to access intermodal terminals, this impact analysis does not consider carload traffic. Long haul freight refers to shipments having a length of haul greater than 500 miles originating or terminating in the United States.
[3] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.2 Figures"

Figure 3[4] {{



}}

10. The three principal market segments in the NY/PA/NJ region generating rail intermodal freight are: 1) on dock port locations immediately surrounding New York City which handle international intermodal volumes, 2) warehousing districts in New Jersey which primarily handle domestic intermodal volumes and 3) warehousing districts in eastern Pennsylvania which primarily handle domestic intermodal volumes. The below chart summarizes container volumes by rail route for these three market segments.

[4] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.2 Figures"

Figure 4[5] {{



}}

11. The NYC on dock market segment is primarily international containers moving locally on {{ }} that would not be significantly impacted by the proposed UP/NS merger. The New Jersey warehouse district is served by NS and CSXT intermodal terminals which both have {{ }} amounts of interline business with {{ }}. Some re-alignment of interline traffic flows will likely occur as a result of the UP/NS merger but competitive intermodal service options will remain. The eastern Pennsylvania warehouse district is only served by NS, and {{ }} interline large volumes with {{ }} to jointly serve the western United States. This is the market segment that would be most directly and heavily impacted by the proposed UP/NS merger and the PAIM condition.

3.3. Identification of regional markets impacted

12. The PAIM condition will affect long haul freight transportation services between the western United States and Pennsylvania. This includes both the eastern region of

[5] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.2 Figures"

Pennsylvania including the area surrounding Harrisburg and Bethlehem and the western region of Pennsylvania including the area surrounding Pittsburgh.

3.3.1. Eastern Pennsylvania

13. The PAIM condition will most significantly impact long haul freight originating or terminating in the counties surrounding the NS intermodal terminals in eastern Pennsylvania where BNSF would operate overhead intermodal trains over the requested trackage rights to and from its own lines in Chicago. The catchment area may be defined using actual truck drayage data, which also illustrates the dependence of this region on NS for intermodal service.[6] The below table identifies all truck drays to, from, or within counties with NS terminals in eastern Pennsylvania.[7]

[6] Although traffic tape data does not provide customer location for intermodal moves, Transearch data provides county drayage flows which can be used to infer customer location and define a catchment area based on real-world traffic patterns. Specifically, we identify the catchment area based on review of which counties are generating the truck drays moving to or from the counties where the NS intermodal are located.

[7] These counties are Dauphin County (where NS's Harrisburg and Rutherford intermodal terminals are located), Northampton County (where Bethlehem intermodal terminal, which is operated by Phoenix Rail and used exclusively by NS, is located), and Bucks County (where NS's Morrisville intermodal terminal is located). While BNSF is not requesting access to NS's intermodal terminal in Morrisville, PA, this county is included in the traffic assessment because BNSF's marketing plan contemplates continuing to address markets currently served through the Morrisville intermodal terminal.

Table 1: Eastern Pennsylvania Intermodal Catchment Area[8] {{

[redacted]

}}

14. This table shows that Transearch reports similar intermodal volumes on the truck dray side of the intermodal movement as NS traffic tape data reports on the rail side of the intermodal movement, which provides validation that this approach is a reasonable way to approximate the relevant regional end markets absent comprehensive information on the ultimate origin and destination of intermodal customers. Notably, a large portion of volumes moving through NS intermodal terminals in Eastern Pennsylvania are ultimately moving to or from counties which do not readily access counties where other railroads have intermodal terminals that may offer competing intermodal services. The blue shaded region on the above map depicts the NS-dependent counties where the large majority—{{[redacted]}}—of dray moves to or from NS's intermodal terminals in Bethlehem, Harrisburg, Rutherford, or Morrisville occur.[9] Only{{[redacted]}} of drays in this region are to or from counties where other railroads have intermodal terminals, indicating the heavy dependence of intermodal customers in this region on the four NS

[8] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures". An additional {{[redacted]}} NS intermodal units are reported in the traffic tape data as originating or terminating in Cumberland County, PA.

[9] Specifically, this region encompasses the following counties: Berks, Bucks, Chester, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Luzerne, Montgomery, Northampton, Northumberland, Schuylkill, and York.

intermodal terminals in eastern Pennsylvania.[10] The same counties in this region generate nearly {{[redacted]}} of revenues for Pennsylvania's vast warehousing industry.[11] Taken together, this demonstrates that the eastern Pennsylvania warehouse district is unique among major intermodal hubs in the United States for its heavy concentration of warehousing in a region dependent on a single railroad for intermodal service.[12]

15. The closest intermodal option other than NS for freight shippers in the eastern Pennsylvania warehousing district is CSXT's terminal in Chambersburg, PA. However, this terminal is not a viable substitute for the large majority of regional freight shippers, nor could it replace existing BNSF-NS services offered using NS's intermodal terminals in eastern Pennsylvania. Drayage traffic patterns demonstrate that a significant majority of traffic within this region exclusively uses NS's intermodal terminals, indicating shippers' strong preference to use the closer NS terminals. The majority of intermodal customers in eastern Pennsylvania are located within {{[redacted]}} miles of NS-served terminals in Harrisburg, Rutherford, or Bethlehem and would have to {{[redacted]}} current dray distance to reach CSXT's Chambersburg intermodal facility.[13] UP/NS's own expert work shows that there are more than {{[redacted]}} fewer intermodal shipments with 25- to 50-mile drays than there are with drays under 25 miles, indicating the major effects on modal choice of even small changes in dray distance. [14] Even for a limited amount of freight in this region where truck drays to Chambersburg would only be

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[10] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures"
[11] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures"
[12] All other major warehousing hubs in the United States have access to at least two Class I railroads, including the largest hubs in Los Angeles, Atlanta, Dallas, and Chicago.
[13] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures"
[14] See Dr. Hunt Verified Statement, at page 129, at Exhibit B-6.

marginally longer, this would still add distance and cost.[15] Moreover, container volumes at the Chambersburg terminal reached an all-time high of 192,000 containers in 2025, a 21% increase from 2023[16], indicating that most of the terminal's capacity is already being utilized and could at best accommodate a small fraction of the nearly {{[redacted]}} containers currently drayed at NS's intermodal terminals in the region. Chambersburg also does not have the scale to provide the same variety and frequency of scheduled intermodal services across various freight corridors as could be offered across NS's intermodal terminals throughout the region.

16. The eastern Pennsylvania warehousing district is a critical part of the supply chain serving the northeast. The eastern Pennsylvania and New Jersey warehousing districts are the two primary warehousing hubs serving the northeast and together form the second largest warehousing district in the United States behind only Los Angeles.[17] These warehousing districts function to serve end consumer markets in the northeast surrounding major cities including New York, Philadelphia, and Baltimore. Railroads move containers into intermodal terminals in eastern Pennsylvania or New Jersey, which are then drayed to nearby warehouses where freight is sorted and stored, and finally moved over the road to end consumer markets including New York City, Philadelphia, Baltimore, Washington D.C., and Boston. Importantly, both districts

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[15] Specifically, Cumberland County, PA and York County, PA are within 50 miles of both Chambersburg and Harrisburg/Rutherford and generate {{[redacted]}} total truck drays. *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures".

[16] *See* https://www.csx.com/index.cfm/about-us/csx-investments-support-continued-growth-at-chambersburg-intermodal-terminal/

[17] The eastern Pennsylvania warehousing district has almost 549 million square feet of warehousing and the New Jersey warehousing district has 373 million square feet of warehousing, for a combined total of 922 million square feet. For perspective, this is more than the Chicago metro area (919 million square feet), more than the Dallas metro area (744 million square feet), more than the Atlanta metro area (620 million square feet), and second only to the Los Angeles metro area (1.5 billion square feet). *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures".

compete to serve the same end markets, so the competitive position of the Eastern Pennsylvania warehousing industry would be degraded if only the New Jersey warehousing district were to maintain competitive intermodal options to the western United States. [18] Below is a stylized representation of these supply chain dynamics.

Figure 5: Stylized Map of Freight Flows and Warehousing Districts in Northeast Supply Chain{{



}}

3.3.2. Western Pennsylvania

17. The PAIM condition will also impact long haul freight originating or terminating in the counties surrounding NS's Pitcairn intermodal terminal in Pittsburgh, which BNSF's intermodal trains between Chicago and eastern Pennsylvania would serve enroute. While CSXT

[18] Nearly {{ }} outbound trucks from eastern Pennsylvania service the NYC/LI ({{ }}), Philadelphia ({{ }}), Baltimore ({{ }}), Washington, DC ({{ }}), and Boston ({{ }}) end markets, while over {{ }} outbound trucks from New Jersey's warehousing district serve these same end markets. *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures".

lines reach Pittsburgh, CSXT discontinued intermodal operations in 2020.[19] Both BNSF and UP currently offer intermodal service with NS connecting markets in the western United States with the Pittsburgh area.

18. The catchment area may be defined using actual truck drayage data, which also illustrates the dependence of this region on NS for intermodal service.[20] The below table identifies all truck drays to, from, or within Allegheny County, where NS's Pitcairn intermodal terminal is located.[21]

Table 2: Western Pennsylvania Intermodal Catchment Area[22]{{



}}

19. As with eastern Pennsylvania, Transearch reports broadly similar intermodal volumes on the truck dray side of the intermodal movement as NS traffic tape data reports on the rail side of the intermodal movement, which provides validation that this approach is a

[19] The CSXT intermodal terminal in Pittsburgh at McKees Rock discontinued intermodal operations in 2020. *See* https://www.trains.com/pro/freight/intermodal/05-csx-shuts-pittsburgh-intermodal-facility/.
[20] These counties are Allegheny County, Armstrong County, Beaver County, Butler County, Fayette County, Greene County, Indiana County, Washington County, Westmoreland County
[21] An additional {{ }} NS intermodal units are reported in the traffic tape data as originating or terminating in Westmoreland County, PA. *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures".
[22] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.3 Tables and Figures".

reasonable way to approximate the relevant regional end markets. Nearly {{[redacted]}} of dray moves in western Pennsylvania are to or from counties that do not dray meaningful volumes to other counties with intermodal terminals of other railroads, indicating the heavy dependence of shippers in this area on NS for intermodal service. The closest CSXT intermodal terminal is in Cleveland, which is more than 100 miles away.

3.4. Description of freight market characteristics of impacted regions

20. The following section provides information on freight flows, market size, modal share, and rail service options for long haul transportation flows to and from the impacted regional markets in eastern and western Pennsylvania.

3.4.1. Eastern Pennsylvania

21. Eastern Pennsylvania is currently an intermodal success story and competitive interline services play an important role in this success. Approximately {{[redacted]}} long haul freight units move into or out of the catchment counties in eastern Pennsylvania and rail intermodal moves about {{[redacted]}} of these units. The following table summarizes market volumes and shares, segmenting between lower and higher volume corridors.

Table 3: Market Volumes and Shares for Eastern Pennsylvania Warehouse District Long Haul Freight Market[23]{{



}}

22. Approximately {{ }} of freight in this market is travelling to or from the western United States where rail uses interline services. The majority of rail volumes—approximately {{ }}—are concentrated in higher volume corridors and, among these corridors, rail shares are {{ }} for interline lanes reaching the western United States than for local lanes within the eastern United States. Truck is dominant in lower volume corridors where only {{ }} of rail volumes move and where interline rail shares are {{ }} than single-line rail shares.

23. Practically all eastern rail volumes move locally on NS's system, while NS partners with multiple railroads to move volumes to the western United States in interline service. The {{ }} primary corridors where BNSF and UP compete head-to-head to offer

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[23] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (East)".

[24] These figures include an additional {{ }} NS intermodal units not included in Table 1, which are reported in the traffic tape data as originating or terminating outside of NS's Intermodal Terminals in Eastern Pennsylvania in Cumberland County, PA..

[25] {{ }} rail shipments classified as "East" are local NS eastern shipments

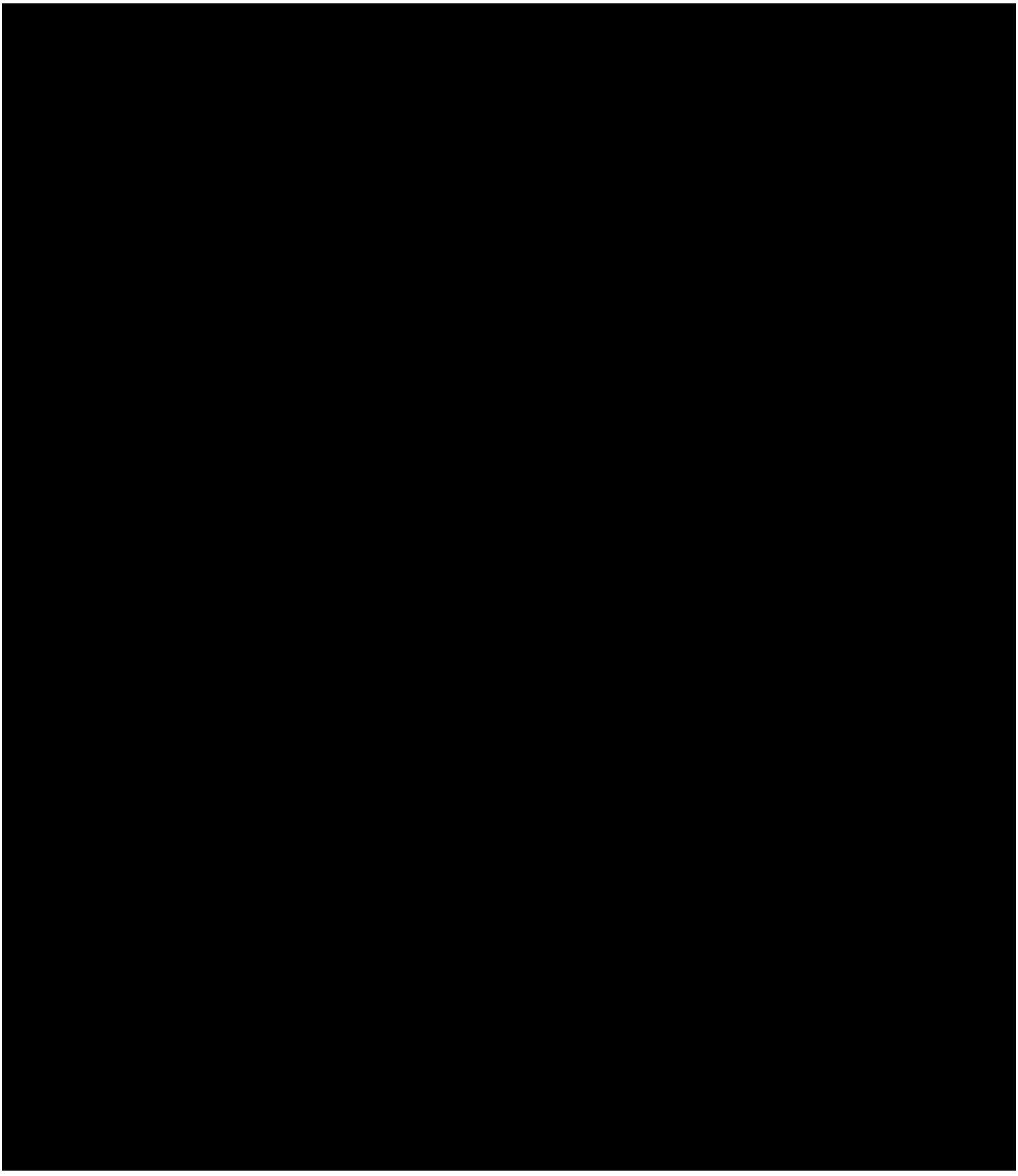
joint service with NS are {{[redacted]}}. These {{[redacted]}} corridors account for over {{[redacted]}} annual rail containers, which is over {{[redacted]}} of all western rail volumes in the market. The corridors have a rail market share over {{[redacted]}}, of which BNSF currently wins about {{[redacted]}} and UP wins about {{[redacted]}}.[26] Other important locations in the western United States served by interline intermodal include Salt Lake City, Portland, and Seattle. [27]

24. There are a variety of intermodal train services that UP and BNSF offer jointly with NS that support these high rail market shares. The below table summarizes the main service offerings and key characteristics, including average transit times and train frequency.

Table 4: Current Intermodal Service Options Between Eastern Pennsylvania and the Western United States[28] {{

[redacted]

[26] About {{[redacted]}} is won by CPKC, which is isolated to the Dallas corridor. *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (East)".
[27] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (East)".
[28] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "Train Service Figures".



[redacted]

}}

25. Overall, approximately {{[redacted]}} of rail volumes between eastern Pennsylvania and the western United States on these corridors move in high priority expedited service, while the remainder moves in premium regular priority intermodal service.[29] Expedited service generally is used by {{[redacted]}}, while premium service is more frequently used by intermodal channel partners including {{[redacted]}}. Local eastern volumes on NS are most frequently offered in partnership with {{[redacted]}}, although {{[redacted]}} also contribute sizable volumes. For interline western volumes, UP primarily partners with {{[redacted]}} and BNSF with {{[redacted]}}. For BNSF-NS existing business partnering with {{[redacted]}} in eastern Pennsylvania, major end customers (i.e., beneficial cargo owners) include {{[redacted]}}, among many others.

26. Food products, plastics/rubber, apparel, chemicals, and pulp/paper are among the main commodities moving to and from this market.[30] Overall, more freight flows into than out of

[29] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "Train Service Figures".
[30] Commodity share is derived mostly from freight currently moving in long haul trucking, since intermodal traffic typically does not report commodity type. *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (East)".

this region, including {{[redacted]}} more eastbound units from the western United States than westbound units from the eastern United States, which reflects the underlying function of the Pennsylvania warehousing industry to provide inbound goods to consumer markets in the northeast. However, eastbound and westbound intermodal volumes are more similar because intermodal takes a smaller share of eastbound volumes.[31]

3.4.2. Western Pennsylvania

27. Western Pennsylvania generates a large amount of long haul freight but receives relatively little intermodal service. Approximately {{[redacted]}} long haul freight units move into or out of the catchment counties in western Pennsylvania and rail intermodal moves about {{[redacted]}} of these units. The following table summarizes long haul truck and rail traffic moving into and out of the Pittsburgh catchment area.

Table 5: Market Volumes and Shares for Western Pennsylvania Long Haul Freight Market[32]{{

[redacted]

}}

[31] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (East)".
[32] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (West)". Due to significant freight flows between the Pittsburgh and Chicago areas and the Pittsburgh and New York City areas that are slightly under 500 miles, we define long haul freight as 400 miles for our analysis of western Pennsylvania freight markets to capture these flows.
[33] These figures include an additional {{[redacted]}} NS intermodal units not included in Table 2, which are reported in the traffic tape data as originating or terminating outside of NS's Pitcairn Intermodal Terminal in Westmoreland County, PA.
[34] {{[redacted]}} rail shipments classified as "East" are local NS eastern shipments

28. Intermodal traffic within the east is largely moving to or from {{ }} The following table summarizes currently offered intermodal services by NS between the Pittsburgh catchment area and Chicago carrying western interline containers to/from BNSF and UP.

Table 6: Current Intermodal Service Options Between Western Pennsylvania and the Western United States

Corridor	NS Eastbound Train Services	NS Westbound Train Services
Pittsburgh–Chicago	{{ }}	{{ }}

29. This table shows that the primary current intermodal service offering for western interline traffic is a daily connection to Chicago, at which point containers either are drayed in the local market or transferred to intermodal trains serving the western United States.[35]

30. Similar to eastern Pennsylvania, the principal intermodal channel partners serving western Pennsylvania include {{ }}. BNSF's western interline traffic is concentrated with {{ }}, while UP's is concentrated with {{ }}. Many of the same major end customers identified in eastern Pennsylvania also use BNSF-NS service in western Pennsylvania, including {{ }}

[35] There are also {{ }} containers moving between western Pennsylvania and NYC/NJ on NS. *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (West)"

[redacted]}}. The freight mix in western Pennsylvania reflects the more industrial character of the Pittsburgh market, where fabricated metals, coal, and rubber/plastics and chemicals are among the leading commodities, along with food products similar to eastern Pennsylvania.[36] For freight moving between western Pennsylvania and the western United States, there is also more traffic moving eastbound than westbound, with over {{[redacted]}} more eastbound than westbound long haul freight units and {{[redacted]}} more eastbound than westbound rail intermodal volumes.[37]

4. Traffic effects of proposed UP/NS merger

30. There is no corridor in the United States where a railroad carrier currently offers interline intermodal service competing against its own local services. This is the position UP would be in should the merger be approved without the PAIM condition. Accordingly, it is reasonable to expect that the proposed merger would result in the significant reduction, if not outright elimination, of all intermodal service options between Pennsylvania and the western United States except those offered by UP. The proposed merger would therefore eliminate the existing competition between UP and BNSF for the western portion of these intermodal movements. As a result, UP/NS would dominate this important intermodal corridor, with CSXT not being a viable eastern alternative because its existing network does not provide access to the same key intermodal facilities in Pennsylvania as NS. This would be harmful to the northeast supply chain at large, since the existing services BNSF-NS offer are part of a successful marketplace, and customers would be harmed by losing these options.

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[36] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (West)"
[37] *See* Baranowski/Zebrowski Workpaper "PAIM Section 3.xlsx", at tab "3.4 Tables and Figures (West)"

4.1. Projected traffic flow changes

31. BNSF-NS interline services between the western United States and Pennsylvania would be largely, if not entirely, displaced by UP-only service if the UP/NS merger is approved without mitigating conditions. This outcome is demonstrated by overwhelming rail traffic patterns showing that interline intermodal service is not offered where single line service is possible, by reductions to KCSM interline intermodal services following the CP/KCS merger despite open gateway commitments, and by UP/NS's own traffic modelling and operating plan.

32. ***First,*** there are no intermodal corridors in the United States where a railroad carrier offers interline linehaul intermodal service competing against its own local services, and practically none competing against another railroad's local services. Specifically, there are {{[redacted]}} active intermodal corridors[38] served by at least one Class I carrier where interline routes are theoretically possible. Of these, only {{[redacted]}} carry more than 5% on interline routes. The pattern is even stronger when limited to corridors where only dependent interline routes are available to compete against a single line route, where {{[redacted]}} corridor carries more than 5% on dependent interline routes.[39] If the current BNSF-NS interline route becomes a dependent interline route competing against UP in corridors between the western United States and Pennsylvania, it is reasonable to expect a similar outcome.

33. ***Second,*** despite making open gateway commitments similar to UP/NS, there were {{[redacted]}} in intermodal service over newly created dependent interline routes following the CP/KCS merger. This supports the view that intermodal service over BNSF-NS dependent interline routes between the western United States and Pennsylvania would

[38] Corridors refer to bi-directional intermodal movements between two BEA regions, limited to those corridors with at least 10,000 rail containers in 2023.
[39] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.1 Figures and Tables"

experience {{[redacted]}}. Immediately following the CP/KCS merger {{[redacted]}} interline intermodal services between KCSM-served territory in Mexico and CPRS-served territory in the western United States {{[redacted]}} and {{[redacted]}}.[40] In regions {{[redacted]}}, existing intermodal service over dependent interline routes has {{[redacted]}}. Most significantly, the manufacturing rich San Luis Potosi region in Mexico is only served by KCSM, similar to how the eastern Pennsylvania warehousing district is only served by NS. KCSM used to offer independent interline service to Chicago with {{[redacted]}}. Upon merging with CP, which created a CPKC single-line route between San Luis Potosi and Chicago, KCSM's prior interline service with {{[redacted]}} almost {{[redacted]}}. This is shown by the following chart.

[40] As discussed above, such alternative service options are not available to most freight shippers in Pennsylvania, which are largely in regions dependent on NS for intermodal service.

Figure 6: San Luis Potosi-Chicago Intermodal Traffic by Route Before and After the CP/KCS Merger[41] {{



}}

34. There are reasons to expect {{ }} in intermodal services on BNSF-NS routes between the western United States and Pennsylvania following the proposed merger. First, for KCSM-only served areas, CPKC displaced existing intermodal service over {{ }} dependent interline routes that were shorter, leaving two dependent interline options to compete against CPKC's single line offering post-merger. In contrast, a UP/NS merger would leave only one dependent interline route to compete against the new UPNS single line offering, thereby providing customers with fewer route alternatives than was the case for CPKC lanes to and from Mexico post-merger. Second, CPKC {{ }} on the Chicago end of the move despite {{ }} established business in this corridor. In contrast, UP would be expanding share on corridors {{ }}. Third, UP's and BNSF's larger commercial and network reach relative to CPKC

[41] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.1 Figures and Tables"

provided leverage that BNSF would not have relative to UP/NS in the eastern Pennsylvania market. For example, customers in San Luis Potosi would still require BNSF or UP participation to access large west coast markets by rail, which could provide some incentives to partner with BNSF or UP for interline services even to locations CPKC can reach such as Chicago. UP/NS would not be in such a situation competing against BNSF since both carriers are able to serve the same regional intermodal markets in the western United States. At minimum, if the {{[redacted]}} traffic patterns affecting intermodal service over CPKC-UP and CPKC-BNSF dependent interline routes occur for BNSF-NS routes, it is reasonable to expect that {{[redacted]}} existing intermodal services between the western United States and Pennsylvania {{[redacted]}} by a single UP-only option.

35. ***Third,*** both the traffic study and operating plan in UP's application support the expectation that intermodal service over BNSF-NS dependent interline routes between the western United States and Pennsylvania will be greatly reduced.

36. UP/NS's expert provides a rail-to-rail diversion modeling framework that may be used to demonstrate that UP-NS single-line route would displace {{[redacted]}} BNSF/NS interline traffic between the western United States and Pennsylvania.[42] After making required corrections discussed in our separate statement, the rail-to-rail diversion model predicts very similar pre-merger shares for competing UP-NS and BNSF-NS routes and very high post-merger shares for UP/NS routes.[43] Underlying this prediction is the simple fact recognized by UP/NS's model that the UP-NS route and BNSF-NS route are currently very comparable and predicted to achieve comparable shares. In contrast, the dependent interline BNSF-NS route is not

[42] See Verified Statement of David Hunt (Sept. 4, 2026), at pages 98 to 115.
[43] *See* Baranowski/Zebrowski Reply VS to Applicant's Merger Application at Section 6.

comparable to the post-merger UP-NS route, and so is not expected to achieve a comparable share. The below table summarizes relative route characteristics in terms of model "impedance" for the largest relevant corridor between Los Angeles and Harrisburg.

Table 7: Relative Route Impedance for UP-NS and BNSF-NS Routes Between Los Angeles and Harrisburg, Pre- and Post-Merger (without PAIM Condition)[44] {{



}}

37. Using this same model for all lanes where multiple routes compete to move intermodal traffic between the western United States and Pennsylvania, the below figure shows the predicted pre- and post-merger traffic distributions among route options.

[44] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.1 Figures and Tables"

Figure 7: Existing and Predicted Post-Merger Traffic Distributions Between the Western United States and Pennsylvania[45] {{



}}

38. To the extent UP/NS identified diversions away from BNSF-NS interline services between Chicago and Pennsylvania, the operating plan also reduced the number of NS trains serving this traffic. UP/NS's operating plan shows it will be removing {{ }} of the {{ }} daily intermodal trains from Chicago to Harrisburg which currently carry BNSF-NS interline traffic (this train also carries BNSF traffic to Pittsburgh).[46] This results in less frequent train service for BNSF volumes that remain. UP's incentive to fill the new intermodal train between Southern California and Croxton, NJ, which bypasses Chicago, may result in further reductions

[45] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.1 Figures and Tables". Analysis is limited to volumes on competing BNSF-NS and BNSF-UP routes and does not cover smaller volumes in affected corridors on other routes. Volumes to or from Morrisville are not included.

[46] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.1 Figures and Tables"

to intermodal service on the NS line between Chicago and Pennsylvania.[47] Erosion of volumes that support more frequent service, combined with UP/NS's lack of incentive to provide BNSF levels of service over the Chicago to Pennsylvania line that would enable BNSF to compete against UP for business in the same markets, would lead to a downward spiral culminating in the elimination of BNSF-NS service between the western United States and Pennsylvania, which is the well-established and normal outcome on lanes with single-line service.

4.2. Impacts of traffic flow changes

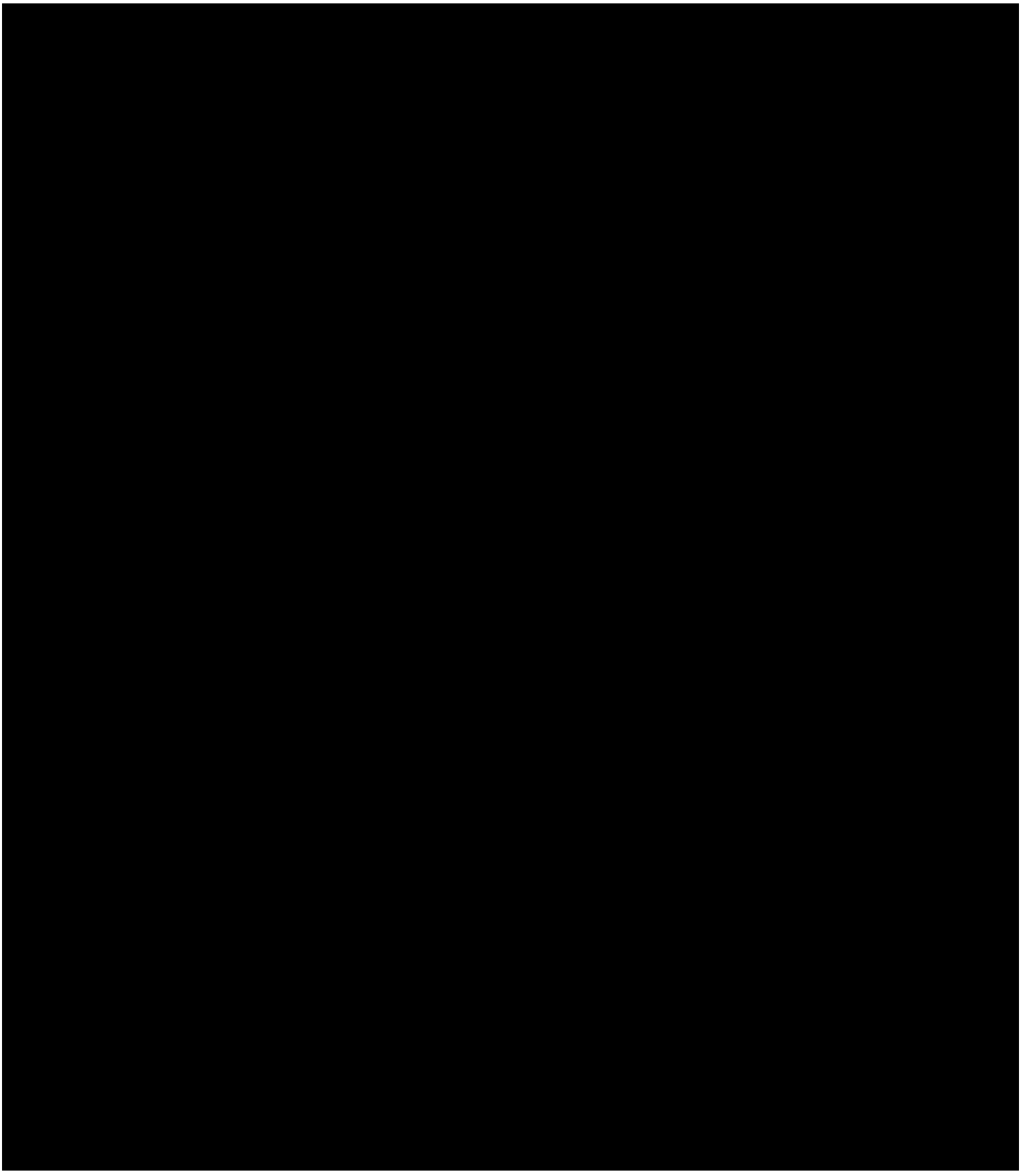
39. The reduction or loss of existing BNSF-NS services between the western United States and Pennsylvania is of itself a harm for shippers. The below table shows that many of the services shippers currently prefer are jointly offered by BNSF-NS and liable to be discontinued.

Table 8: Rail Service Options Between Eastern Pennsylvania and the Western United States Liable to be Discontinued[48] {{

[redacted]

[47] *See* Verified Statement of Eric Gehringer and John F. Orr (Sept. 4, 2024), at page 115.

[48] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.2 Figures and Tables"



[redacted]

}}

39. Even if UP-NS replaces some of these services by expanding upon other services currently offered, there will be fewer options. Nor is it reasonable to expect any expansions to improve service. The current interchange at Chicago already can and frequently does take less than {{[redacted]}} so there is no meaningful room to improve transit time here.[49] In fact, BNSF-NS already offers an intermodal service that achieves {{[redacted]}} transit times than {{[redacted]}} of the new services UP is proposing between the west and the northeast.[50]

40. Nor are there grounds to expect rate decreases. The average rate of a container moving between Los Angeles and Harrisburg is about {{[redacted]}} and the cost of interchanging a container is {{[redacted]}}.[51] Because BNSF-NS already runs intermodal services in this corridor {{[redacted]}} than what UP/NS is proposing, opportunities to reduce costs beyond the {{[redacted]}}

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[49] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.2 Figures and Tables"
[50] UP is proposing a new set of LA<>Croxton trains (ZCICX/ZCXCI) that have planned transit times of 95 hours and 99 hours respectively. BNSF-NS currently moves approximately {{[redacted]}} of its traffic in these corridors faster than UP's planned schedules. *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.2 Figures and Tables"
[51] Both calculations are for a round-trip move using 2023 URCS costs and assume a UP-side and NS-side interchange will be eliminated. This calculation includes SEMs, car-day costs, and interchange and I&I make whole adjustments. These calculations assume railroad-owned equipment, which directly reflect costs to the railroad but also serve as a proxy representing potential savings for private equipment. *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.2 Figures and Tables"

interchange savings due to higher velocities are unrealistic. It follows that any changes in rates would be based on commercial, not cost, considerations. Dr. Carlton discusses why commercial considerations in a market with fewer options would lead to upward rate pressure.[52]

41. Reduced intermodal service offerings and upward intermodal rate pressure would damage the competitiveness of the eastern Pennsylvania warehouse industry. Long haul transportation is a significant component of costs in the warehousing industry. The eastern Pennsylvania warehousing industry generates approximately {{[redacted]}} in revenues, compared to nearly {{[redacted]}} billion in rail transportation payments.[53] Increases in rail transportation payments, or added costs of using truck instead of the eliminated BNSF-NS services, would be a significant impairment. Over time it could lead to advantages for the New Jersey warehousing, and ultimately concentration of warehousing in areas with competitive railroad access and removal of existing warehousing infrastructure in eastern Pennsylvania. This overall reduction of competition leads to higher prices for consumer goods delivered throughout the northeast supply chain to over one-third of the United States population.

5. Traffic effects of proposed PAIM condition

42. The PAIM condition would preserve the competitive landscape underlying existing intermodal traffic patterns on BNSF-NS and UP-NS routes between the western United States and Pennsylvania. Unlike for dependent interline routes discussed in the prior section, railroads are able to successfully use trackage rights over lines owned by the carrier they are competing against to win intermodal traffic in the same corridor. Pre-merger UP-NS and BNSF-NS routes have {{[redacted]}} relative characteristics as post-merger routes based on UP/NS's

[52] *See* Verified Statement of Dr. Carlton, Sections III.B–III.C.

[53] *See* Baranowski/Zebrowski Workpaper "PAIM Section 4.xlsx", at tab "4.2 Figures and Tables"

modelling, and the specific intermodal train services each is planning to offer in their respective operating plans are also {{[redacted]}} to those offered today. Thus, we project that future traffic distributions would remain similar to how they are today if the PAIM condition is granted.

43. Railroads successfully use trackage rights over lines owned by the carrier they are competing against to win intermodal traffic in the same corridor. The most direct recent example of this is NS {{[redacted]}} against CSXT in the Boston market using trackage rights it obtained from CSXT as a condition of the PanAm merger. In this case, CSXT acquired the best route reaching Boston from the west similar to how NS already owns the best (and only) line reaching across Pennsylvania from Chicago. Rather than attempt to compete against CSXT using dependent interline rights, NS obtained trackage rights to operate over CSXT's line. Specifically, NS obtained the right to operate up to two intermodal trains a day.[54] Using this right, NS has been able to win enough business {{[redacted]}} compete against CSXT in the intermodal corridor between Chicago and Boston, winning over {{[redacted]}} rail market share.[55]

44. Modelling intermodal shares over the UP-NS and BNSF-NS routes {{[redacted]}} to UP/NS's approach also provides support for expecting {{[redacted]}} traffic patterns post-merger under the PAIM condition.

[54] https://www.trains.com/pro/freight/intermodal/norfolk-southern-to-operate-its-first-new-england-stack-trains-next-week/

[55] *See* Baranowski/Zebrowski Workpaper "PAIM Section 5.xlsx", at tab "Tables and Figures"

Table 9: Relative Route Impedance for UP-NS and BNSF-NS Routes Between Los Angeles and Harrisburg, Pre- and Post-Merger (with PAIM Condition)[56]{{



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45. Table 9 above shows that relative route impedance for UP-NS and BNSF-NS routes pre- and post- merger with PAIM condition trackage rights and existing traffic distributions for the intermodal lane between Los Angeles and Harrisburg. The {{ }} of how UP-NS and BNSF-NS routes compare both pre- and post-merger if trackage rights are granted shows that it is reasonable to expect {{ }} traffic distributions as today. Based on extending the route impedance modelling to all impacted intermodal lanes BNSF currently

[56] *See* Baranowski/Zebrowski Workpaper "PAIM Section 5.xlsx", at tab "Tables and Figures". This calculation incorporates re-stated coefficients discussed in our verified separately submitted in BNSF's comments.
[57] FTI conservatively retains 90 impedance miles through Chicago under the PAIM condition to reflect impedance related to entering and existing NS trackage at Chicago.
[58] See Verified Statement of David Hunt (Sept. 4, 2026), at page 111 for formula.

serves between the western United States and impacted Pennsylvania market, the following table summarizes predicted current and post-merger traffic assuming the PAIM condition is granted.

Figure 8: Pre- and Post-Merger UP-NS and BNSF-NS Intermodal Shares for Top Western Markets to and from Eastern Pennsylvania[59] {{



}}

The similarity of traffic shares indicates that current traffic patterns will remain if the PAIM condition is granted.

46. Finally, BNSF's operating plan also reflects that the PAIM condition will enable BNSF to preserve existing traffic patterns. Namely, BNSF is planning to run daily intermodal train service between the four Pennsylvania intermodal terminals and Chicago in each direction using the trackage rights, which is similar to existing NS operations moving BNSF-NS interline intermodal traffic between Chicago and Pennsylvania.

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[59] *See* Baranowski/Zebrowski Workpaper "PAIM Section 5.xlsx", at tab "Tables and Figures". Analysis is limited to volumes on competing BNSF-NS and BNSF-UP routes and does not cover smaller volumes in affected corridors on other routes. Volumes to or from Morrisville are not included.

47. The below table summarizes current and projected future intermodal traffic distributions over UP-NS, BNSF-NS, and other routes between the western United States and Pennsylvania impacted by the PAIM condition. Projected future traffic distributions if the PAIM condition is granted reflect current traffic distributions. This includes scenarios where the UP/NS merger is approved with and without BNSF's PAIM condition requested granted.

Table 10: Current and Projected Post-Merger Intermodal Volumes Between the Western United States and Pennsylvania by NS Terminal (with and without PAIM Condition) [60]{{

[redacted]

}}

The post-merger scenario where the PAIM condition is granted is dependent on reasonable trackage rights rates aligned with market rate levels and equal dispatching rights.

[60] *See* Baranowski/Zebrowski Workpaper "PAIM Section 5.xlsx", at tab "Tables and Figures". Analysis is limited to volumes on competing BNSF-NS and BNSF-UP routes and does not cover smaller volumes in affected corridors on other routes. Volumes to or from Morrisville are not included.

48. Consistent with UP's selection of a 2023 base year in its Application, the traffic volumes presented in this statement rely on 2023 data, whereas BNSF's operating plan is sized using 2025 volumes, which are summarized below in comparison to 2023 volume levels.

Table 11: BNSF-NS Intermodal Volumes Between the Western United States and Western Pennsylvania, 2023 vs. 2025 Operating Plan[61] {{



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[61] *See* Baranowski/Zebrowski Workpaper "PAIM Section 5.xlsx", at tab "Tables and Figures"
[62] Volumes do not include approximately {{ }} revenue empty containers modelled in the 2025 operating plan.

VERIFICATION

I, Michael R. Baranowski, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 18, 2026.

/s/ Michael R. Baranowski

Michael R. Baranowski

VERIFICATION

I, Nathaniel S. Zebrowski, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 18, 2026.

/s/ Nathaniel S. Zebrowski

Nathaniel S. Zebrowski

Michael Baranowski

EXHIBIT 1

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Education

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Supplemental Finance Studies, Kean College

Mike Baranowski heads FTI's Network Industries Strategies practice and provides strategic, financial, and economic consulting services to the telecommunications and railroad and pipeline transportation industries. He has special expertise in analyzing and developing complex costing and cash flow models, conducting detailed operations analysis, and transportation engineering. Much of his work involves providing oral and written expert testimony before courts, arbitration panels and regulatory bodies.

He is a recognized expert in railroad regulatory economics and has assisted FTI's railroad clients in a broad range of litigation and regulatory engagements involving pricing of services, contract disputes, damage calculations and analyses of the specific effects of pending or proposed changes in policy or regulation.

Some of Mr. Baranowski's representative experience includes:

- Development of strategic litigation analyses for large network industry regulatory rate proceedings based on the theory of Constrained Market Pricing and the Stand-Alone cost test. Theory assumes the existence of a hypothetical, efficient competitor and involves detailed analysis of short and long run operations, expenses, capital expenditures and revenues.
- Analysis of market dynamics effecting pricing and development of a suite of modeling tools to assess the regulatory risk of tariff and contract transportation rates for a mix of commodities and services based on key cost drivers and forecasts.
- Expert testimony related to the determination of damages in a variety of commercial contract disputes in the railroad, telecommunications, pipeline and trucking industries.
- Evaluation of market effects of proposed railroad mergers and identification of merger related efficiencies and quantification of the associated savings.

- Going concern and liquidation value estimates for railroad related assets as the basis for trackage rights and competitive access compensation.
- Develop detailed cost and revenue allocation metrics to assess relative profitability of individual asset groups or segments of complex network industries.

Mr. Baranowski holds a B.S. in Accounting from Fairfield University in Fairfield, Connecticut and has pursued supplemental finance studies at Kean College in Union, New Jersey.

Select Railroad Testimony

Surface Transportation Board

November 7, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
March 6, 2017	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.
January 12, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski
July 16, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski
April 26, 2019	Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski
January 26, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski
January 29, 2021	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
April 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Reply Statement on Compensation, Verified Statement of Michael R. Baranowski
May 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement on Compensation, Verified Statement of Michael R. Baranowski
June 21, 2021	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Canadian Pacific Applicants' Response to KCS Reply, Verified Statement of Michael R. Baranowski

October 29, 2021	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Michael R. Baranowski
February 14, 2022	Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, supplemental Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
May 27, 2022	Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Opening Submission of CN, Verified Statement of Michael R. Baranowski
July 12, 2022	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Michael R. Baranowski on behalf of Applicants
August 22, 2022	Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Rebuttal Submission of CN, Verified Statement of Michael R. Baranowski
February 23, 2023	Ex Parte No. 771, Alternative to URCS, Opening Comments of AAR, Verified Statement of Michael R. Baranowski
September 22, 2023	Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Motion of The Association of American Railroads to Extend the Comment Period, Verified Statement and Written Testimony of Michael R. Baranowski and Nathaniel S. Zebrowski
December 20, 2023	Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Reply Comments of The Association of American Railroads, Reply Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
May 3, 2024	Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Opening Statement and Evidence, Verified Statement of Michael R. Baranowski and Nathan Zebrowski
September 23, 2024	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, Reply Supplementary Statement on Compensation, Verified Statement of Michael R. Baranowski
March 14, 2025	Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Reply Statement and Evidence, Reply Verified Statement of Michael R. Baranowski and Nathan Zebrowski
October 23, 2025	Docket No. NOR 42180, Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Statement and Evidence, Verified Reply Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
April 20, 2026	Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Supplemental Submission, Supplemental Verified Statement of Michael R. Baranowski and Nathan Zebrowski

U.S. District Court for the Northern District of Texas, Fort Worth Division

November 7, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Expert Report of Michael R. Baranowski
November 22, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Reply Expert Report of Michael R. Baranowski
December 21, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Rebuttal Expert Report of Michael R. Baranowski

U.S. District Court for the Western District of Washington

December 15, 2023	U.S. District Court for the Western District of Washington, Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Expert Report of Michael R. Baranowski
February 16, 2024	U.S. District Court for the Western District of Washington, Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Rebuttal Expert Report of Michael R. Baranowski

Business Court of Texas, Eighth Division

April 29, 2026	Business Court of Texas, Eighth Division, Cause No. 25-BC08A-0023, BNSF Railway Company vs. CF&I Steel LP d/b/a Rocky Mountain Steel Mills, Report of Michael R. Baranowski
August 12, 2026	Business Court of Texas, Eighth Division, Cause No. 25-BC08A-0023, BNSF Railway Company vs. CF&I Steel LP d/b/a Rocky Mountain Steel Mills, Reply Statement and Supplement of Michael R. Baranowski

Arbitrations and Mediations

April 14, 2017	American Arbitration Association Case No. 01-15-0004-4830 and 01-15-0004-4931, Arbitration Between FirstEnergy Generation LLC and CSX Transportation, Inc. & BNSF Railway Company, Expert Report of Michael R. Baranowski
November 22, 2017	American Arbitration Association Case No. No. 01-16-0003-6208, CSXT Transportation, Inc. v. JEA and Florida Power & Light Co., Expert Report of Michael R. Baranowski
January 26, 2018	American Arbitration Association Case No. No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Expert Report of Michael R. Baranowski
February 16, 2018	American Arbitration Association Case No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Rebuttal Expert Report of Michael R. Baranowski
February 23, 2018	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
April 17, 2018	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski

June 22, 2018	JAMS REF #1100088262, BNSF Railway Company v. Union Pacific Railroad Company, Expert Report of Michael R. Baranowski
March 25, 2019	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
April 26, 2019	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
January 18, 2021	American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Report of Michael R. Baranowski on Behalf of BNSF & NS
February 5, 2021	American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Reply Report of Michael R. Baranowski on Behalf of BNSF & NS
January 14, 2022	Arbitration between The Port of Vancouver, USA and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
May 9, 2025	American Arbitration Association Case No. 01-24-0000-5997, Schneider National Carriers, Inc. vs. BNSF Railway Company, Verified Statement of Michael R. Baranowski on behalf of BNSF Railway Company

Select Pipeline Testimony

Federal Energy Regulatory Commission

November 20, 2019	Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony of Michael R. Baranowski on behalf of Colonial Pipeline
March 20, 2020	Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony to Trial Staff of Michael R. Baranowski on behalf of Colonial Pipeline

Nathaniel S. Zebrowski

EXHIBIT 2

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Education

B.A. in Economics, Northwestern University

Graduate Certificate in Transportation Policy and Economics, George Mason University

Nathan Zebrowski is a Senior Managing Director in the Network Industries Strategies group of the Economic Consulting segment, located in McLean, VA. He provides financial and economic consulting services to the transportation and energy industries.

Mr. Zebrowski's work combines economic and statistical training with deep industry expertise and project experience. His work includes freight transportation market analysis; competitive assessments and valuations for transportation assets, services, and systems; contract evaluation, negotiation support, regulatory risk assessment, and damages determinations; litigation and expert witness testimony; rate reasonableness inquiries including application of regulatory tests; M&A related analysis and support; and operational, capital investment, and cost studies.

In Mr. Zebrowski's work evaluating network enterprises, he is informed by an intimate knowledge of the fundamental economics related to long-lived network assets, the unique realities affecting network operations and the highly individualized nature of the regional and commodity markets in which transportation businesses participate. He has special expertise in developing complex computer models assessing traffic flows over railroad networks and conducting detailed studies on costs, operations, and pricing of freight transportation services.

Testimony:

March 7, 2016	United States Surface Transportation Board, Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
October 29, 2021	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
February 14, 2022	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
July 12, 2022	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
January 19, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Expert Report of Nathaniel S. Zebrowski
February 14, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Supplemental Expert Report of Nathaniel S. Zebrowski
April 15, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Hearing Testimony of Nathaniel S. Zebrowski
September 25, 2023	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
December 20, 2023	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Reply Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
February 26, 2024	United States Surface Transportation Board, Finance Docket 36744, Canadian National Railway Company—Control—Iowa Northern Railway Company Verified Statement of Nathaniel S. Zebrowski
April 29, 2024	United States Surface Transportation Board, Finance Docket 36744, Canadian National Railway Company—Control—Iowa Northern Railway Company Verified Statement of Nathaniel S. Zebrowski
May 3, 2024	United States Surface Transportation Board, Finance Docket 22218, Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Co. Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski.
March 14, 2025	United States Surface Transportation Board, Finance Docket 22218, Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Co. Reply Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski.
August 15, 2025	United States District Court, Tarrant County, Texas, Cause No. 017-361391-25, BNSF Railway Company v. Amsted Rail Company Inc., Expert Report of Nathaniel S. Zebrowski

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 12-C

VERIFIED STATEMENT OF DENNIS W. CARLTON, PH.D.

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE

SURFACE TRANSPORTATION BOARD

BNSF RAILWAY COMPANY — TRACKAGE RIGHTS — NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY	***STB Finance Docket No. 36873 (Sub-No. 33)***

Exhibit 12-C

Verified Statement of Professor Dennis W. Carlton, Ph.D.

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I. QUALIFICATIONS, ASSIGNMENT, AND SUMMARY OF OPINIONS

A. QUALIFICATIONS

1. I am the David McDaniel Keller Professor of Economics Emeritus at the Booth School of Business of the University of Chicago. I received my A.B. in Applied Mathematics and Economics from Harvard University and my M.S. in Operations Research and Ph.D. in Economics from the Massachusetts Institute of Technology. I have served on the faculties of the Law School and the Department of Economics at the University of Chicago and the Department of Economics at the Massachusetts Institute of Technology.

2. I specialize in the economics of industrial organization. I am co-author of the book Modern Industrial Organization, a leading text in the field of industrial organization, and I also have published approximately 150 articles in academic journals and books. In addition, I serve as Co-Editor of the Journal of Law and Economics, a leading journal that publishes research applying economic analysis to industrial organization and legal matters; serve on the Editorial Board of Competition Policy International, a journal devoted to competition policy; and serve on the Advisory Board of the Journal of Competition Law and Economics. I have also served as an Associate Editor of the International Journal of Industrial Organization and Regional Science and Urban Studies, and on the Editorial Board of Intellectual Property Fraud Reporter. I was the 2014 Distinguished Fellow of the Industrial Organization Society.

3. In addition to my academic experience, I served as Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice from October 2006 through January 2008. My responsibilities included supervising approximately 50 Ph.D. economists, helping formulate antitrust policy toward ongoing proposed mergers, analyzing general antitrust policies both horizontal and vertical, and communicating such policies to foreign and domestic agencies, as well as to practitioners. I also served as a Commissioner of the Antitrust Modernization Commission, created by Congress to evaluate U.S. antitrust laws. I have served as a consultant to the Department of Justice and Federal Trade Commission on the Horizontal Merger Guidelines, as a general consultant to the Department of Justice and Federal Trade Commission on antitrust matters, as a member of the American Bar Association Advisory

Committee that advises the incoming President on antitrust policy, and as an advisor to the Bureau of the Census on the collection and interpretation of economic data.

4. I also am a Senior Managing Director of Compass Lexecon, a consulting firm that specializes in the application of economics to legal and regulatory issues and for which I served as President (of Lexecon) for several years. I have provided expert testimony before various U.S. state and federal courts, the U.S. Congress, a variety of state and federal regulatory agencies, and foreign tribunals. I have submitted testimony before the Surface Transportation Board ("STB") and the Interstate Commerce Commission (ICC) in different proceedings, and provided expert testimony in litigation matters involving Class I railroads. My curriculum vitae, which includes a list of my publications and the last four years of my testifying experience, is attached as Attachment 1.

B. ASSIGNMENT

5. I have been asked to comment on the way in which BNSF's request for overhead trackage rights on certain NS-owned lines connecting Chicago to Pennsylvania (the "Pennsylvania Intermodal Condition") could address potential harm to the rail network from Union Pacific Corporation's ("UP") proposed acquisition of Norfolk Southern Corporation ("NS") (collectively, "Applicants") (the "Proposed Transaction").

6. To carry out this assignment, I have relied on my years of experience studying the nature of competition, including prospective analyses of mergers. The materials that I and my staff have relied on in the preparation of this Verified Statement are listed in Attachment 2. I am also submitting a Verified Statement on behalf of BNSF as part of the proceeding assessing the Proposed Transaction. In this Verified Statement, I refer to such Verified Statement as the "Carlton Main VS."[1]

[1] Verified Statement of Professor Dennis W. Carlton, Ph.D., Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, November 18, 2026 (hereinafter, "Carlton Main VS").

C. OVERVIEW OF THE PROPOSED TRANSACTION AND BNSF'S PENNSYLVANIA INTERMODAL CONDITION

1. Overview of the main transaction

7. On July 29, 2025, Union Pacific and Norfolk Southern announced their agreement to "create America's first transcontinental railroad," a combination that would "transform the U.S. supply chain" allowing for the connection of "over 50,000 route miles across 43 states from the East Coast to the West Coast[.]"[2] The Proposed Transaction, first filed before the STB late in 2025, if approved, will see UP acquire control of the operations of NS and its rail carrier subsidiaries.[3]

8. The STB's consideration of the merger or control of at least two Class I railroads is governed by the public interest criterion.[4] Mergers serve the public interest 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."[5] And, of course, to the extent that the STB can impose conditions that mitigate the harms yet preserve the benefits, the net benefits of the merger increase.

2. Overview of BNSF's Pennsylvania Intermodal Condition

9. I focus my discussion on BNSF's Pennsylvania Intermodal Condition. I understand that BNSF is seeking approval of overhead trackage rights on certain NS-owned lines between

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[2] Union Pacific, "Union Pacific and Norfolk Southern to Create America's First Transcontinental Railroad," July 29, 2025, https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729.

[3] Decision, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, December 19, 2025.

[4] Decision, Major Rail Consolidation Procedures, STB Docket No. EP 582 (Sub-No. 1), June 11, 2001 (hereinafter, "STB Rules"), §1180.1(b).

[5] STB Rules, §1180.1(c) (emphasis removed).

Chicago, IL and Bethlehem, PA, and that in connection with this trackage rights request, BNSF is also requesting access to and use of certain NS-owned intermodal facilities in Pennsylvania.[6]

II. SUMMARY OF OPINIONS

10. Today, BNSF and NS jointly operate one of the most successful interline intermodal products in the country. Through a long-standing partnership, these carriers move {{[redacted]}}' worth of merchandise between the West Coast and Pennsylvania every year. The combined efforts of BNSF and NS to develop and grow this business have translated into cost-effective, reliable transportation that shippers and final consumers of those products depend on.

11. The Proposed Transaction threatens the success of this partnership. To the extent rates are above incremental costs, a combined UP/NS will find it profitable to divert traffic to its own lines, an outcome that can benefit some shippers but that can also harm others in related corridors (origin-destination pairs), by depriving BNSF of volume needed to justify investments, appropriate level of service, and convenient scheduling throughout its network. This can lead to harm to competition.

12. As I explain below and in the Carlton Main VS, the expected shifts in traffic patterns and potential harm to shippers could extend beyond BNSF-NS intermodal connections in Pennsylvania, potentially affecting other parts of BNSF's rail network. Depriving carriers of volume that currently supports a high-quality level of operations and service can have several consequences. In the shorter term, frequency can be affected due to necessary changes in schedule to accommodate the lower volumes of traffic, leading to service degradation. Shippers

[6] I understand BNSF's Operating Plan in support of its Responsive Application, sponsored by Mr. Jon Gabriel, describes in detail the extent of BNSF's request. I understand BNSF is requesting trackage rights on five NS lines that together form a continuous route from Chicago, IL to Bethlehem, PA. These include the Chicago Line, the Cleveland Line, the Fort Wayne Line, the Pittsburgh Line, and the Harrisburg Line, together with segments of the Reading Line and the Lehigh Line. The trackage rights BNSF is requesting would allow BNSF to access four existing intermodal facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem). Operating Plan, Verified by Jon Gabriel, BNSF Railway Company – Trackage Rights – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873 (Sub-No. 33), November 18, 2026. When I use the phrase "I understand" and then cite a document or Verified Statement, that means that I understand that the cited material will contain the relevant content.

that rely on the BNSF segment for purposes other than reaching Pennsylvania can also be impacted as a result. In the longer term, investments that would have been made otherwise are not made, deteriorating the quality of service in that segment and others. By degrading the ability of rivals to compete, harm to competition occurs. See Section III.

13. I show below that these risks of harm to competition are material. To address their potential impact, BNSF is asking the Board to adopt the Pennsylvania Intermodal Condition. The requested trackage rights address, at least to some extent, the potential harms from the Proposed Transaction. See Section IV.

III. APPLICANTS IN THE PROPOSED TRANSACTION UNDERSTATE THE RISK OF HARM FROM THE PROPOSED TRANSACTION BECAUSE THEY IGNORE THE NETWORK NATURE OF THE RAILROAD INDUSTRY IN THEIR DISCUSSION OF VERTICAL FORECLOSURE[7]

14. In this Section III, I first provide an overview of interline intermodal traffic associated with the Pennsylvania Intermodal Condition.[8] Second, I explain that mergers with vertical elements can, under certain circumstances, harm competition,[9] and I show that those risks in a network industry like railroads exist in a way that they do not generally exist in other industries and therefore need to be considered. Third, I describe how foreclosure can affect competing

[7] As I note in the Carlton Main VS, foreclosure typically arises when an integrated entity limits access to products or services that rivals use to compete throughout the network. Carlton Main VS, Section IV.A.

[8] I understand the Verified Statement of Mr. Nathaniel Zebrowski and Mr. Michael Baranowski, which BNSF submits in support of its Responsive Application, describes the geographic area in Pennsylvania relevant to the Pennsylvania Intermodal Condition as encompassing the following counties: (i) Berks, Bucks, Chester, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Luzerne, Montgomery, Northampton, Northumberland, Schuylkill, and York, in eastern Pennsylvania; and (ii) Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington, and Westmoreland, in western Pennsylvania. Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski, BNSF Railway Company – Trackage Rights – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873 (Sub-No. 33), November, 18, 2026 (hereinafter, "Zebrowski and Baranowski VS").

[9] Dennis W. Carlton, "Transaction costs and competition policy," *International Journal of Industrial Organization,* Vol. 73 (2020): 1-14; Dennis W. Carlton and Michael Waldman, "The Strategic Use of Tying to Preserve and Create Market Power in Evolving Industries," *The RAND Journal of Economics*, Vol. 33, No. 2 (2002): 194-220.

carriers such as BNSF. Lastly, I discuss how UP's and NS's commitment to maintain gateways open is likely insufficient.

A. BNSF'S INTERMODAL VOLUME RELATED TO THE PENNSYLVANIA INTERMODAL CONDITION IS SIGNIFICANT

15. BNSF and NS interline traffic associated with intermodal services valued at nearly {{[redacted]}} in 2023 on routes related to the Pennsylvania Intermodal Condition.[10] To the extent a combined UP/NS can foreclose BNSF from serving these routes, the Proposed Transaction would have the potential to adversely affect {{[redacted]}} of BNSF's revenues from corridors related to the Pennsylvania Intermodal Condition. In Section III.B I explain how this can adversely impact competition and shippers.

16. In Figure 1 below I show that shipments of intermodal commodities related to the Pennsylvania Intermodal Condition and in which Class I carriers interlined directly with one another generated over {{[redacted]}} in total revenue, with NS participating in {{[redacted]}} of these revenues. BNSF relies entirely on NS as an interline partner for its intermodal business in Pennsylvania: shipments in which NS participates account for {{[redacted]}} of the {{[redacted]}} in BNSF's 2023 intermodal revenues related to the Pennsylvania Intermodal Condition.

[10] Unless noted otherwise, all figures in this Verified Statement rely on data from the workpapers produced on August 28, 2026, as part of the Verified Statement Of Elizabeth M. Bailey, Ph.D., Union Pacific Corporation and Union Pacific Railroad Company — Control — Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026 ("Bailey VS Workpapers"). See also Michael L. Rosenthal Letter to Chief of Case Administration, Surface Transportation Board, August 28, 2026, Re: Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.

Figure 1: Class I 2023 Interline Revenues from Intermodal Traffic Related to the Pennsylvania Intermodal Condition {{



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B. THE NETWORK NATURE OF THE RAIL INDUSTRY HEIGHTENS THE RISK OF NEGATIVE IMPACT ON COMPETITION

17. Even when potentially unlocking new benefits, "end-to-end" transactions can, under certain conditions, harm competition.[11] This has been recently recognized, for example, by the

[11] The possibility of vertical harm in recent economic literature has often not focused on network industries such as railroads. For a discussion of these effects, see Dennis W. Carlton and Randal C. Picker, "Antitrust and Regulation," in *Economic Regulation and Its Reform: What Have We Learned?* edited by Nancy L. Rose, The University of Chicago Press (2014): 25-61; Dennis W. Carlton and J. Mark Klamer, "The Need for Coordination Among Firms, with Special Reference to Network Industries," *The University of Chicago Law Review*, Vol. 50, No. 2 (1983): 446-465; Yanyou Chen, "Network Structure and the Efficiency Gains from Mergers: Evidence from the U.S. Freight Railroads," *The RAND*

STB in its decision to approve the merger of Canadian Pacific and Kansas City Southern.[12] In the Carlton Main VS, I explain why Applicants have failed to demonstrate that the Proposed Transaction will not cause competitive harm through vertical foreclosure. In particular, I elaborate on the following ideas:

- The potential for harm in vertical mergers arises from the possibility that the merged entity would limit access to products or services that rivals use to compete throughout the network, usually referred to as foreclosure.
- In the railroad industry, foreclosure concerns refer to the possibility that the newly-merged carrier would limit access to competing railroads, which would experience volume declines as a result.
- One feature of the rail freight industry that heightens the risk of competitive harm associated with foreclosure and traffic shifts is its configuration as a network. Decisions on one link of a network affect not only that link but also other links in the network, due to what economists describe as "externalities."[13] Some of those externalities are positive, whereas others are negative.
- One negative externality is associated with the loss of traffic volumes for competing carriers other than a combined UP/NS. I understand the Verified Statement of Mr. Jon

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Journal of Economics, (2026): 1-28 (hereinafter, "Chen (2026)"). See also U.S. Department of Justice and the Federal Trade Commission, *Merger Guidelines*, December 18, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf, p. 13 ("Mergers involving products or services rivals may use to compete can threaten competition in several ways, for example: (A) the merged firm could limit rivals' access to the products or services, thereby weakening or excluding them, lessening competition; (B) the merged firm may gain or increase access to rivals' competitively sensitive information, thereby facilitating coordination or undermining their incentives to compete; or (C) the threat of limited access can deter rivals and potential rivals from investing.").

[12] Decision, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al., STB Docket No. FD 36500, March 14, 2023 (hereinafter, "CPKC Decision"), p. 4 ("Even end-to-end mergers, however, can pose competitive risks, and indeed this decision overturns prior agency precedent that did not sufficiently recognize such concerns.").

[13] Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization*, 4th edition, Pearson (2005) (hereinafter, "Carlton and Perloff (2005)"), p. 82 (Externalities refer to situations in which decisionmakers "do not bear the full cost (benefit) from the harm (good) their actions do to others.").

Gabriel on behalf of BNSF explains that, following the consummation of the Proposed Transaction, BNSF expects a combined UP/NS to reduce BNSF's ability to offer competitive pricing and service and that, as a result, many customers would have little incentive to choose the BNSF interline option over a combined UP/NS's single-line services.[14, 15] As I explain in the Carlton Main VS, volumes can be a crucial determinant in the provision of services in rail freight. When volume decreases, frequency of service is reduced, investments can be delayed or eliminated, and, eventually, services may no longer be provided, with resulting harm to competition and shippers.

- The direct relationship between investment levels and expectations about volume of traffic in the rail industry is almost axiomatic and recognized in Applicants' submissions in support of the Proposed Transaction.[16] It is also illustrated by BNSF's own experience

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[14] Verified Statement of Jon Gabriel, BNSF Railway Company – Trackage Rights – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873 (Sub-No. 33), November, 18, 2026 (hereinafter, "Gabriel VS").

[15] Applicants' own analyses indicate that the Proposed Transaction is expected to reduce volumes for competing carriers, reducing traffic volume on their networks. Verified Statement of David T. Hunt, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026, p. 67; Verified Statement of Mark A. Israel, Union Pacific Corporation, et al. – Control – Norfolk Southern Corporation, et al., STB Docket No. FD 36873, September 4, 2026, ¶ 140; Carlton Main VS, Section IV.B.2.

For example, Mr. Hunt finds diversions of approximately {{[redacted]}} of BNSF intermodal traffic in {{[redacted]}}. See my workpapers. I understand the Verified Statement by Mr. Zebrowski and Mr. Baranowski on behalf of BNSF addresses Mr. Hunt's underlying rail-to-rail diversion model and finds that (i) Mr. Hunt's estimates understate those diversions, and (ii) when that model is corrected, it shows that {{[redacted]}} BNSF/NS interline traffic between the western United States and Pennsylvania would be diverted to the combined UP/NS' single-line routes. Zebrowski and Baranowski VS.

[16] Amended Railroad Control Application, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026, Vol. 1, p. 59 ("The consolidation of UP and NS operations will require capital expenditures for various purposes, including, among other things, increasing capacity of certain lines and yards. Applicants expect to invest more than $2 billion to implement the proposed transaction, primarily to add and extend sidings and expand intermodal terminals and to integrate UP and NS information technology systems. These investments will allow Applicants to accommodate the traffic attracted to the merged system by their seamless, single-line service offerings."); Verified Statement of Grant Janke, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk

related to the construction of a second bridge in a segment of BNSF's Southern Transcon route connecting Los Angeles to Chicago.[17]

18. Because of the network nature of the industry, any negative impact from traffic shifts and their associated volume losses on one segment of a route (such as reduced investment, degradation of quality, and even exit) can affect a broader set of routes.[18] The following illustrate some of these effects:

- Shippers of the non-merging carriers relying on services at an origin O or at a destination D may face a reduction in the availability or quality of those services in those locations.
- Shippers on corridors for which O-D was a bridge segment (i.e., corridors of the form O'-O-D-D') may now have to search for different alternatives to move their products from O' to D' given reductions in frequency or quality of service in the O-D bridge. In the event of total exit from the O-D corridor, the non-merging carriers may offer alternative routes to those customers, presumably longer and more costly than before.
- Shippers that established plant sites at O or D because of access to railroad competition may eventually have no more than one alternative, losing the level of rail competition they expected to benefit from when they decided to establish their sites in those geographies.

19. The examples above illustrate how traffic shifts and their associated volume losses (for the non-merged carriers) can trigger changes in scheduling and frequencies and impact growth

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Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026, ¶ 11 ("In the UP/NS merger, certain traffic gains will depend in part on capital expenditures, including projects that will increase the capacity of the main line and yards.").

[17] Carlton Main VS, Section IV.B.4.a.

[18] Chen (2026), pp. 11 ("Each railroad company incurs fixed operational costs, including administrative and general overheads; thus, higher shipment volumes naturally generate economies of scale at the firm-wide aggregate level."), 18 ("I find that non-merging competitors reallocate their resources away from such regions in equilibrium. Assuming all other factors remain constant, when the merged firm's costs decrease in a given market, its market share in that market will increase. Consequently, the competitors' allocated resources to that market will have reduced utilization. This leads to a decrease in the competitors' marginal return on capital in that market, prompting them to reallocate their resources to other markets. When resources are moved away, the shipment cost of non-merging competitors will further increase in those markets. This results in further increases in the local market share of the merged firm.").

projections in such a way that investments (e.g., track maintenance, container cars, bridges, and stations) are delayed – or forever halted, or service stops altogether. Any of these effects could harm the rail network. And harm to such network can, in turn, adversely affect competition and result in harm to shippers throughout the network through higher prices or lower quality of service. In turn, shippers might reduce their own investments (e.g., in capacity) if they see reductions in service levels, non-merging railroads' investment, or competition among railroads.

20. The discussion above is relevant to the case of intermodal services to the extent intermodal service is a business line in which a rail carrier cannot exit and reenter without incurring significant costs. In the analysis they put forth as support for the Proposed Transaction, Applicants do not analyze whether the competitive harm from rivals' degradation of service quality and underinvestment is likely, or whether its impact would be substantial. They simply ignore the extent to which traffic shifts would have the potential to cause harm, even when the scale of the Proposed Transaction suggests those shifts are likely to occur and potentially impact at least some parts of the networks of Class I railroads.

C. A COMBINED UP/NS CAN ENGAGE IN FORECLOSURE THAT HARMS COMPETING CARRIERS LIKE BNSF

21. Shifts in traffic patterns as a result of the Proposed Transaction can result from improved service. But diversions can also be the outcome of a process in which the combined carrier actively increases the cost or reduces the effectiveness with which a competing carrier can serve shippers throughout the network, affecting that carrier's ability to compete. [19] In the context of the Proposed Transaction, a combined UP/NS could harm its rivals in a myriad of ways; for example, by imposing conditions on interline service at interchange points that would increase the cost and/or degrade the quality of the service that BNSF (and other competing carriers) offer to shippers throughout their networks.[20] As a result of foreclosure, the volume of traffic those competing carriers transport will decline and, given the network effects I explained in Section III.B, this could harm shippers and competition throughout the rail network.

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[19] Carlton and Perloff (2005), pp. 371-372.

[20] I understand the Gabriel VS discusses ways in which a combined UP/NS could undermine BNSF's ability to offer competitive pricing and/or reduce BNSF's ability to offer competitive service. Gabriel VS.

D. UP/NS'S COMMITMENT TO MAINTAINING GATEWAYS OPEN IS NOT A SUFFICIENT GUARANTEE TO PRESERVE COMPETITION FOR INTERLINE INTERMODAL SHIPMENTS ASSOCIATED WITH THE PENNSYLVANIA INTERMODAL CONDITION

22. Applicants in the Proposed Transaction have made vague commitments to maintain gateways open at commercially reasonable terms that they claim "mirror" those in the CPKC proceeding.[21] As I discuss in the Carlton Main VS, there was a noticeable decrease in interlining activity between CPKC and other Class I carriers relative to interlining activity among other railroads following the CPKC merger (see Figure 2).[22] Moreover, I find that these trends are particularly pronounced for intermodal traffic, where CPKC's interline volumes with other Class I carriers {{[redacted]}} from 2022 to 2024 (see Figure 3). This evidence casts doubts on the ability of conditions such as open gateway commitments to guarantee the continuation of interlining activity at current levels.

[21] Israel VS, ¶ 91 ("UP/NS is making a series of commitments to maintain open gateways on commercially reasonable terms. These commitments mirror those imposed in the CP-KCS merger and include: [] Keeping all existing gateways open in perpetuity on commercially reasonable terms (including both rates and service), for both existing and new traffic; [] Offering connecting carriers commercially reasonable rate divisions and negotiating in good faith regarding disagreements; [] Ensuring no new regulatory bottlenecks that could limit STB rate review; [] Providing (upon request) written justification of price increases in excess of inflation; and [] Submitting monthly reports on interchange volumes at gateways during the oversight period." (notes omitted)).

[22] Carlton Main VS, Section IV.C.

Figure 2: Class I Interline Carloads Before and After CPKC Merger {{



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Figure 3: CPKC Interline Intermodal Partners Pre- and Post-Merger (2022 and 2024) {{



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23. While some efforts have been made to clarify the meaning and scope of "commercially reasonable terms" when related to rates, I understand there have been no comparable efforts to deal with quality of service.[23] This is perhaps explained by the fact that open gateway commitments have generally been offered as a general response to foreclosure concerns rather than one specific to the foreclosure of intermodal traffic. However, quality of service is a key

[23] CPKC Decision, p. 68 ("The Board will accordingly impose as a condition to the merger Applicants' commitment to keep gateways open on commercially reasonable terms, as it has done in prior mergers. … [T]o facilitate Applicants' adherence to the gateway commitment and the Board's enforcement, the Board will require during the oversight period that Applicants provide to a shipper, upon request, a written justification for rate increases above the rate of inflation for interline movements subject to the open gateway obligation. This condition will help ensure that shippers have information needed to assess whether a price increase is warranted or whether it may be the result of potential foreclosure[.]").

determinant of shippers' choices regarding intermodal rail traffic.[24] As a result, the success of open gateway commitments to prevent negative effects on intermodal traffic largely depends on the precise conditions behind the definition of "commercially reasonable terms."

24. In the context of this proceeding, Applicants offer no such descriptions of the precise commitments they are willing to make with regards to intermodal traffic specifically, as their commitment to keep gateways open mimics the commitment imposed in the CPKC proceeding. And for that transaction, my analysis points to a meaningful decrease in intermodal interline activity post CPKC merger. Therefore, I conclude that Applicants' commitment to keep gateways open is not a sufficient guarantee to mitigate concerns about potential foreclosure effects from the Proposed Transaction in corridors related to the Pennsylvania Intermodal Condition.

IV. IF THE PROPOSED TRANSACTION IS APPROVED, BNSF'S REQUEST FOR TRACKAGE RIGHTS WOULD ADDRESS, AT LEAST TO SOME EXTENT, THE POTENTIAL FOR HARM TO THE RAIL NETWORK

25. The approval of the trackage rights BNSF is requesting would address, at least to some extent, the potential for harm arising from the Proposed Transaction, as it would preserve at least some of the ability BNSF currently has today to serve its intermodal shippers to the area covered by the Pennsylvania Intermodal Condition. I understand the analysis in the Verified Statement of Mr. Zebrowski and Mr. Baranowski indicates that, in the particular geographic areas identified by BNSF as the basis for its request for trackage rights, CSXT can, at best, provide a weak alternative to NS for intermodal services.[25] Therefore, BNSF's concern with foreclosure is understandable.

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[24] BNSF Railway Company, "Intermodal Frequently Asked Questions," http://web.archive.org/web/20261102171802/http://www.bnsf.com/ship-with-bnsf/intermodal/faq.page ("The nation's top LTL, refrigerated and parcel carriers rely on BNSF intermodal solutions to deliver the shipments their customers need. BNSF's intermodal service continues to grow in popularity in large part due to reliable on-time performance that rivals on-time performance for over-the-road shipments. Many shippers have the confidence in intermodal to ship from distribution centers directly to their stores, with even the most service-sensitive shippers relying on BNSF Intermodal.").

[25] Zebrowski and Baranowski VS.

26. The approval of BNSF's request for trackage rights will likely allow BNSF to address, at least to some extent, the large loss of volume that would otherwise occur and that could make it a less effective competitor throughout the network because of diminished incentives to invest and maintain service quality. Thus, the approval of the requested trackage rights would address, at least to some extent, the risk of negative impact of competition on BNSF for the area covered by the Pennsylvania Intermodal Condition and resulting harm to the rail network.

VERIFICATION

I, Dennis W. Carlton, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed this 18 day of November, 2026.



Dennis W. Carlton

ATTACHMENT 1

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EDUCATION

Ph.D., MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts: Economics, 1975.

M.S., MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts: Operations Research, 1974.

A.B., HARVARD UNIVERSITY (Summa cum laude): Applied Math and Economics, 1972.

EMPLOYMENT

COMPASS LEXECON (formerly Lexecon), (2008 – present) Senior Managing Director; LEXECON INC., (1977 – 2006), President 1997 – 2001, Senior Managing Director 2003 - 2006

UNIVERSITY OF CHICAGO, Booth School of Business, David McDaniel Keller Professor of Economics (2011 – July 2022; Emeritus July 2022- present); Katherine Dusak Miller Professor of Economics (2008 – 2011); Professor of Economics (1984 – 2008); Law School, Professor of Economics (1980 – 1984); Department of Economics, Assistant Professor (1976 – 1979); Associate Professor (1979)

U.S. DEPARTMENT OF JUSTICE, Washington, District of Columbia (2006 – 2008) Deputy Assistant Attorney General for Economic Analysis, Antitrust Division

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts, Department of Economics (1975 – 1976) Instructor in Economics

OTHER PROFESSIONAL EXPERIENCE

HARVARD UNIVERSITY, Public Policy Summer Course in Economics (1977), Professor

BELL TELEPHONE LABORATORIES (Summers 1976, 1977)

JOINT CENTER FOR URBAN STUDIES OF M.I.T. AND HARVARD UNIVERSITY, Cambridge, Massachusetts (1974 - 1975)

CHARLES RIVER ASSOCIATES, Cambridge, Massachusetts (Summers 1971, 1972) Research Assistant

FIELDS OF SPECIALIZATION

Theoretical and Applied Microeconomics
Industrial Organization

ACADEMIC HONORS AND FELLOWSHIPS

Keynote Address, Substance Over Slogans: Strengthening the Foundations of Antitrust, Paris, 2025
Keynote Address, 32nd Annual Workshop of the Competition Law & Policy Institute of New Zealand, 2021
2020 Award for Best Article in *Economic Inquiry* for the article "Antitrust Treatment of Nonprofits: Should Hospitals Receive Special Care? (with C. Capps and G. David)".
Best Academic Economics Article in Antitrust - 2019 Antitrust Writing Awards, given by Concurrences and George Washington University Law School for the article "Vertical Most-Favored-Nation Restraints and Credit Card No-Surcharge Rules" (with R. Winter) in *The Journal of Law and Economics.*
Harris Professor Lecture, Clemson University, 2019
Taft Lecture, New York Bar Association, 2018
Keynote Address, CRESSE Conference, June 2018
Best Academic Economics Article in Antitrust - 2016 Antitrust Writing Awards, given by Concurrences and George Washington University Law School for the article "Rethinking Antitrust in the Presence of Transaction Costs: Coasian Implications" (with B. Keating) in *Review of Industrial Organization*.
Keynote Address, Federal Trade Commission, Auto Distribution: Current Issues and Future Trends, January 19, 2016
Award for Antitrust Litigation Consultants of the Year 2015, awarded by Corporate Vision
Keynote Address, International Industrial Organization Conference, 2014
The 2014 Distinguished Fellow, Industrial Organization Society
Economist of the Year, Global Competition Review, 2014
Keynote Address, Sixth Annual Federal Trade Commission Microeconomics Conference, 2013
Heath Memorial Lecture, University of Florida, 2013
Award (w. Mark Israel) for Best Antitrust Analysis in Litigated Cases, Global Competition Review, 2013
Keynote Address, 21st Annual Workshop of the Competition Law & Policy Institute of New Zealand, 2010
Keynote Address, Japanese Symposium on Competition, sponsored by Japan Fair Trade Commission, 2009

Recipient of Inaugural Robert F. Lanzilotti Prize, awarded by the Industrial Organization Society for Best Paper in Antitrust Economics, 2008
Keynote Address to Israel Antitrust Conference, 2008
Lewis Bernstein Memorial Antitrust Lecture, Washington, D.C., 2006
Distinguished Visitor, University of Melbourne, April 2005
Milton Handler Lecture, New York, 2004
Keynote Address to the International Competition Network, Mexico, 2004
Alexander Brody Distinguished Lecture, Yeshiva University, 2000
Ph.D. Thesis chosen to appear in the Garland Series of Outstanding Dissertations in Economics
Recipient of the 1977 P.W.S. Andrews Memorial Prize Essay, best essay in the field of Industrial Organization by a scholar under the age of thirty
National Science Foundation Grant, 1977 - 1985
Recipient of Post-doctoral Grant from the Lincoln Foundation, 1975
National Science Foundation Fellowship, 1972 - 1975
Phi Beta Kappa, 1971
John Harvard Award, 1970
Detur Book Prize, 1969
Edwards Whitaker Award, 1969
M.I.T., National Scholar Award, 1968

PROFESSIONAL AFFILIATIONS AND ACTIVITIES

Appointed to ABA Leadership in Antitrust Section: 2018-2019
Participant in the FTC Competition and Consumer Protection Hearings: "The State of U.S. Antitrust Law", September 21, 2018 (Session 1) and “Merger Retrospective Hearing”, April 12, 2019
Co-Organizer and Instructor, Antitrust Law and Economics Institute, Federal Judicial Center, 2017, 2018, 2023
Member, Task Force on International Divergence in Dominance Standards, American Bar Association 2017 - 2018
Board Member, The Taub Center for Social Policy Studies, 2017 - present
Member, U.S. Chamber of Commerce International Competition Policy Expert Group for report on International Trade and Competition, 2017
Appointed Member of the ABA Presidential Transition Task Force, Antitrust Law, 2016
Appointed Member of the ABA Presidential Transition Task Force, Antitrust Law, 2012
Advisory panel to the Department of Justice and the FTC on the merger guidelines, 2010
Co-editor, The Journal of Law and Economics, 1980 - present
Visiting Committee, MIT, Department of Economics, 1995 - 2011
Member, Advisory Board, Economics Research Network, 1996 - present
Member, Advisory Board of Antitrust and Regulation Abstracts, Social Science Research Network, 1998 - present
Advisory Board, Massachusetts Institute of Technology, Department of Economics, 1999
Editorial Board, Competition Policy International (CPI), 2010 - present, Co-Editor, Competition Policy International (CPI), 2004 – 2009
Member, Economic Task Force – Antitrust Division, American Bar Association, 2010
Advisory Board, Journal of Competition Law and Economics, 2004 - present
Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice, 2006 – 2008
Presidential Appointment to the Antitrust Modernization Commission, 2004 – 2007

Invited Panelist at Public Hearing on the Retail Banking Sector Inquiry: Payment Cards, before the European Commission in Brussels, Belgium, July 17, 2006.
Consultant on Merger Guidelines to the FTC, 2003
Professor, George Mason Institute for Judges, October 2001
Chairman, FTC Round Table on Empirical Industrial Organization (September 11, 2001)
Participant in the Round Table on the Economics of Mergers Between Large ILECS before the Federal Communications Commission, February 5, 1999
Member, Steering Committee, Social Science Research Council, Program in Applied Economics, 1997 - 1999
Participant in roundtable discussions on "The Role of Classical Market Power in Joint Venture Analysis," before the Federal Trade Commission, November 19, 1997 and March 17, 1998.
Participant in meetings with Committee of the Federal Reserve on Payment Systems, June 5, 1997
Associate Editor, Regional Science and Urban Economics, 1987 - 1997
Resident Scholar, Board of Governors of the Federal Reserve System, Summer, 1995
Accreditation Committee, Graduate School of Business, Stanford University, 1995
Associate Editor, The International Journal of Industrial Organization, 1991 - 1995
Editorial Board, Intellectual Property Fraud Reporter, 1990 - 1995
Consultant on Merger Guidelines to the U.S. Department of Justice, 1991 - 1992
Member, Advisory Committee to the Bureau of the Census, 1987 – 1990
National Bureau of Economic Research, Research Associate
American Bar Association, Associate Member
American Economic Association, Member

BOOKS

Market Behavior Under Uncertainty, Ph.D. Thesis, Massachusetts Institute of Technology (September 1975); Garland Publishing (1984).

Modern Industrial Organization, Scott, Foresman & Co., co-authored with Jeffrey Perloff, first edition (1990), (Chapter 17 of first edition reprinted as “The Economics of Information” for the University of Connecticut, Food Marketing Policy Center (1989)), second edition (1994), translated into Chinese, French, Hungarian and Italian; Addison Wesley Longman, third edition (2000), fourth edition (2005), translated into Chinese (2009), fourth edition, published as Global Edition (2015).

RESEARCH PAPERS

"The Equilibrium Analysis of Alternative Housing Allowance Payments," (with Joseph Ferreira) Chapter 6 of Analysis of a Direct Housing Allowance Program, The Joint Center for Urban Studies of M.I.T. and Harvard University, (July 1975).

"Theories of Vertical Integration," presented at Fourth Annual Telecommunications Conference. Appears in a volume of Proceedings of the Fourth Annual Telecommunications Conference, Office of Telecommunications Policy, (April 1976).

"Uncertainty, Production Lags, and Pricing," American Economic Review, (February 1977).

"Selecting Subsidy Strategies for Housing Allowance Programs," (with Joseph Ferreira) Journal of Urban Economics, (July 1977).

"Peak Load Pricing With Stochastic Demand," American Economic Review, (December 1977). (Reprinted in Economic Regulation edited by P.L. Joskow, Edward Elgar Publishing Limited, 1998 and Reprinted in The Economics of Public Utilities edited by Ray Rees, Professor of Economics at the University of Munich, Germany, 2005.)

"The Distribution of Permanent Income," (With R. Hall) Income Distribution and Economic Inequality, edited by Zvi Griliches, et al. (Halsted Press, 1978).

"Vertical Integration--An Overview," in Congressional Record Hearings on the Communications Act of 1978. Bill H.R. 13105, (August 3, 1978).

"Market Behavior with Demand Uncertainty and Price Inflexibility," American Economic Review, (September 1978).

"Vertical Integration in Competitive Markets Under Uncertainty," Journal of Industrial Economics, (March 1979). Awarded the P.W.S. Memorial Prize for the best essay in the field of Industrial Organization by a scholar under the age of thirty.

"Valuing Market Benefits and Costs in Related Output and Input Markets," American Economic Review, (September 1979).

"Contracts, Price Rigidity and Market Equilibrium," Journal of Political Economy, (October 1979).

"Why New Firms Locate Where They Do: An Econometric Model," in Studies in Regional Economics, edited by W. Wheaton, (Urban Institute, 1980).

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"Free Riding and Sales Strategies for the Internet," (with J. Chevalier), The Journal of Industrial Economics, (December 2001).

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"Intellectual Property, Antitrust and Strategic Behavior," (with R. Gertner), in eds. Adam Jaffee and Joshua Lerner, Innovation Policy and the Economy, Volume 3, MIT Press (2003).

"Airline Networks and Fares," (with G. Bamberger), Handbook of Airline Economics, 2nd ed., Darryl Jenkins, ed., McGraw Hill (2003).

"Contracts that Lessen Competition -- What is Section 27 for, and How Has it Been Used?" (with David Goddard), in Mark N. Berry and Lewis T. Evans eds., Competition Law at the Turn of the Century: A New Zealand Perspective, Victoria University Press (2003).

Interview, Economists' Roundtable, Antitrust Magazine, (Spring 2003).

"The Relevance for Antitrust Policy of Theoretical and Empirical Advances in Industrial Organization," (Fall 2003), George Mason Law Review.

"The Control of Externalities in Sports Leagues: An Analysis of Restrictions in the National Hockey League," (with A. Frankel and E. Landes), Journal of Political Economy, (February 2004), reprinted in Recent Developments in the Economics of Sport, edited by W. Andreff (2011).

"An Empirical Investigation of the Competitive Effects of Domestic Airline Alliances," (with G. Bamberger and L. Neumann), The Journal of Law and Economics, Vol. 47, No. 1, (April 2004, pp. 195-222).

"Why Barriers to Entry are Barriers to Understanding," American Economic Review, (May 2004).

"Using Economics to Improve Antitrust Policy," Milton Handler Lecture, Columbia Business Law Review, (June 2004).

"The Proper Role for Antitrust in an International Setting," (Keynote address: Second Annual Conference of the International Competition Network (ICN), Merida City, Mexico (June 25,

2003), appears as Appendix to "Using Economics to Improve Antitrust Policy", Columbia Business Law Review (June 2004).

"Econometric Analysis of Telephone Mergers," (with H. Sider) pp. 373-395 in American Bar Association, Econometrics: Legal, Practical, and Technical Issues, (2005).

"How Economics Can Improve Antitrust Doctrine Towards Tie-in Sales," (with M. Waldman), Competition Policy International, (Spring 2005).

Preface to: "Law and Economics of the Mexican Competition Laws," by Francisco Gonzalez de Cossio (2005).

"Transaction Costs, Externalities and "Two-Sided" Payment Markets," (with A. Frankel), Columbia Business Law Review, No. 3 (2005).

"Predation and the Entry and Exit of Low-Fare Carriers," (with G. Bamberger), in Advances in Airline Economics: Competition Policy and Antitrust, Darin Lee, ed., (2006).

"Why Tie An Essential Good," (with Michael Waldman), in Hahn R. ed., Antitrust Policy and Vertical Restraints, AEI-Brookings, (July 2006).

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Attachment 2: List of Materials Relied Upon

Verified Statements

1. Verified Statement of David T. Hunt, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026.
2. Verified Statement of Professor Dennis W. Carlton, Ph.D., Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, November 18, 2026.[26]
3. Verified Statement Of Elizabeth M. Bailey, Ph.D., Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026.
4. Verified Statement of Grant Janke, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026.
5. Verified Statement of Mark A. Israel, Union Pacific Corporation, et al. – Control – Norfolk Southern Corporation, et al., STB Docket No. FD 36873, September 4, 2026.

Surface Transportation Board Filings

1. Amended Railroad Control Application, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, September 4, 2026.
2. Decision, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al., STB Docket No. 36500, March 14, 2023.
3. Decision, Major Rail Consolidation Procedures, STB Docket No. EP 582 (Sub-No. 1), June 11, 2001.
4. Decision, Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket No. FD 36873, December 19, 2025.
5. Michael L. Rosenthal Letter to Chief of Case Administration, Surface Transportation Board, August 28, 2026, Re: Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.

Rules and Guidelines

[26] Includes all materials cited therein.

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Data

1. Data processed by Dr. Bailey.
2. Data processed by Mr. Hunt.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 12-D

EXCERPT FROM VERIFIED STATEMENT OF NICHOLAS HILL, PH.D.

EXCERPT FROM VERIFIED STATEMENT OF NICHOLAS HILL, PH.D.

In support of this Responsive Application, BNSF Railway Company's ("BNSF") Market Analyses includes the Verified Statement of Nicholas Hill, Ph.D., Partner at Bates White Economic Consulting. BNSF is submitting the full version of the Verified Statement, including Dr. Hill's curriculum vitae, with BNSF's Comments filed in Docket No. FD 36873. This Exhibit provides an excerpt from Dr. Hill's Verified Statement.

In his Verified Statement, Dr. Hill concludes that the proposed merger is likely to result in foreclosure, and that it should be blocked. He notes that, "[n]otwithstanding this view, BNSF has proposed conditions on the merger intended to partially mitigate the risk of harm should the Board permit the merger to proceed." (BNSF Comments, V.S. Hill 6 n.1.)

* * *

9.2. BNSF's proposed Pennsylvania Intermodal Condition would likely mitigate the risk of foreclosure

(84) The Pennsylvania Intermodal Condition proposes that the Board grant BNSF overhead trackage rights on a number of NS lines between Chicago and Bethlehem, Pennsylvania.[113] These trackage rights would also allow BNSF to access four existing intermodal facilities and any new intermodal facilities that are served by the subject lines.[114] In particular, the Pennsylvania Intermodal Condition proposes that the merged firm be required to grant BNSF access to and use of the following NS facilities:[115]

- Harrisburg intermodal facility
- Pittsburgh intermodal facility
- Rutherford intermodal facility

[113] Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, BNSF Railway Company's Comments, Finance Docket No. 36873 (18 November 2026), § VII.

[114] Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, BNSF Railway Company's Comments, Finance Docket No. 36873 (18 November 2026), § VII.

[115] Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, BNSF Railway Company's Comments, Finance Docket No. 36873 (18 November 2026), § VII.

(85) BNSF intends in addition to negotiate access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail.[116] The Pennsylvania Intermodal Condition also proposes that UP/NS be required to provide haulage service for BNSF traffic moving on the subject lines for a necessary time period that will allow BNSF to establish operations and provide service to meet customer needs.[117]

(86) The part of Pennsylvania that would be affected by the Pennsylvania Intermodal Condition ("Pennsylvania Intermodal Area") is an important location for intermodal traffic: interline intermodal shipments originating or terminating in the affected area generated {{[redacted]}} in revenue in 2023, accounting for {{[redacted]}} of total United States interline intermodal revenue.[118,119] The corridors originating or terminating in the affected area of Pennsylvania are also particularly important to BNSF: in 2023, BNSF's interline intermodal revenue in the area was {{{[redacted]}}}, or {{{[redacted]}}} of BNSF's total interline intermodal revenue (and {{{[redacted]}}} of BNSF's total interline revenue).[120] Further, the Pennsylvania Intermodal Area accounts for {{{[redacted]}}} of BNSF's revenue that is potentially at risk of foreclosure.[121]

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[116] Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, BNSF Railway Company's Comments, Finance Docket No. 36873 (18 November 2026), § VII.

[117] Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, BNSF Railway Company's Comments, Finance Docket No. 36873 (18 November 2026), § VII.

[118] I approximate the Pennsylvania Intermodal Area using the following geographies: Harrisburg-Carlisle-Lebanon, PA (BEA 11), Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD (BEA 12), Pittsburgh, PA-WV (BEA 53), and the Pennsylvania portion of New York-No. New Jersey-Long Island, NY-NJ-CT-PA-MA-VT (BEA 10). *See* Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, BNSF Railway Company's Comments, Finance Docket No. 36873 (18 November 2026), § VII; *see also* Verified Statement of Jon Gabriel, Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, Finance Docket No. 36873 (Sub-No. 33) (Surface Transportation Board 18 November 2026), § 2.

[119] I identify intermodal shipments as those with an AAR equipment code initial of P, Q, S, U, or Z or with an STB service type code of 2. *See* 2024 Waybill Reference Guide; Bailey Statement, n.125.

[120] To examine BNSF's interline intermodal revenue in the Pennsylvania Intermodal Area, I limit to BNSF's revenue from shipments originating or terminating in the area.

[121] I define BNSF traffic that is potentially at risk of foreclosure as BNSF's interline revenue on corridors that are jointly served by UP and NS and at least one other carrier. See **Error! Reference source not found.** for details. To calculate BNSF's at-risk revenue associated with

(87) The Pennsylvania Intermodal Area is also at material risk of foreclosure. In this area, {{{ }}} of BNSF's interline intermodal revenue involved NS in 2023, indicating that there are few competitive alternatives to NS in this area.

(88) The Pennsylvania Intermodal Condition would mitigate harm by lowering the probability that BNSF—which accounts for {{{ }}} of total interline intermodal revenue in the Pennsylvania Intermodal Area—would be foreclosed from serving shippers.[122] This would help preserve competition and benefit shippers.

* * *

the Pennsylvania Intermodal Area, I limit BNSF traffic that is potentially at risk of foreclosure to intermodal shipments originating or terminating in the Pennsylvania Intermodal Area. For this calculation, I limit my analysis to shipments with two or three legs.

[122] As mentioned earlier in this section, the interline intermodal shipments originating or terminating in the Pennsylvania Intermodal Area generated {{ }} in revenue in 2023 and BNSF's interline intermodal revenue in this area was {{{ }}}. {{{ }}}

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 13-A

OPERATING PLAN

VERIFIED BY JON GABRIEL

OPERATING PLAN

VERIFIED BY JON GABRIEL

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OPERATING PLAN

1. Introduction

My name is Jon Gabriel. I am Group Vice President, Consumer Products for BNSF Railway Company ("BNSF"). My current role includes responsibility for BNSF's intermodal and automotive business. I was appointed to my role in 2024.

I joined BNSF in Consumer Products Marketing in 2006 and then held several positions in Service Design. In 2012, I shifted to Transportation, where I have served in various leadership roles with increasing responsibility. In 2017, I was named General Manager of the Montana Division, before serving as General Manager of the Northwest Division, and then serving as General Superintendent of BNSF's Network Operations Center in Fort Worth. I then served as Vice President, South Region, before serving as Vice President, Service Design and Network Strategy, where I had responsibility for all network planning, capital expansion, operations research, and innovation.

I have been involved in BNSF's evaluation and analysis of the proposed Union Pacific ("UP") and Norfolk Southern ("NS") merger. Additionally, I am familiar with the existing BNSF/NS interline movement of intermodal traffic between BNSF-served western markets and NS-served intermodal facilities in Pennsylvania.

BNSF is submitting this operating plan ("Operating Plan") as Exhibit 13-A in support of its responsive application ("Responsive Application") seeking trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. BNSF's

trackage rights request, together with certain related BNSF requests, are collectively referred to herein as the "Pennsylvania Intermodal Condition." The Pennsylvania Intermodal Condition is described further below.

In addition, BNSF is submitting as Exhibit 13-B a supplement to this Operating Plan ("Supplement"), verified by Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., and Nathaniel S. Zebrowski, Senior Managing Director at FTI Consulting, Inc. The Supplement provides additional analyses related to this Operating Plan, utilizing highly confidential material that is not available to me as an in-house BNSF employee.

This Operating Plan complies with the requirements set forth in 49 C.F.R. § 1180.8(b).[1] Specifically, it provides:

> [A] summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction.

This Operating Plan also "make[s] clear the gains in service, operating efficiencies, and other benefits anticipated." 49 C.F.R. § 1180.8(b).

[1] As explained in its Responsive Application, BNSF believes that the Responsive Application should be classified as a minor transaction. However, BNSF is submitting the information and exhibits required for a significant application, including this Operating Plan, in the event that the Board decides to evaluate the Responsive Application as a significant transaction.

2. Data Sources and Methodologies

This Operating Plan was developed by a team of experienced BNSF operating employees and consultants. The traffic and operating data sources used and the methodology applied to develop this Operating Plan are described below.

2.1 Traffic Data Sources

The team analyzed 2025 BNSF interline train data, which provides train counts, block lengths, and terminal-level volumes for loaded trains that BNSF interchanges with NS today. This dataset also provides shipment-level units, revenue, and destination by end customer, as well as BNSF loaded interline volume by origin and destination. 2025 was used as the base year as the closest commercial analogue to the proposed service.

2.2 Operating Data Sources

Operating inputs were based on internal BNSF service design analyses, public materials filed in the UP/NS proceeding, and other publicly available sources, which are described further below. Blocking and routing were determined using the Federal Railroad Administration ("FRA") Rail Network, which identifies the corridor routing and the specified NS lines and segments.

Public materials filed in the UP/NS proceeding that were used in the creation of this Operating Plan include the Applicants' Revised Application, which provides growth plan infrastructure investment assumptions[2] and route descriptions for

[2] (*See* UP/NS Rev. Appl., Vol. 2 at 913.)

passenger trains.[3] Publicly available sources that were used in the creation of this Operating Plan include Amtrak route maps and timetables and Amtrak host railroad performance reports.

2.3 Methodology

The operating and traffic data described above were used to develop an initial operating plan for the relief requested in this Responsive Application. Traffic was projected three years following the transaction, applying the growth-plan assumptions in the publicly filed UP/NS merger application for the specified lanes. 2025 was used as the base year for BNSF traffic data. Train counts are stated as trains per day, such that one round trip equals two trains per day.

3. Background and Summary

As I explain further in my Verified Statement submitted as part of BNSF's Market Analyses for the Responsive Application (Exhibit 12-A), BNSF and NS jointly move significant amounts of intermodal traffic today between BNSF-served western markets, primarily Southern California, and Pennsylvania through an interline arrangement. From west-to-east, BNSF moves the traffic from intermodal facilities in BNSF-served western markets to Chicago, IL. In Chicago, BNSF interchanges the traffic with NS. NS then moves the traffic to intermodal facilities in Pennsylvania. BNSF and NS also provide westbound service from Pennsylvania to BNSF-served western markets.

[3] (*See id.*, Vol. 2 at 764-65, 769-72, 775.)

Currently, BNSF and UP compete directly for intermodal traffic moving from western markets to the Northeast, including traffic that each carrier interchanges with NS in Chicago for movement to NS-served facilities in Pennsylvania. NS is incentivized to work together with BNSF and with UP to provide this intermodal service. However, if the Surface Transportation Board ("STB" or "Board") decides to approve the proposed merger, the combined UP/NS would have both the ability and incentive to ensure that BNSF is not a competitive option for this intermodal traffic from a pricing and service perspective. The proposed UP/NS merger would place this intermodal traffic under UP/NS single-line control, increasing UP/NS market power and weakening price and service competition for customers.

To preserve competition, BNSF is submitting this Responsive Application seeking trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. These trackage rights would be "overhead" with exceptions that allow BNSF to access the four existing intermodal facilities described below, along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

In connection with the trackage rights request, BNSF has two related requests. First, BNSF is requesting that the Board order UP/NS to provide BNSF with access to and use of NS's Pittsburgh, Harrisburg, and Rutherford intermodal

facilities,[4] as those facilities may expand, change, or be modified in the future. BNSF also intends to obtain access to Phoenix Rail's Bethlehem intermodal facility through a separate commercial agreement with Phoenix Rail. These four intermodal facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem) (collectively, the "NS Sole-Served Facilities") are important intermodal destinations, and access to them is critical to maintaining competitive intermodal service in Pennsylvania. NS currently serves these facilities on a closed, single-line basis. BNSF can only reach these markets today by interchanging traffic with NS at Chicago. If the merger is approved, these four intermodal facilities will lack competitive access due to their remote geographical locations. The nearest CSX Transportation, Inc. ("CSX") intermodal terminal is more than 50 miles away, which is not economical for customers.[5]

Second, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the lines, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs.

If the Board grants the merger and imposes the Pennsylvania Intermodal Condition as a condition of its approval, BNSF would have the ability to directly move traffic between BNSF-served western markets and the NS Sole-Served

[4] BNSF is willing to discuss consolidation of Harrisburg and Rutherford traffic at Rutherford to streamline operational efficiency and impacts.

[5] (*See* Ex. 12-A, V.S. Gabriel 6, 25.)

Facilities, thereby allowing BNSF to continue competing for traffic that today moves through the Chicago gateway pursuant to the BNSF/NS interline arrangement.

This Operating Plan provides a summary of existing operations over the subject NS lines and the proposed changes that would result from the relief requested by BNSF. As explained in detail in Section 5 below, BNSF is merely proposing to operate its own trains over NS's lines between Chicago, IL and Bethlehem, PA, rather than interchanging with NS at Chicago, as it does today.

BNSF anticipates that it would run approximately six trains per week in each direction at the outset. Under this proposal, total corridor volumes would be held approximately constant, as these are existing shipments currently carried by NS, with BNSF seeking under this Responsive Application to maintain the status quo as a competitive option against UP/NS service from western markets to the NS Sole-Served Facilities. BNSF would conduct terminal operations at the four NS Sole-Served Facilities.

BNSF does not expect changes to the existing dispatching arrangement on the subject lines. BNSF trains would be dispatched by NS over the trackage rights route, as is standard for overhead trackage rights. Furthermore, BNSF does not anticipate adverse effects on the scheduling or on-time performance of any passenger service on the subject lines.

Thus, the relief requested by BNSF would allow BNSF to continue serving customers that move traffic today under the BNSF/NS interline arrangement and to preserve the existing competition.

4. Pre-Transaction Operations

4.1 Description of the Lines

In this Responsive Application, BNSF is requesting the grant of trackage rights on certain NS lines between Chicago, IL and Bethlehem, PA. As described in detail below, the subject lines consist of five NS lines that together form a continuous route of approximately 851 route miles from Chicago, IL to Bethlehem, PA, including the Chicago Line, the Cleveland Line, the Fort Wayne Line, the Pittsburgh Line, and the Harrisburg Line, together with segments of the Reading Line and the Lehigh Line east of Wyomissing Junction, PA. The lines are shown in Figure 1 below. These trackage rights would be "overhead" with exceptions that would allow BNSF to access four existing intermodal facilities (Pittsburgh, Harrisburg, Rutherford, and Bethlehem), along with any new intermodal facilities that are served by the subject lines, including through connection or interchange with any other carrier or private switching railroad serving such intermodal facilities.

Figure 1: Map of the Requested Trackage Rights on NS Lines Between Chicago, IL and Bethlehem, PA



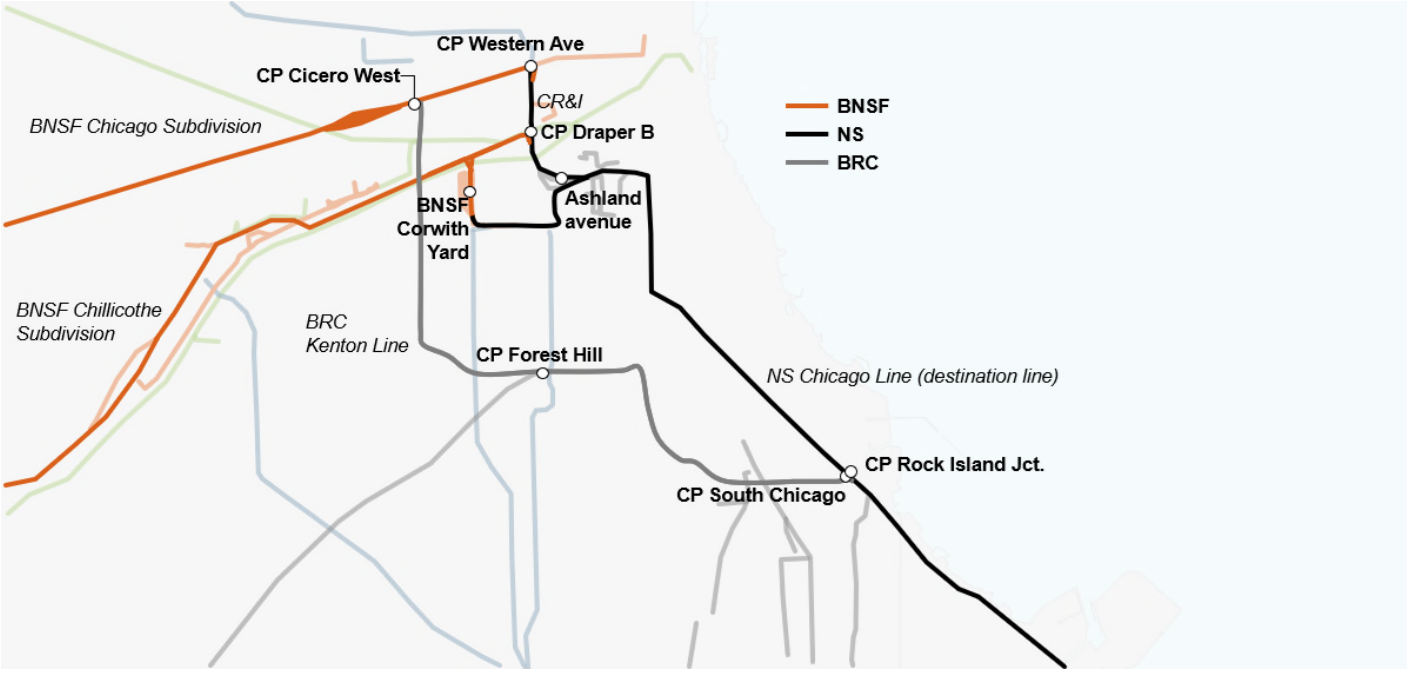
Under this Operating Plan, for eastbound traffic, crews would start on BNSF track in Chicago and enter the NS network in the Chicago terminal district.[6] BNSF is seeking two primary connections onto the NS Chicago Line, each of which mirrors an existing BNSF/NS interchange flow: (i) from the BNSF Chicago Subdivision, over the Chicago River & Indiana ("CR&I") Industrial Track at Western Avenue, with trackage rights commencing at CP Cermak (MP UW-4.77); and (ii) from the BNSF Chillicothe Subdivision, over the CR&I Industrial Track toward NS Ashland, with trackage rights commencing at CP Brighton Park. Figure 2 below shows the Chicago interchange pattern from BNSF to NS's Chicago Line.

[6] As noted above, BNSF is requesting that the Board order UP/NS to provide haulage service for BNSF traffic moving on the subject lines, for the period of time necessary to allow BNSF to establish its own service and commence operations consistent with customer needs.

1. **Chicago Line.** The NS Chicago Line extends approximately 341.1 route miles from Chicago, IL to Cleveland, OH. The Chicago Line is the primary route for BNSF's proposed operation. The line is predominantly double-track. NS's Toledo / Walbridge intermodal facility, which BNSF has identified as a crew-change point, is located on this line. BNSF seeks trackage rights over the following segments:
    a. The line from MP KN-3.1 connecting to BNSF's Corwith Yard through MP KN-0.0 near Ashland Avenue Yard, IL (milepost equation KN-0.00/UW-1.60);
    b. The line from MP UW-4.77 near Cermak, IL through MP UW-0.0 at CP 518, IL (milepost equation UW-0.00 = CD-518.40);
    c. The line from MP CD-523.3 at Union Station (Chicago), IL through MP CD-193.9 at Berea, OH, including NS's interest in Amtrak's facilities between MP CD-520.8 and MP CD-523.3; and
    d. The line from MP CD-193.9 at Berea, OH through MP CD-181.9 at Drawbridge (Cleveland), OH.[7]

[7] BNSF would also use its existing right to operate over the BRC Kenton Line to enter or exit NS's Chicago Line. BNSF's request includes the right to enter or exit the NS lines at any connecting point BNSF has rights to operate over, including in order to make that connection.

Figure 2: Chicago Interchange Pattern from BNSF to NS Chicago Line



2. **Cleveland Line.** The NS Cleveland Line (NS milepost prefix "RD") extends approximately 56.2 route miles from Drawbridge (Cleveland), OH to Alliance, OH. The Cleveland Line would carry traffic from the Chicago Line to the Fort Wayne Line.[8] BNSF seeks trackage rights over the following segments:

    a. The line from MP RD-123.2 at Drawbridge (Cleveland), OH through MP RD-67.0 at Alliance, OH (milepost equation RD-123.21 = CD-181.92).

[8] Portions of the Cleveland Line are cab-signal territory. UP/NS's plan states that approximately $34 million of PTC investment will occur between Cleveland and Conway. (UP/NS Rev. Appl., Vol. 2 at 913-14, 932-33.)

3. **Fort Wayne Line.** The NS Fort Wayne Line (NS milepost prefix "PC") extends approximately 83.2 route miles from Alliance, OH to West Pitt, PA. NS's Conway Yard, which BNSF has identified as a crew-change point, is located on this line. BNSF seeks trackage rights over the following segments:
    a. The line from MP PC-83.2 at Alliance, OH through MP PC-25.9 at Rochester, PA (milepost equation PC-83.22 = RD-66.96); and
    b. The line from MP PC-25.9 at Rochester, PA through MP PC-0.0 at West Pitt, PA (milepost equation PC-25.85 = RD-0.00).
4. **Pittsburgh Line.** The NS Pittsburgh Line (NS milepost prefix "PT") extends approximately 248.5 route miles from West Pitt, PA to Harrisburg, PA, with an additional 19.1 miles for the double-stack cleared Bell-Perry-Wing route. NS's Pittsburgh (Wall) intermodal terminal and NS's Harrisburg intermodal terminal are located on this line. Under this Operating Plan, the Pittsburgh blocks would be set out at Pittsburgh, and the Harrisburg blocks at Harrisburg.[9] BNSF seeks trackage rights over the following segments:
    a. The line from MP PT-353.4 at West Pitt, PA through MP PT-290.7 at Conpit, PA (milepost equations PT-353.35 = PC-0.00 and PT-339.75 = JP-0.00);

[9] UP/NS's plan states that approximately $37 million of PTC investment will occur between Conway and Harrisburg. *(Id.*, Vol. 2 at 913-14, 932-33.)

b. The line from MP ML-0.0 at Bell, PA through MP ML-16.2 at Perry, PA (milepost equation ML-0.0 = PC-4.80);

c. The line from MP JP-2.9 at Perry, PA through MP JP-0.0 at Wing, PA (milepost equations JP-2.90 = ML-16.20 and JP-2.89/ML-16.00); and

d. The line from MP PT-290.7 at Conpit, PA through MP PT-104.9 at Harrisburg, PA (milepost equation PT-290.68 = LC-0.00).

The segments described in items (c) and (d) above comprise the only routing through the Pittsburgh area currently cleared for double-stack traffic and are therefore essential to BNSF's proposed operation.

5. **Harrisburg Line and the Reading Line and Lehigh Line Segments to Bethlehem.** The NS Harrisburg Line (NS milepost prefix "HP") extends approximately 51.7 route miles from Harrisburg, PA to Wyomissing Junction, PA. East of Wyomissing Junction, BNSF's proposed route to Bethlehem continues over approximately 43.3 additional route miles over segments of NS's Reading Line and Lehigh Line. The Rutherford intermodal terminal is located on the Harrisburg Line, and the Bethlehem intermodal terminal is located at the east end of the requested trackage rights.[10] BNSF seeks trackage rights over the following segments:

[10] UP/NS's planned PTC investment reaches Harrisburg but does not extend to the Reading and Lehigh lines east of Harrisburg, which remain cab-signal territory.

a. The line from MP HP-112.9 at Harrisburg, PA through MP HP-61.2 at Wyomissing JCT, PA (milepost equation HP-112.90 = PT-104.90);
b. The line from MP TW-9.4 at Wyomissing JCT, PA through MP TW-8.1 at Tulp, PA (milepost equation TW-9.40 = HP-61.15);
c. The line from MP AF-8.15 at Tulp, PA through MP AF-5.4 at Belt, PA (milepost equation AF-8.15 = TW-8.10);
d. The line from MP TK-5.4 at Belt, PA through MP TK-0.0 at Blandon, PA (milepost equation TK-5.40 = AF-5.40);
e. The line from MP RV-7.5 at Blandon, PA through MP RV-35.1 near Burn, PA (milepost equation RV-7.50 = TK-0.00);
f. The line from MP EN-93.0 at Burn, PA through MP EN-88.6 at Bethlehem, PA (milepost equation EN-93.00 = RV-35.11); and
g. The line from MP LE-88.6 at Bethlehem, PA through MP LE-86.8 near Florence, PA (milepost equation LE-88.58 = EN-88.58).

4.2 Existing Train Operations

Today, the subject NS lines carry a mix of freight traffic and host certain intercity passenger services described below. Existing traffic in the corridor is largely intermodal, as discussed in Section 4.3 below. The composition and density of NS's existing train operations over the requested routing is further addressed in the Supplement at Section 2.1.

4.3 Existing Intermodal Operations

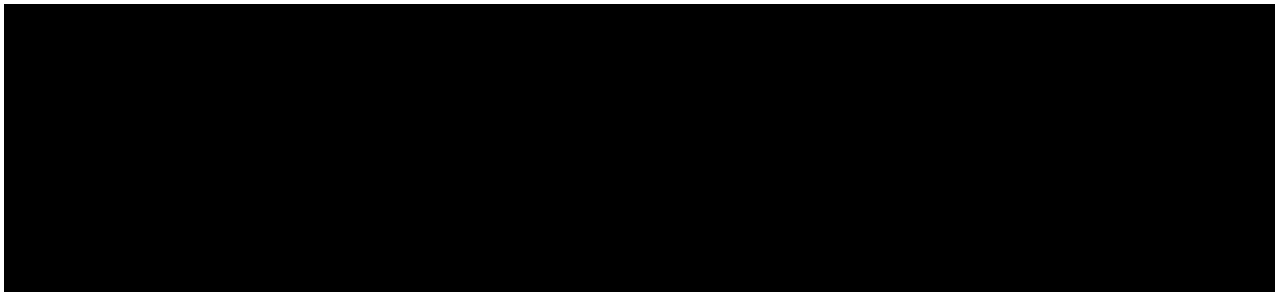
Existing traffic in the corridor is largely intermodal. Existing intermodal operations are further discussed in the Supplement at Section 2.2. Today, BNSF's Pennsylvania intermodal volume primarily moves on NS. The largest BNSF customers in the corridor are {{ [redacted] }}. NS carries approximately {{ [redacted] }} freight interchanged through Chicago. {{ [redacted] }}. The NS trains on which BNSF's traffic moves today and the train schedules are addressed in the Supplement at Appendix A.[11]

Under the existing BNSF/NS interline arrangement, traffic primarily originates in Southern California, with a minority of volume originating in Texas, the Pacific Northwest, Minnesota, other areas of California, and other states. The BNSF trains that carry the largest amount of volume moving to the NS Sole-Served Facilities are the {{ [redacted] }}

[11] *See* workpaper, "2025 Intermodal Interline Volume.xlsx".

[redacted] }}. BNSF premium intermodal trains that offer service interchanging with NS in Chicago are listed in Figure 3 below.[12]

Figure 3: BNSF Intermodal Trains Interchanging Volume in Chicago Destined for NS Sole-Served Facilities[13] {{



}}

4.4 Existing Interchanges

BNSF's Pennsylvania intermodal traffic is currently interchanged with NS in the Chicago terminal district. BNSF crews do not operate trains east of Chicago over the subject lines.

Eastbound, some Pennsylvania intermodal traffic traveling on the NS Chicago Line interchanges with NS at Chicago Ashland Avenue. From the BNSF Chillicothe Subdivision, BNSF's eastbound NS Pennsylvania intermodal volume

[12] *See* workpaper, "Cutoff times.xlsx".

[13] *See* workpaper, "Interline Data - Domestic & International.xlsx". {{ [redacted] }}

travels to CP Draper B, where it connects via the CR&I to NS's Ashland Avenue yard, interchanging with NS and continuing to the NS Chicago Line. From the BNSF Chicago Subdivision, BNSF's eastbound NS Pennsylvania intermodal volume travels to CP Western Ave, where it connects via the CR&I to NS's Ashland Avenue yard, interchanging with NS and continuing to the NS Chicago Line.

BNSF's westbound Pennsylvania intermodal volume is interchanged with BNSF in the Chicago terminal district. Connections between BNSF's subdivisions and the NS Chicago Line are described in Section 4.1 above.

4.5 Existing Yards and Facilities

The trackage rights route includes the following yards and facilities relevant to BNSF's request: Pittsburgh / Wall (PA), Harrisburg (PA), Rutherford (PA), and Bethlehem (PA). Yard track milepost ranges for the intermodal yards are set forth in Section 4.1 above. Base-plan lifts and capacity at these facilities is addressed in the Supplement at Section 3.

BNSF understands that the Harrisburg, Rutherford, and Pittsburgh facilities are owned by NS. The Bethlehem facility is owned and operated by Phoenix Rail. The Bethlehem facility is also served by Canadian Pacific Kansas City Limited ("CPKC") under a haulage arrangement with NS, as CPKC has no direct trackage into Bethlehem.[14] As noted above, BNSF also intends to obtain access to Phoenix Rail's Bethlehem facility through a separate commercial agreement with Phoenix Rail.

[14] *See* Phoenix Rail, Bethlehem, PA, https://phoenixrail.com/bethlehem-pa/.

4.6 Existing Dispatching

BNSF understands that the subject lines are currently dispatched by NS. NS performs dispatching from its Network Operations Center ("NOC") in Atlanta, Georgia, where dispatching territory is organized into named desks corresponding to geographic districts.

In addition to its own freight trains, NS dispatches other carriers' and passenger operators' trains over the subject lines. These include Amtrak's Lake Shore Limited, Floridian, Pennsylvanian, Wolverine, Blue Water, and Pere Marquette services, and at least CSX trains operating under trackage rights.[15]

NS's train-routing records confirming the foreign-road and passenger trains operating over the subject lines are addressed in the Supplement at Section 2.1.

4.7 Existing Labor

In the Revised Application, NS reported 15,484 agreement employees system-wide as of September 15, 2025, including 3,415 engineers and 4,583 trainpersons.[16] Existing NS labor is further addressed in the Supplement at Section 5.

As noted above, under the existing BNSF/NS interline arrangement, BNSF crews do not currently operate trains east of Chicago over the subject NS lines.

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[15] *See* Norfolk Southern Corp., Central Intelligence: A Unified Network Operations Center, YouTube (Feb. 7, 2019), https://www.youtube.com/watch?v=UXVl9iqEA54; Amtrak, Host Railroad Report (Apr. 2025), https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/April-2025-Amtrak-Host-Railroad-Report.pdf.

[16] (UP/NS Rev. Appl., Vol. 1 at 539, V.S. Parkerson, tbl. 1.)

4.8 Existing Commuter and Other Passenger Rail Service

The subject lines host intercity passenger rail services, which are dispatched by NS. Amtrak operates six services over portions of the trackage covered by BNSF's request: the Lake Shore Limited, the Floridian, the Pennsylvanian, the Wolverine, the Blue Water, and the Pere Marquette. Each service is described below, together with the portion of the requested routing it occupies and its current train count.[17]

Lake Shore Limited: The Lake Shore Limited is an Amtrak long distance train that runs a daily round trip between Chicago and New York, with a Boston section that separates from the New York section at Albany-Rensselaer, NY. The NS portion of the route, and the only portion that overlaps with BNSF's request, is the NS Chicago Line from Chicago Union Station to Cleveland Rockport, OH, consisting of a combination of double and triple track mainline. East of Cleveland the Lake Shore Limited operates over CSX, rather than NS. On the requested routing, the Lake Shore Limited occupies every Chicago Line segment from Chicago through Cleveland. It accounts for two trains per day on each of those segments.

Floridian (Combination of Capitol Limited and Silver Star Services): The Floridian is a temporary Amtrak long distance train that runs a daily round trip from Chicago to Miami via Washington, D.C., while planned rehabilitation work on New York's East River Tunnels takes place. The Floridian operates over

[17] Train counts are stated as trains per day, such that one round trip equals two trains per day. Route descriptions are drawn from the UP/NS Revised Application, Vol. 2 at 764-765, 769-772, and 775, and from Amtrak route maps and timetables.

the routes of two currently suspended Amtrak services: the Capitol Limited (Chicago to Washington, D.C.), and the Silver Star (New York Penn Station to Miami). The NS portion of the Floridian route segments are Chicago to Pittsburgh, consisting of a combination of double and triple track mainline. That segment overlaps with BNSF's request. Over that segment, the Floridian occupies the Chicago Line from Chicago to Cleveland, the connecting segments at Cleveland, the Cleveland Line from Cleveland to Alliance, OH, the Fort Wayne Line from Alliance to Pittsburgh, including the Conway to Rochester segment, and the CP-BLOOM approach into Pittsburgh. It accounts for two trains per day on each of those segments and is the only passenger service on the Cleveland Line and Fort Wayne Line portions of the requested routing.

Pennsylvanian: The Pennsylvanian is an Amtrak intercity service, operated in partnership with the Pennsylvania Department of Transportation, that currently runs one daily round trip between Pittsburgh and New York via Harrisburg and Philadelphia. The NS portion of the route, and the only portion that overlaps with BNSF's request, is the NS Pittsburgh Line from Pittsburgh to Harrisburg. East of Harrisburg the service continues over Amtrak's Keystone Corridor. On the requested routing the Pennsylvanian occupies the CP-BLOOM approach into Pittsburgh, the Conpit to CP-BLOOM segment, and the Harrisburg to Conpit segment. It accounts for two trains per day on each of those segments today. Amtrak has announced a second daily round trip, expected to begin in mid-November 2026 following completion of PennDOT-funded mainline, interlocking,

and connector track work at Harrisburg, Enola, Camp Hill, Altoona, Johnstown, and Pittsburgh,[18] which will raise the Pennsylvanian to four trains per day.

Wolverine: The Wolverine is an Amtrak Midwest corridor service that runs three daily round trips between Chicago and Pontiac, MI, via Kalamazoo, Jackson, Ann Arbor, and Detroit. The NS portion of the route that overlaps with BNSF's request is the NS Chicago Line from Chicago Union Station to Porter, IN, consisting of a combination of double and triple track mainline, where the service diverges to the north onto Amtrak's Michigan Line toward Kalamazoo. The Wolverine accounts for six trains per day on the Chicago Line west of Porter and no trains east of Porter.

Blue Water: The Blue Water is an Amtrak Midwest corridor service that runs one daily round trip between Chicago and Port Huron, MI, via Kalamazoo, Battle Creek, East Lansing, and Flint. The NS portion of the route that overlaps with BNSF's request is the same NS Chicago Line trackage from Chicago Union Station to Porter, IN, where the service diverges to the north onto Amtrak's Michigan Line. Between Kalamazoo and Battle Creek, the Blue Water operates over NS's Michigan Line, and between Battle Creek and Port Huron, the Blue Water operates over Canadian National; neither is part of BNSF's request. The Blue Water accounts for two trains per day on the Chicago Line west of Porter and no trains east of Porter.

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[18] Press Release, Governor Shapiro Announces Expanded Pennsylvanian Train Service Will Begin in November (Aug. 24, 2026) https://www.pa.gov/governor/newsroom/2026-press-releases/gov--shapiro-announces-expanded-pennsylvanian-train-service-will.

Pere Marquette: The Pere Marquette is an Amtrak Midwest corridor service that runs one daily round trip between Chicago and Grand Rapids, MI, via St. Joseph and Holland. The NS portion of the route that overlaps with BNSF's request is the NS Chicago Line from Chicago Union Station to Porter, IN, where the service diverges to the north onto CSX for the remaining distance to Grand Rapids. The Pere Marquette accounts for two trains per day on the Chicago Line west of Porter and no trains east of Porter.

5. Post-Transaction Operations

5.1 Changes to Train Operations

BNSF proposes to operate its own trains over the subject NS lines, rather than interchanging the intermodal traffic with NS at Chicago, as it does today. Under current volumes, BNSF's proposal would hold total corridor volume constant. BNSF would provide dedicated service to the four NS Sole-Served Facilities (Harrisburg, Rutherford, Bethlehem, and Pittsburgh), running approximately six trains per week in each direction at the outset.

Eastbound trains would start crews on BNSF track in Chicago. Volume would be blocked so the trains could be efficiently operated over NS lines. Crews could start at Cicero, Corwith, or other existing crew change points within BNSF's Chicago terminal, with volume entering the NS network via the requested connections before continuing east past Ashland or onto the Chicago Line. Eastbound, blocks could be set out at Pittsburgh, then Harrisburg, then Rutherford,

before the train terminates at Bethlehem. Eastbound routing through Chicago in shown in Figure 2 above.

Westbound, volume could be consolidated as the train traverses west through the requested facilities. Volume from Bethlehem could be steel-wheeled to Rutherford, then Bethlehem and Rutherford volume could be steel-wheeled to Harrisburg, then volume from Pittsburgh could be attached en route.

Anticipated traffic density along the corridor is addressed in Exhibit 14 to the Responsive Application (Density Charts).

BNSF's Pennsylvania intermodal volume supports viable train lengths at the service frequency described herein. Applying above BNSF's 2025 interline train data for the four NS Sole-Served Facilities, an eastbound operation at {{ [redacted] }}.[19] Train lengths across the range of frequencies under consideration therefore fall {{ [redacted] }}, which is consistent

[19] {{ [redacted] }}

with BNSF's existing intermodal train profile.[20] Figure 4 below lists the estimated BNSF train lengths for the NS Sole-Served Facilities.

Figure 4: Estimated BNSF train lengths for the four NS Sole-Served Facilities, by service frequency {{



}}

This Operating Plan is sized to the volumes moving in the corridor today. The segment-by-segment and terminal-by-terminal analyses are addressed in the Supplement at Sections 3 and 4.

5.2 Changes to Intermodal Operations

Changes to intermodal operations would be minimal since, as described above, the post-transaction volume currently exists, carried by NS across the Pennsylvania intermodal corridor. On the eastbound run, Pittsburgh blocks would be set out at Pittsburgh, and at Harrisburg, the Harrisburg blocks would be set out. Then, the Rutherford block could continue to the Rutherford terminal with the originating Conway crew.

[20] {{ }}

A new Harrisburg crew could then run a trip from Rutherford to Bethlehem, carrying the Bethlehem block outbound. Across the requested facilities, BNSF's operation is expected to require approximately one to two train-lengths of working track.

The resulting schedule could hold a pattern of service some of BNSF's Pennsylvania intermodal customers receive today. A large portion of the traffic departs Los Angeles on {{ [redacted] }}. Under the requested trackage rights, BNSF could depart Corwith on those days, rather than interchange the traffic with NS. The Rutherford block could reach the terminal {{ [redacted] }} availability that BNSF's expedited customers are given today.[21] Figure 5 below shows post-transaction possible departure schedules and Rutherford arrival schedules.

[21] *See* workpaper, "Cutoff times.xlsx".

Figure 5: Post-Transaction Possible Departure and Rutherford Arrival, by day of week[22] {{



}}

5.3 Changes to Interchanges

Because BNSF would operate its own trains over NS's lines, the BNSF/NS interchange that occurs at Chicago today would be replaced by BNSF's operation on the NS lines without the need to stop trains at the existing NS interchange locations to effectuate the interchanges. BNSF would connect volume from its Chicago and Chillicothe Subdivisions onto the NS Chicago Line, as outlined above.

5.4 Changes to Yards and Facilities

BNSF would conduct terminal operations at the four NS Sole-Served Facilities it seeks to serve directly: Harrisburg, Rutherford, Bethlehem, and Pittsburgh. BNSF's projected share and capacity related to the NS Sole-Served Facilities is addressed in the Supplement at Section 3. Based on current volumes, BNSF would substitute its own line-haul and terminal handling for traffic that NS carries and interchanges today, rather than add net new corridor volume.

[22] *See id.*

Growth-plan lifts as they relate to capacity and utilization at the four NS Sole-Served Facilities, and BNSF's projected share of that capacity, are addressed in the Supplement at Section 3. Figure 6 below shows projected BNSF required lifts at the NS Sole-Served Facilities.

Figure 6: Projected BNSF Required Lifts at Requested Facilities[23] {{



}}

Because BNSF's lifts would substitute for NS lifts, rather than adding to them, the physical requirement is the allocation of existing working track, gate, and lift capacity to BNSF, rather than the expansion of that capacity. Capacity at these facilities highlights why enforceable facility access on non-discriminatory terms is essential to the requested remedy: BNSF cannot realize the benefit of the requested trackage rights if it cannot obtain the share of terminal capacity that its own volume represents. As discussed in the Responsive Application, BNSF's ability to receive fair and non-discriminatory treatment will depend on robust and continued Board oversight.[24]

[23] *See workpaper* "Interline Data - Domestic & International.xlsx." {{ }}

[24] (BNSF Responsive Appl. 16.)

5.5 Changes to Dispatching

BNSF does not expect the proposed trackage rights to change the existing dispatching arrangement on the subject lines. NS would continue to dispatch all train movements on its lines from the Atlanta NOC over the existing dispatching desks, and BNSF trains would be dispatched by NS over the trackage rights route, as is standard for overhead trackage rights. As discussed above, NS already dispatches Amtrak and CSX trains over portions of the subject lines. NS's dispatch of third-party trains over these lines is therefore an established practice, rather than a new requirement arising from BNSF's request. The addition of approximately six BNSF trains per week in each direction would not require a change in dispatching structure or systems. On the volumes reflected in this Operating Plan, and because BNSF would operate its own trains in lieu of the traffic NS carries and interchanges today, total corridor volumes would be held approximately constant.

Because dispatching and terminal control would remain with NS, BNSF's ability to provide competitive service would depend on non-discriminatory dispatching parity: BNSF trains must be dispatched on terms no less favorable than those NS applies to its own and its affiliates' trains of like character, priority, and schedule, without preference in meets, passes, holding, crew-change handling, or entry to and departure from the intermodal facilities.

5.6 Labor Impacts

Details regarding impacts to labor are described in the Responsive Application,[25] as well as Appendix 4 to the Responsive Application.

5.7 Impacts on Commuter and Other Passenger Rail Service

BNSF's proposed operation would have no impact on commuter and other passenger rail service on the subject lines. BNSF would operate its own trains in lieu of the traffic that NS carries and interchanges with BNSF at Chicago today. Thus, based on current volumes, total corridor volume would be held constant, and the passenger train counts described above would be unchanged. The incremental line-of-road volume attributable to BNSF is 12 trains per week on each segment of the requested routing, six head-haul and six back-haul, or approximately two trains per day.[26] [27]

Lake Shore Limited: BNSF would add approximately two trains per day to the Chicago Line segments and Cleveland connecting segments that the Lake Shore Limited occupies between Chicago and Cleveland. The Lake Shore Limited's train count would be unchanged. BNSF does not anticipate any effect on the Lake Shore Limited scheduling or on-time performance.

---

[25] (BNSF Responsive Appl. 17-20.)

[26] The segment-by-segment test of that conclusion against NS's own capacity figures is set out in the Supplement at Section 4.

[27] Incremental addition of two trains per day as cited throughout this section presumes that the number of trains operated by NS today over the segments is not reduced as a result of BNSF's trackage rights.

Floridian (Combination of Capitol Limited and Silver Star Services): The Floridian shares portions of the requested routing, over which BNSF would add approximately two trains per day. The Floridian's train count would be unchanged. BNSF does not anticipate any effect on the Floridian scheduling or on-time performance.

Pennsylvanian: The Pennsylvanian occupies three segments of the requested routing. BNSF would add approximately two trains per day to each. The growth-plan figures account for Amtrak's announced second daily round trip, which raises passenger train counts on the Pittsburgh Line from two to four trains per day and on the CP-BLOOM to Pittsburgh approach from four to six trains per day. BNSF does not anticipate any effect on the Pennsylvanian scheduling or on-time performance, including the added round trip.

Wolverine, Blue Water, and Pere Marquette: The three Michigan services and BNSF's trains would share portions of the Chicago Line between Chicago Union Station and Porter, IN. East of Porter, the routes do not overlap. On those segments, BNSF would add approximately two trains per day. These segments carry the highest passenger train density on the subject lines. The Michigan services' train counts would be unchanged, and BNSF does not anticipate any effect on the Wolverine, Blue Water, or Pere Marquette scheduling or on-time performance.

Corridor-Wide Conclusion: The segment-by-segment capacity analysis is addressed in the Supplement at Section 4 and is consistent with UP/NS's capacity analysis and conclusions regarding passenger service on these lines. UP/NS found that passenger delay in months when capacity utilization exceeded the projected post-merger level was not statistically different from delay in months when it remained below that level.[28] BNSF's trains would be dispatched by NS on the non-discriminatory basis described above.[29] Additionally, based on current volumes, BNSF's operation would substitute for volume currently carried by NS, rather than adding net new corridor volume. For these reasons, BNSF does not anticipate adverse effects on the scheduling or on-time performance of any passenger service on the subject lines.

5.8 Anticipated Abandonments and Discontinuances

No abandonments or discontinuances are planned as a consequence of the relief requested in this Responsive Application.

5.9 Equipment Requirements

BNSF does not anticipate any incremental equipment requirements in connection with the requested trackage rights at the service levels described in this Operating Plan. The Pennsylvania intermodal volume would be handled with BNSF's existing fleet of locomotives and intermodal well cars. BNSF does not

[28] (UP/NS July 7 Suppl. 174 tbl. PR-1; *id.* at 374-392.)

[29] As noted above, BNSF's ability to receive fair and non-discriminatory treatment will depend on robust and continued Board oversight. (BNSF Responsive Appl. 16.)

initially propose any additional locomotives or rolling stock purchase during the merger transition period. The traffic would move as an extension of BNSF's existing transcontinental intermodal network, and BNSF's current equipment is sufficient to accommodate the operation described herein.

A portion of the corridor requires cab-signal-equipped locomotives. UP/NS's PTC investment is expected to reach Harrisburg, but not the subject Harrisburg-to-Bethlehem (Reading and Lehigh) lines (see Figure 7 below).[30] Thus, BNSF will need a cab-signal solution to operate to Bethlehem within the transition period. BNSF could use HP-hour exchange for a lead NS cab-signal locomotive, or equip a BNSF sub-fleet of locomotives with cab signals. Operating practice may vary depending on the speed of investment for PTC enablement, however BNSF will comply with trackage rights needs for cab signals.

[30] (UP/NS Rev. Appl., Vol. 2 at 913-914, 932-933.)

Figure 7: Planned UP and NS Cab Signal Investments on the Trackage Rights Lines[31]



5.10 Capital Investment

BNSF does not anticipate any capital investment in the physical plant of the subject lines in connection with the requested trackage rights based on current volumes. That conclusion follows from the request. Based on current volumes, BNSF seeks trackage rights and would operate its own trains in place of traffic that NS carries and interchanges with BNSF at Chicago today. Thus, total corridor volume would be held approximately constant, and the incremental line-of-road attributable to BNSF would be approximately two trains per day. The requested routing would use connections that already exist and that mirror existing BNSF-NS interchange flows, so no new connection is required to implement it. The route

[31] (*Id.*)

BNSF would use is already cleared for double-stack intermodal service, including through the Pittsburgh area over the segments described in Section 4.1 above.

At the four NS Sole-Served Facilities that BNSF would serve, BNSF's lifts would substitute for NS lifts, rather than adding to them.

5.11 Safety Impacts

Safety is foundational to everything we do at BNSF. BNSF treats safety as an ongoing process of improving its safety culture and works to provide the leadership, training, organizational support, technology, and resources needed to reduce all injuries and fatalities across its system. BNSF is committed to integrating these operations in a manner that leverages our safety culture.

The safety practices that BNSF would apply on the NS trackage rights lines are those it already applies across its own network and its existing trackage rights over other carriers' networks. BNSF employees would remain subject to BNSF's safety rules, air brake and train handling rules, and hazardous materials instructions. BNSF's operations testing, recurrent training, and locomotive engineer and conductor certification requirements would continue without change. As is customary with trackage rights, BNSF crews would be trained on and expected to comply with the operating rules, timetables, and special instructions of the host railroad (NS).

NS does not currently operate under the General Code of Operating Rules ("GCOR"). BNSF would train and qualify its crews to the rule book in effect on the subject territory and would revise its qualification program if UP/NS later convert

the territory to GCOR. As crew bases are established, BNSF would qualify employees on the physical characteristics of the territory and confirm certification in conformance with 49 C.F.R. Part 240 for locomotive engineers and Part 242 for conductors, along with all other applicable FRA regulations, including those relating to territorial qualification.

Operations over the NS trackage rights would also be covered by BNSF's FRA-approved Risk Reduction Program. That program applies to BNSF's employees and operations system-wide, without regard to whether a given segment is BNSF-owned or operated under trackage rights and would extend to these operations on the same terms.

The operation on the subject lines would accordingly be brought within BNSF's existing safety framework, and BNSF would consult with FRA on any updates or filings that the trackage rights require. BNSF will address the cab signal requirements for operation over the NS lines as required when achieving full operations, following the grant of trackage rights. BNSF's safety, operating practices, and mechanical personnel are in routine contact with their counterparts at NS and other Class I railroads, and BNSF would continue to use those channels appropriately while operating on NS's tracks.

6. Conclusion

As explained in this Operating Plan, the relief requested by BNSF would allow BNSF to operate its own trains over NS's lines between Chicago, IL and Bethlehem, PA, rather than interchanging with NS at Chicago. This would enable BNSF to preserve existing competitive rail optionality and to continue serving customers that move traffic today under the BNSF/NS interline arrangement. I urge the Board to grant this Responsive Application.

VERIFICATION

I, Jon Gabriel, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on November 18, 2026.

/s/ Jon Gabriel

Jon Gabriel

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 13-B

SUPPLEMENT TO THE OPERATING PLAN

VERIFIED BY MICHAEL R. BARANOWSKI AND NATHANIEL S. ZEBROWSKI

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APPENDIX A: TRAIN LIST 18

Supplement to the Operating Plan

Verified by Michael R. Baranowski and Nathaniel S. Zebrowski

1. Introduction

We are Michael R. Baranowski and Nathaniel S. Zebrowski of FTI Consulting. Mr. Baranowski is a Senior Managing Director and leader of FTI's Network Industries Strategies practice. Mr. Zebrowski is a Senior Managing Director in FTI's Network Industries Strategies practice. Details of our background and qualifications are set forth in Exhibits 1 and 2 to this Supplement.

In connection with BNSF's Operating Plan (Exhibit 13-A), sponsored by Jon Gabriel, BNSF has requested that we review and analyze certain highly confidential materials not available to Mr. Gabriel related to existing train operations, passenger operations, and labor information pertaining to the NS rail line and intermodal terminals over which BNSF is requesting trackage rights.

2. Pre-Transaction Operations

This section describes existing NS operations over the trackage rights line.

2.1 Existing Train Operations

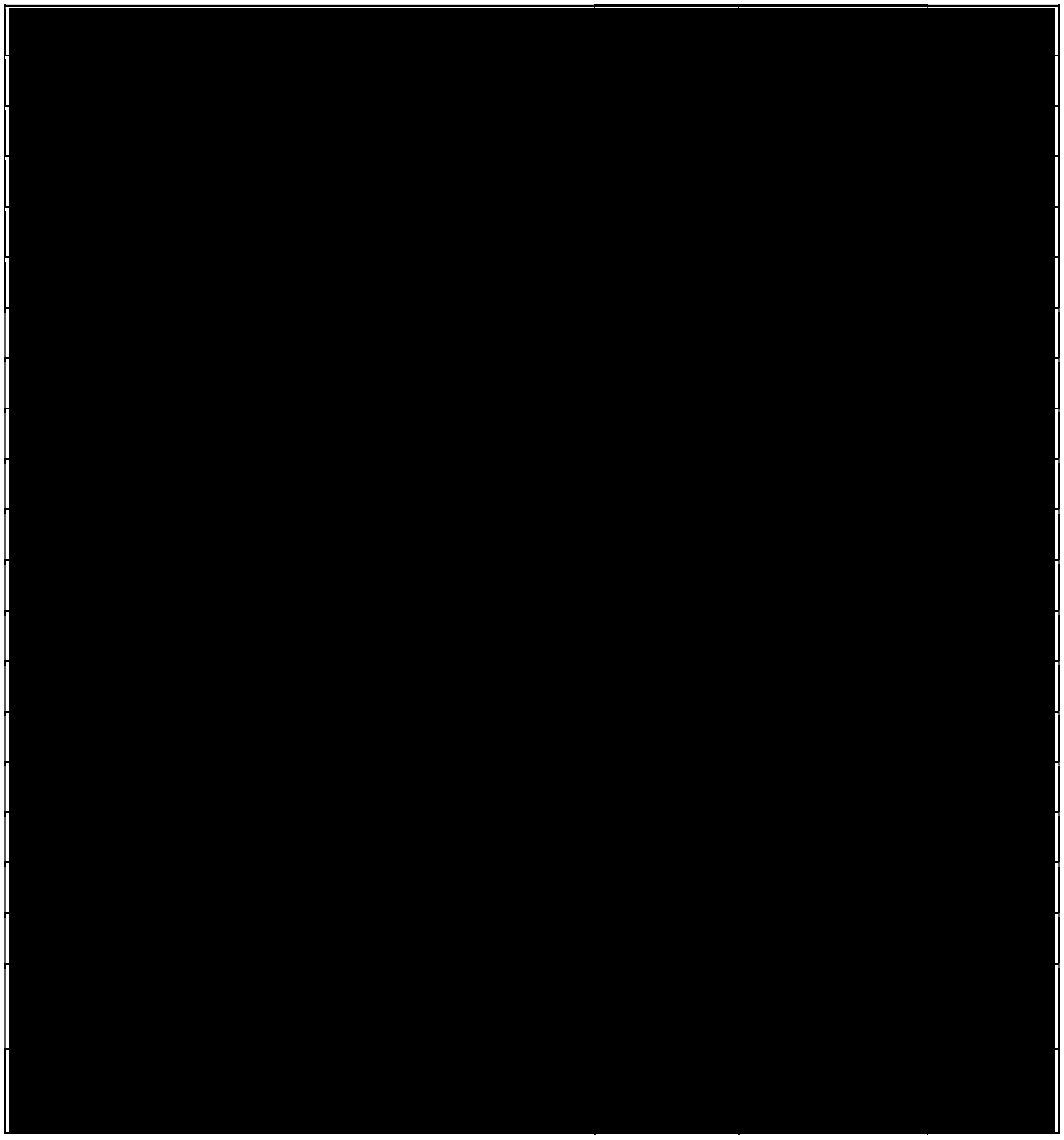
This section summarizes trains per day by segment and reports schedule and other information for all trains operating over the trackage rights line as of 2023.[1] The subject lines

[1] This Section corroborates the Existing Train Operations section of the Operating plan (Section 4.2). Segment definitions follow the Description of the Lines in Exhibit 13-A, Section 4.1, reproduced in Appendix A.

carry a mix of {{[redacted]}} traffic and host intercity passenger services described below. Freight density on the subject lines is heaviest on the western and central portions of the routing–{{[redacted]}}–and falls sharply east of Harrisburg to {{[redacted]}}.

Figure 1 below shows base plan train counts on the requested routing.

Figure 1: Base plan trains per day on NS trackage rights line (2023)[2] {{



}}

Figure 2 summarizes the types of trains operating over part or all of the NS trackage rights line.

[2] *See* Baranowski/Zebrowski HC Workpapers "NS Line-Of-Road Volume and Capacity Summary.xlsx" and "Train Routes.xlsx" at tab "Train Route." Consistent with the convention used throughout this Operating Plan, train counts are stated as trains per day, so that one round trip equals two trains per day.

Figure 2: Trains on NS trackage rights line by category (2023)[3] {{



}}

Details for individual trains operating over some portion of the NS trackage rights line as of 2023 are listed in Appendix A, including the category and scheduled days of operation. {{ }}. The traffic that is not scheduled to a weekly pattern is almost entirely {{ }} which operate as traffic requires. NS's train-routing records for 2023 show {{

[3] *See* Baranowski/Zebrowski Workpaper "Train Routes.xlsx" at tabs "Train Symbol", "Train codes", and "Train Route." Symbols, train route names, origin and destination station codes and scheduled days of operation are as carried. {{ }}. Symbols shown as operating as required are {{ }}.

[redacted]}}.[4] NS also hosts{{[redacted]}} over these lines.

2.2 Existing Intermodal Operations and Interchanges

This section describes intermodal operations for BNSF-NS interline traffic moving over the trackage rights line as of 2023.[5]

Eastbound, the traffic interchanges at {{[redacted]}}. BNSF's westbound Northeast volume is returned to BNSF in the Chicago terminal district and moves west on BNSF's Q-NYCLAC. The connections between BNSF's subdivisions and the NS Chicago Line are those described in Section 4.1 in the Operating Plan.[6]

3. Terminal Capacity and Utilization

BNSF proposes to conduct terminal operations only at the four facilities exclusively served by NS that it seeks to serve directly (defined in Exhibit 13-A and this Supplement as the

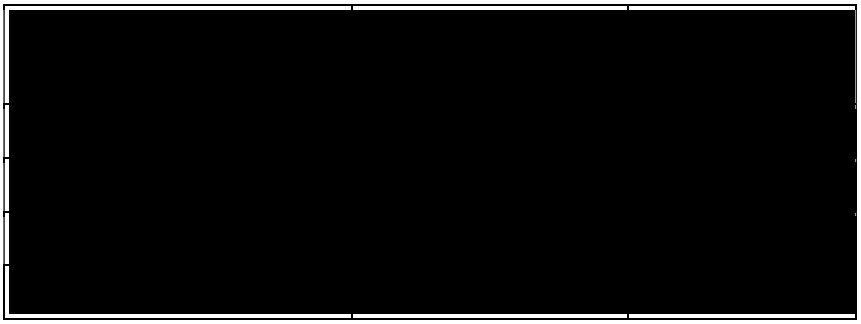
[4] *See* Baranowski/Zebrowski Workpaper "Train Routes.xlsx" at tabs "Train Symbol", "Train codes", and "Train Route."

[5] This Section corroborates the Existing Intermodal Operations and Existing Interchanges sections of the Operating Plan (Sections 4.3 and 4.4).

[6] *See* Baranowski/Zebrowski Workpaper "Train Routes.xlsx" at tabs "Train Symbol", "Train codes", and "Train Route." Symbols, train route names, origin and destination station codes and scheduled days of operation are as carried.

NS Sole-Served Facilities): Harrisburg, Rutherford, Bethlehem, and Pittsburgh.[7] Each of these terminals has existing capacity to accommodate projected traffic. Per the UP/NS Revised Application, base plan lift utilization at these are as follows:

Figure 3: Pennsylvania intermodal corridor terminal base plan lifts and capacity[8] {{



}}

The Harrisburg, Rutherford, and Pittsburgh (Pitcairn) terminals are owned by NS, with NS performing rail switching and Pacific Rail Services providing ramp services. The Bethlehem terminal is owned and operated by Phoenix Rail and is served by CPKC under a haulage arrangement[9], as CPKC has no direct trackage into Bethlehem.

Across Harrisburg, Rutherford, Bethlehem, and Pittsburgh intermodal terminals, BNSF's projected trains would account for approximately {{ }}[10] of post-transaction lift capacity on growth-plan volumes. Based on current volumes, BNSF would substitute its own line-haul and terminal handling for traffic that NS carries and interchanges today, rather than add net new

[7] This Section corroborates the Existing Yards and Facilities, Changes to Yards and Facilities and Capital Investment sections of the Operating Plan (Exhibit 13-A, Sections 4.5, 5.4 and 5.10).

[8] *See* Baranowski/Zebrowski Workpapers "Consolidated Terminal Data.xlsx", and "PA Terminal Volume and Capacity.xlsx", at tab "Output."

[9] NS provides haulage for CPKC.

[10] *See* Baranowski/Zebrowski Workpapers "Consolidated Terminal Data.xlsx", and "PA Terminal Volume and Capacity.xlsx", at tab "Output."

corridor volume. Thus, no yard on the subject lines is expected to see an increase in activity of more than 20%.

Across the four NS Sole-Served Facilities that BNSF would serve, the UP/NS growth plan contemplates {{ }}.[11] Of those growth-plan lifts, {{ }}.

{{ }}.[12] The details by terminal are set out in Figure 4 below.

[11] *See* Baranowski/Zebrowski Workpapers "Consolidated Terminal Data.xlsx", and "PA Terminal Volume and Capacity.xlsx", at tabs "Output" and "Analysis."

[12] Methodology: for each terminal, NS's growth-plan daily lift figure is taken from the Applicants' workpaper "Consolidated Terminal Data.xlsx" and annualized using 364 days to give total growth-plan lifts per year, and annual lift capacity for the same terminal is taken from that workpaper. {{ }}

Figure 4: Pennsylvania intermodal corridor terminal lifts versus capacity[13] {{



}}

Because BNSF's lifts would substitute for NS lifts, rather than adding to them, the physical requirement is the allocation of existing working track, gate, and lift capacity to BNSF, rather than the expansion of that capacity.

4. Line-Segment Capacity and Passenger Impacts

This section reviews capacity and utilization of each segment of the trackage rights line in light of proposed changes and passenger operations. [14] Utilization is measured segment by segment under the UP/NS base plan and under the UP/NS growth plan with the second Pennsylvanian round trip and BNSF's trains added.

The Operating Plan is sized to the volumes moving in the corridor today. Applying NS's own capacity-estimating methodology, every segment of the requested routing retains excess capacity under the UP/NS growth plan with BNSF's trains included, at {{ }}.

[13] *See* Baranowski/Zebrowski Workpapers "Consolidated Terminal Data.xlsx", and "PA Intermodal Terminal Lifts.xlsx." *Note figure may not sum exactly due to rounding.*

[14] This Section corroborates the Changes to Train Operations, Impacts on Commuter and Other Passenger Rail Service and Capital Investment sections of the Operating Plan (Exhibit 13-A, Sections 5.1, 5.7 and 5.10).

Additionally, the four NS Sole-Served Facilities BNSF would serve retain {{[redacted]}}.[15]

BNSF's proposed operation would not adversely affect Amtrak intercity passenger service on the subject lines. BNSF would operate its own trains in lieu of the traffic that NS carries and interchanges with BNSF at Chicago today. Thus, based on current volumes, total corridor volume is held constant and the passenger train counts described above would be unchanged. The incremental line-of-road volume attributable to BNSF is 12 trains per week on each segment of the requested routing, six head-haul and six back-haul, or approximately two trains per day.[16] For purposes of the capacity analysis, the proposed BNSF trains are conservatively treated as fully incremental to existing NS train counts.

- **Lake Shore Limited**

BNSF would add approximately two trains per day to the Chicago Line segments and Cleveland connecting segments that the Lake Shore Limited occupies between Chicago and Cleveland. On the Chicago Line segment leaving Chicago, which carries the 14 daily passenger trains described above, capacity utilization would move from approximately {{[redacted]}}[17] under

[15] *See* Baranowski/Zebrowski Workpapers "Consolidated Terminal Data.xlsx", and "PA Intermodal Terminal Lifts.xlsx" at tabs "Output" and "Analysis."

[16] BNSF tested that conclusion segment by segment against NS's own capacity figures. {{[redacted]}}. The results are set out service by service below.

[17] *See* Baranowski/Zebrowski Workpapers "NS Line-Of-Road Volume Capacity Summary.xlsx," and "Train counts and passenger impact.xlsx," at tabs "Output & Verification." See also Zetenyi Verified Statement, Supplemental Filings at pp. 374-375

the base plan to approximately {{[redacted]}}[18] under the growth plan with BNSF's trains included. On the CP-MAX to Cleveland Rockport segment, utilization would move from approximately {{[redacted]}}[19], and on the CP-117 to Cleveland Rockport segment, utilization would move from approximately {{[redacted]}}.[20] Each segment would retain substantial excess capacity, and the Lake Shore Limited's own train count would be unchanged.

- **Floridian (Combination of Capitol Limited and Silver Star Services)**

The Floridian shares more of the requested routing than any other passenger service, and BNSF would add approximately two trains per day across all of it. West of Cleveland, the segments and results are those described above for the Lake Shore Limited. South and east of Cleveland, utilization on the CP-116 to CP-117 segment would move from approximately {{[redacted]}}[21] under the base plan to approximately {{[redacted]}}[22] under the growth plan with BNSF's trains included. On the Cleveland Line between CP-116 and Alliance, utilization would move from approximately {{[redacted]}}[23]; on the Conway to Rochester segment, from approximately {{[redacted]}}[24]; on the Fort Wayne Line between Sebring and Rochester, from approximately {{[redacted]}}; on the Fort Wayne Line between Conway and Pittsburgh, from approximately {{[redacted]}}[25]; and on the CP-BLOOM to Pittsburgh approach, from

[18] *Ibid.*
[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*

approximately {{[redacted]}}[26]. Every segment would retain excess capacity, and the Floridian's own train count would be unchanged.

- **Pennsylvanian**

The Pennsylvanian occupies three segments of the requested routing. BNSF would add approximately two trains per day to each. On the Pittsburgh Line between Conpit and CP-BLOOM, capacity utilization would move from approximately {{[redacted]}}[27] under the base plan to approximately {{[redacted]}}[28] under the growth plan with BNSF's trains included. On the CP-BLOOM to Pittsburgh approach, utilization would move from approximately {{[redacted]}}[29], as described above for the Floridian. On the Harrisburg to Conpit segment, utilization would move from approximately {{[redacted]}}.[30] Those growth-plan figures already absorb Amtrak's announced second daily round trip, which raises passenger train counts on the Pittsburgh Line from two to four trains per day and on the CP-BLOOM to Pittsburgh approach from four to six trains per day. All three segments would retain excess capacity with Amtrak's second daily round trip and BNSF's trains in place.

- **Wolverine, Blue Water, and Pere Marquette**

The three Michigan services and BNSF's trains would share the Chicago Line between Chicago Union Station and Porter, IN. East of Porter, the routes do not overlap. On those segments, BNSF would add approximately two trains per day against NS's estimated fluid

[26] *Ibid.*

[27] *Ibid.*

[28] *Ibid.*

[29] *Ibid.*

[30] *Ibid.*

capacity of {{[redacted]}}[31], moving capacity utilization from approximately {{[redacted]}}[32] under the base plan to approximately {{[redacted]}}[33] under the growth plan with BNSF's trains included, with these segments carrying the highest passenger train density on the subject lines. The Michigan services' train counts would be unchanged.

- **Corridor-Wide Conclusion**

Across the 20 segments of the requested routing, capacity utilization under the UP/NS base plan ranges from approximately {{[redacted]}}[34], with the highest utilization on the {{[redacted]}}[35] and the {{[redacted]}}.[36] Adding UP/NS's growth-plan trains, the announced increase in Pennsylvanian service, and BNSF's trains, utilization would range from approximately {{[redacted]}}[37], highest at the eastern end of the routing, where NS's own growth plan already places the Lehigh Line at {{[redacted]}}[38] before BNSF's trains are added–{{[redacted]}}[39]–followed by the {{[redacted]}}[40] and the {{[redacted]

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

[37] *Ibid.*

[38] *Ibid.*

[39] *Ibid.*

[40] *Ibid.*

[redacted]}}[41], with the Chicago Line between CP-502 and Porter at approximately {{[redacted]}}[42]. Every segment would retain excess capacity under both cases. Because BNSF's trains would be dispatched by NS on the non-discriminatory basis described in the Changes to Dispatching section in the Operating Plan, and because, based on current volumes, BNSF's operation would substitute for trains NS operates today, there will be no adverse effects on the scheduling or on-time performance of any passenger service on the subject lines.

NS's existing plant is adequate to accommodate the proposed BNSF operation without improvement. Applying NS's own capacity-estimating methodology, every segment of the requested routing would retain excess capacity under the UP/NS growth plan with BNSF's trains included, at {{[redacted]}}[43]. At the four NS Sole-Served Facilities that BNSF would serve, BNSF's lifts would substitute for NS lifts, rather than adding to them, and the growth plan leaves {{[redacted]y}}[44] across those terminals.

5. Existing NS Labor at the Pennsylvania Intermodal Corridor Reporting Points

This section summarizes NS's current employee base relevant to the trackage rights line, as shown in Figure 5 below.[45] NS employs {{[redacted]

[redacted]

[redacted]

[41] *Ibid.*

[42] *Ibid.*

[43] *Ibid.*

[44] *See* Baranowski/Zebrowski Workpapers "Consolidated Terminal Data.xlsx", and "PA Intermodal Terminal Lifts.xlsx" at tabs "Output" and "Analysis."

[45] This Section corroborates the Existing Labor section of the Operating Plan (Exhibit 13-A, Section 4.6).

[redacted]

[redacted]

[redacted]}}.[46]

Figure 5: Existing NS employees at the Pennsylvania intermodal corridor terminals, crew bases and route yards, by craft (as of September 15, 2025)[47] {{



}}

[46] {{[redacted]}} Craft totals reconcile to Parkerson VS Table 11, Am. App. Vol. 1, p. 539. Train Crew comprises the Engineers and Trainpersons crafts per Am. App. Vol. 2, p. 979 n.152. {{[redacted]}}.

[47] {{[redacted]

6. Conclusion

The highly confidential materials reviewed and analyzed in this Supplement corroborate the Operating Plan submitted as Exhibit 13-A. The NS trackage rights line carries a mix of {{[redacted]}} trains together with the Amtrak services described in the Operating Plan; every segment of the NS trackage rights line and each of the four NS Sole-Served Facilities retains capacity under the UP/NS growth plan with BNSF's trains added; and the NS labor at the reporting points serving the Pennsylvania intermodal corridor terminals is as described in Section 5.

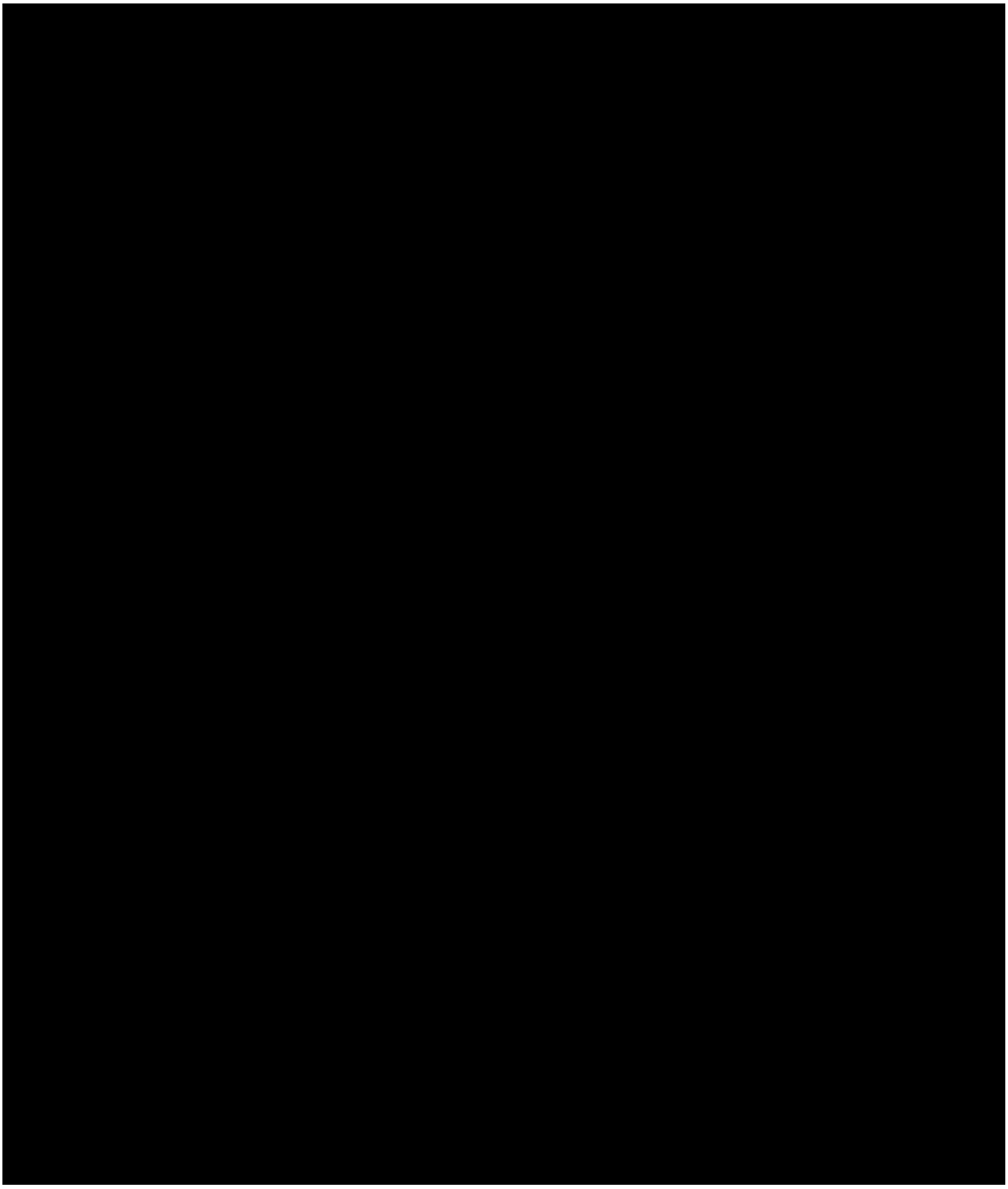
[redacted]}}

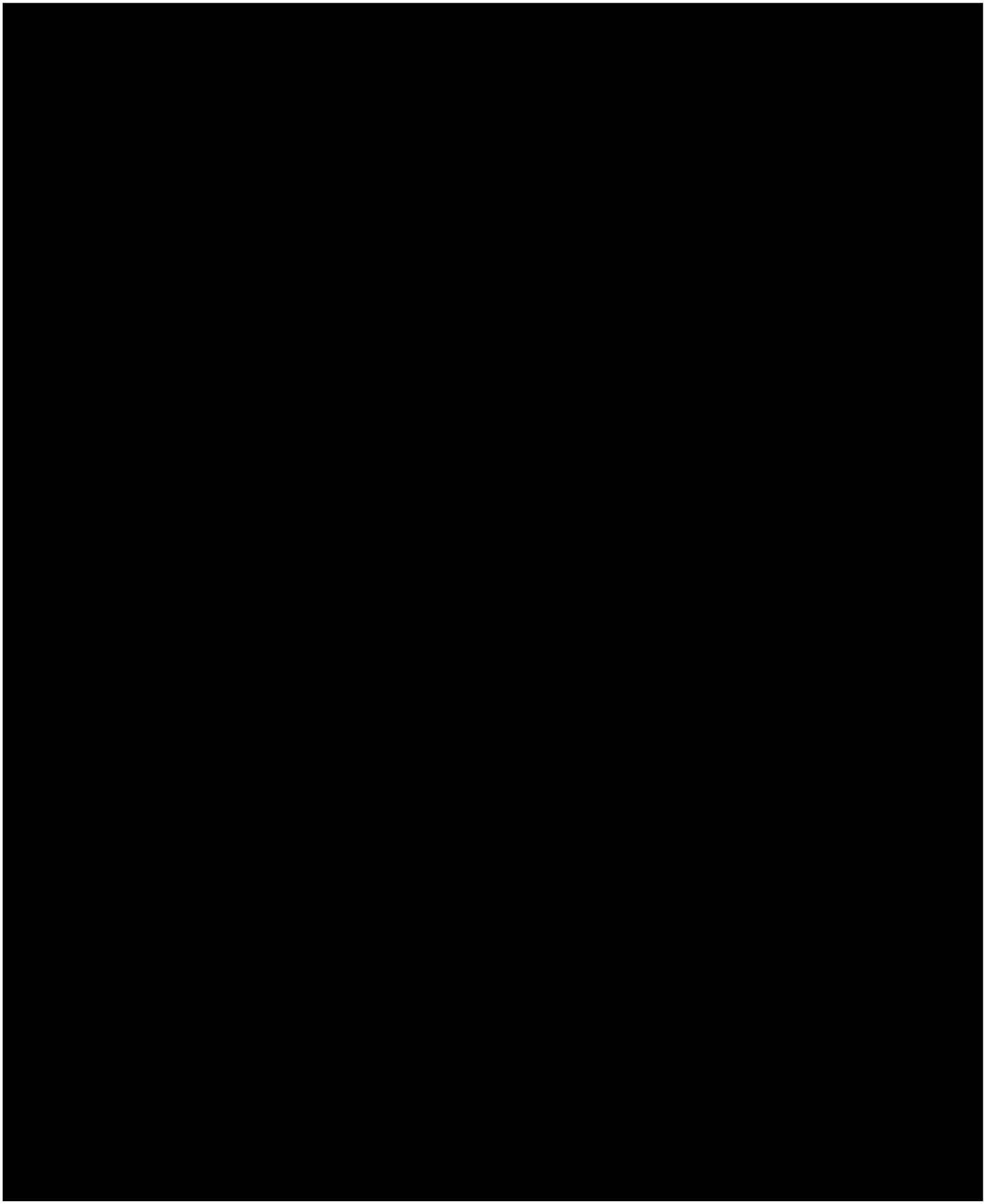
APPENDIX A: TRAIN LIST

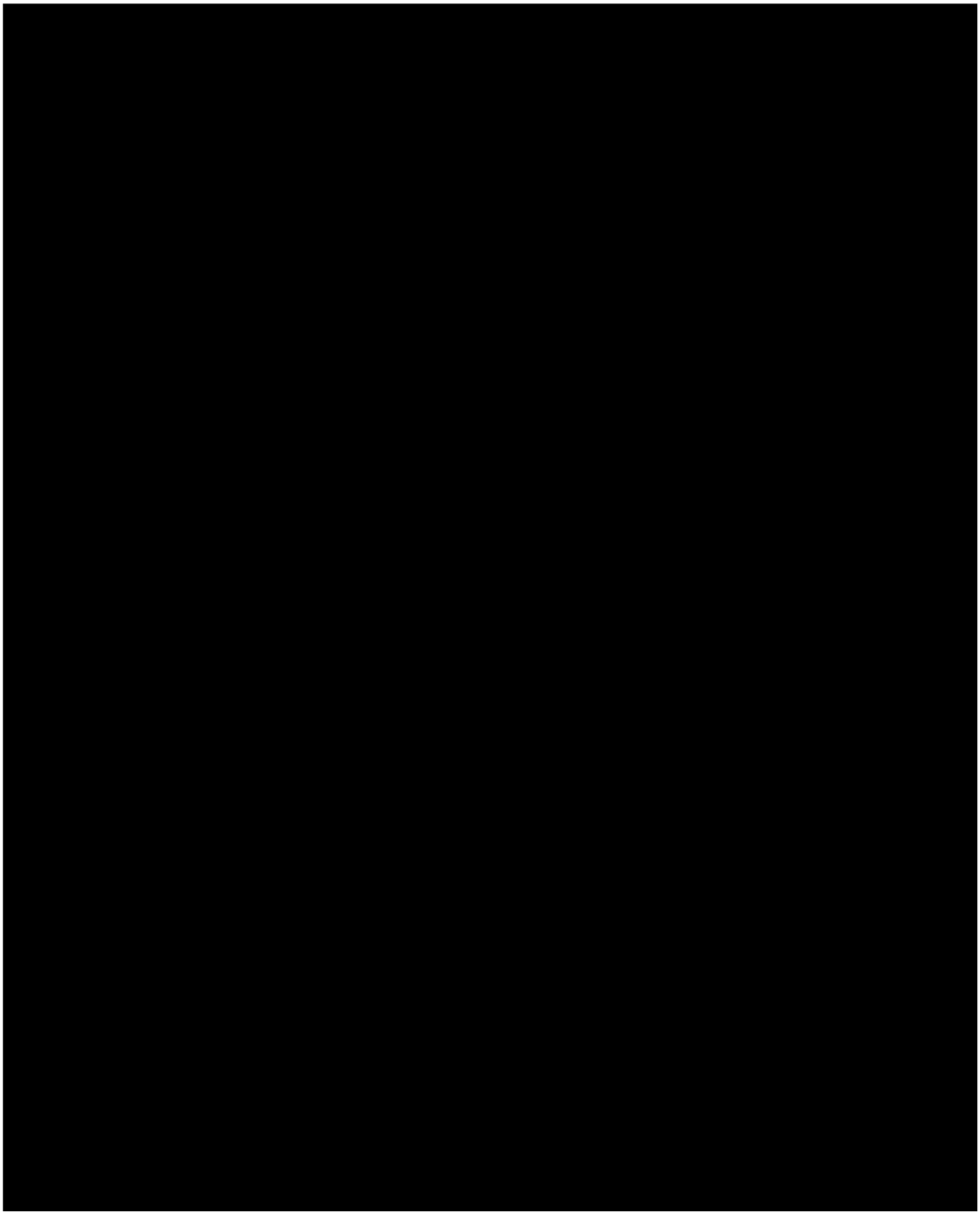
List of individual trains operating over the NS trackage rights line, by symbol, category and scheduled days of operation (2023).[48] {{

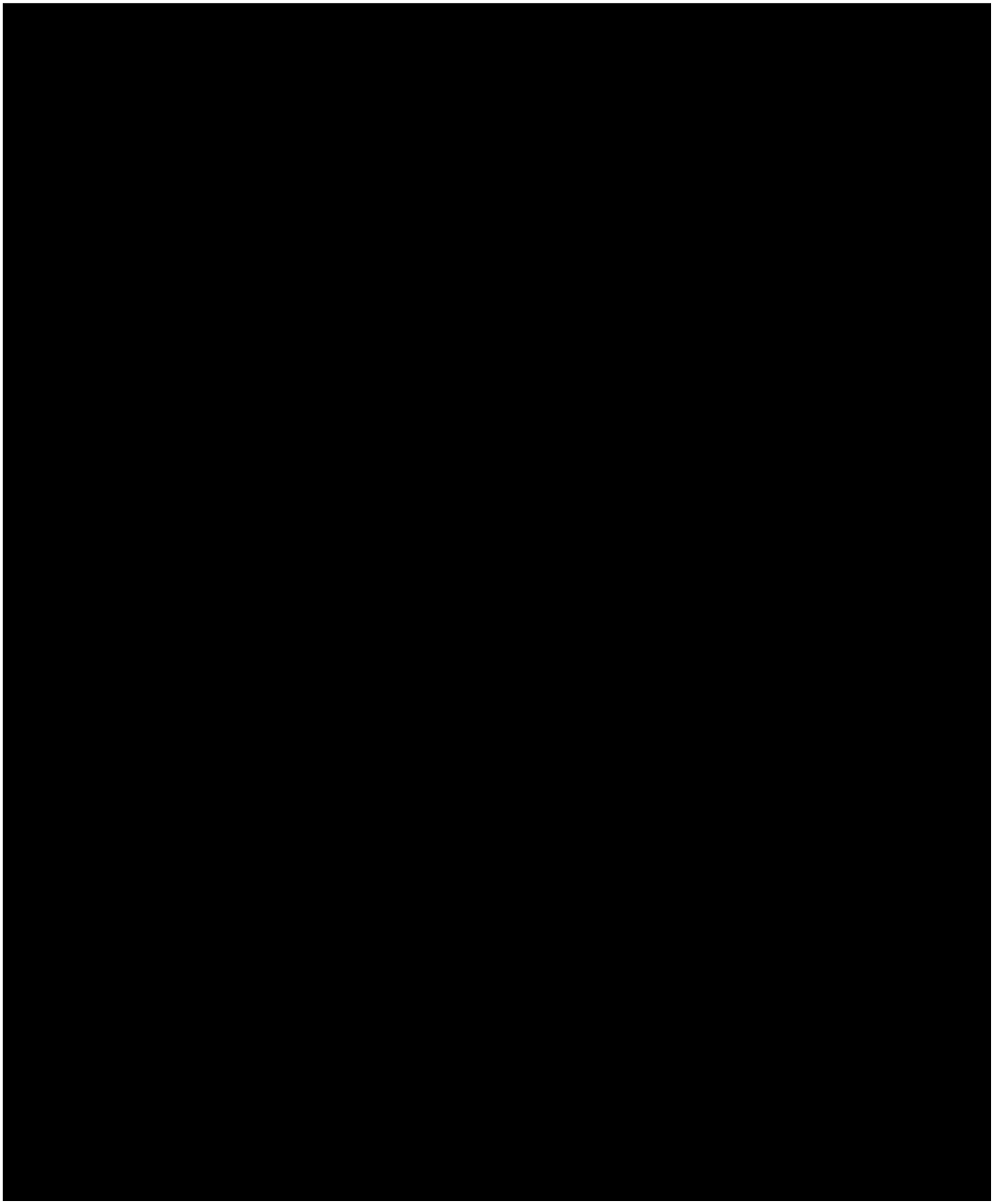
[redacted]

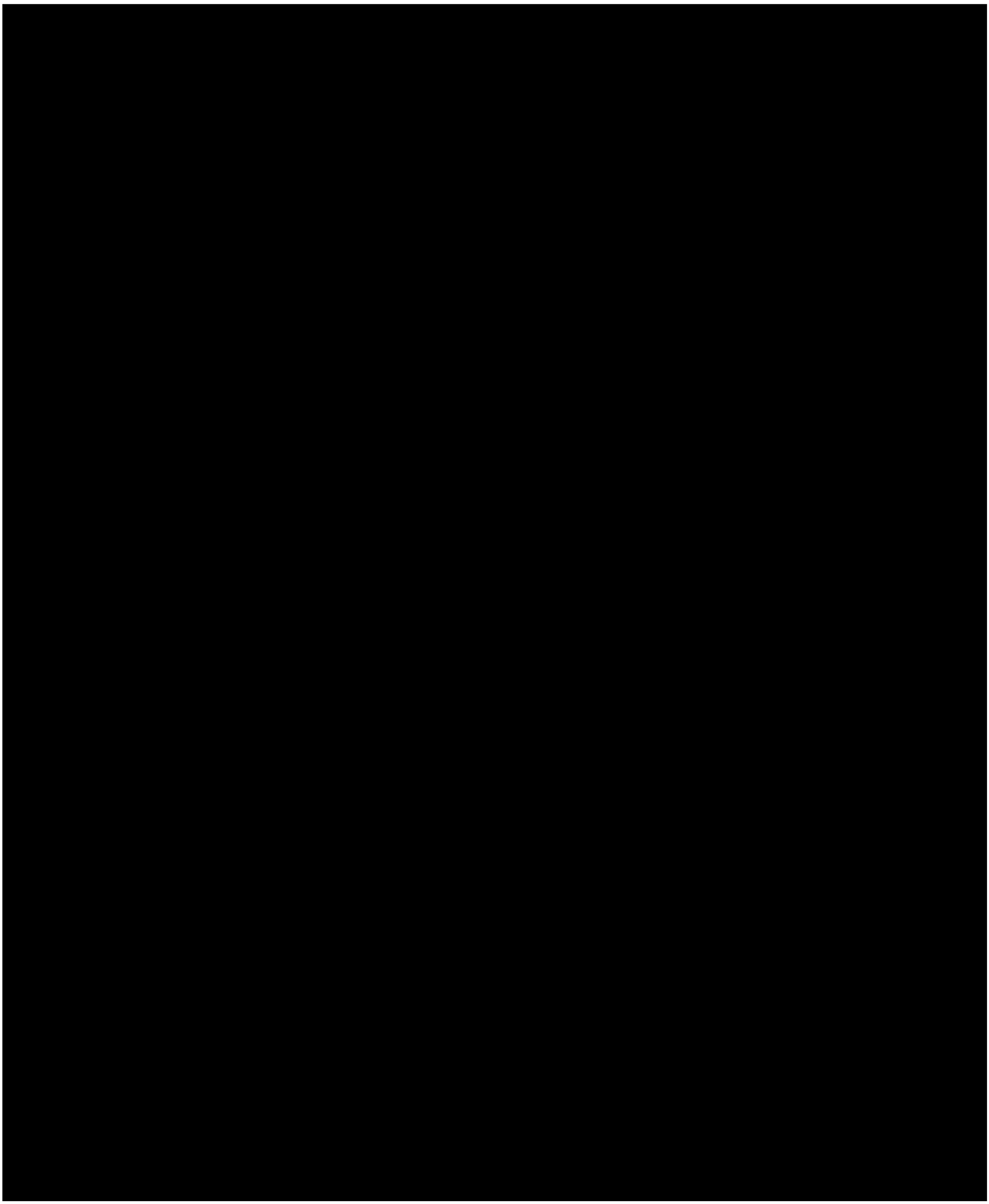
[48] *See* Baranowski/Zebrowski workpaper "Train Routes.xlsx," at tabs "Train Symbol," "Train codes," and "Train Route." Symbols, categories, lines served, and scheduled days of operation are as carried. {{[redacted]}}. Symbols shown as operating as required are {{[redacted]}}.

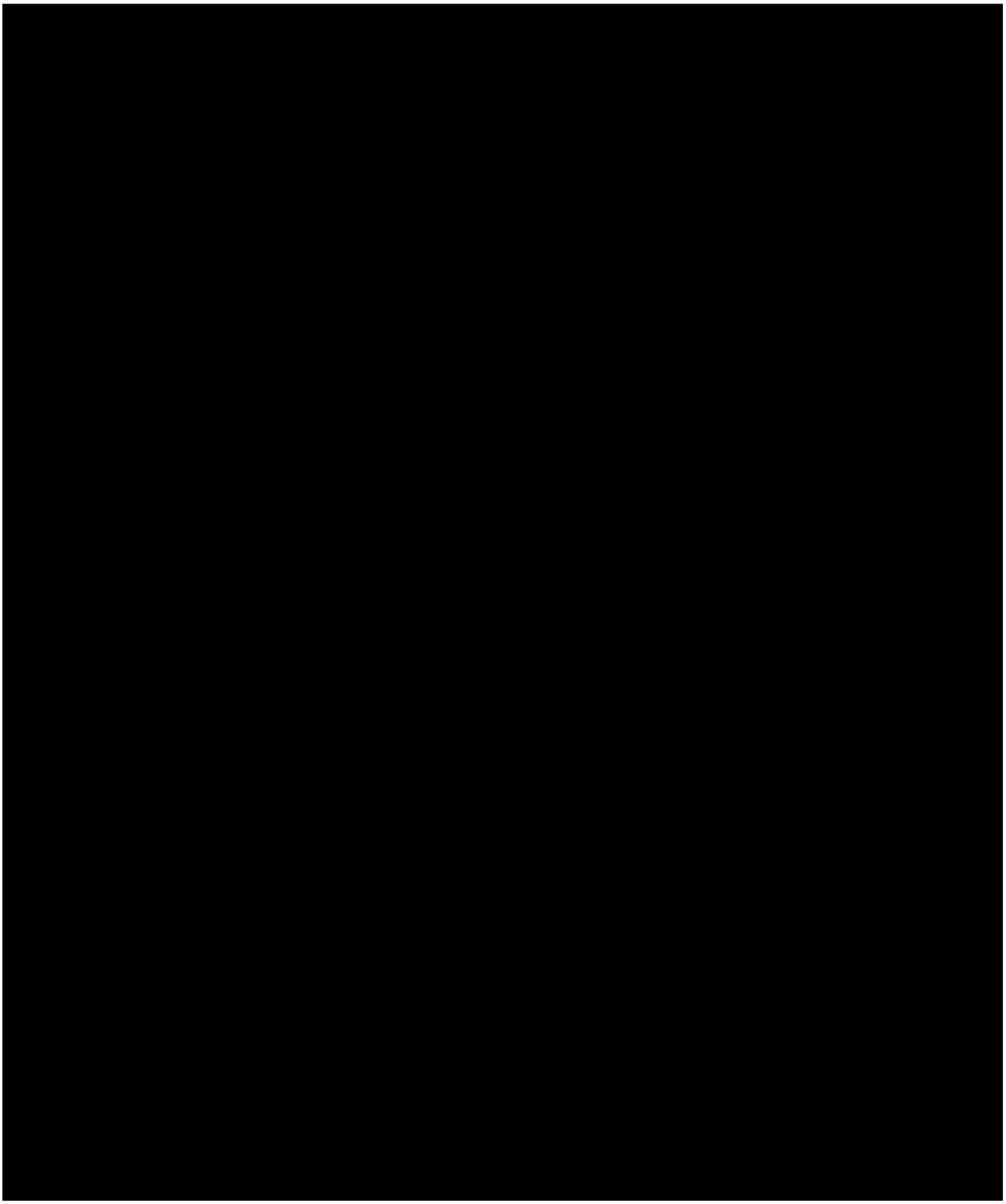


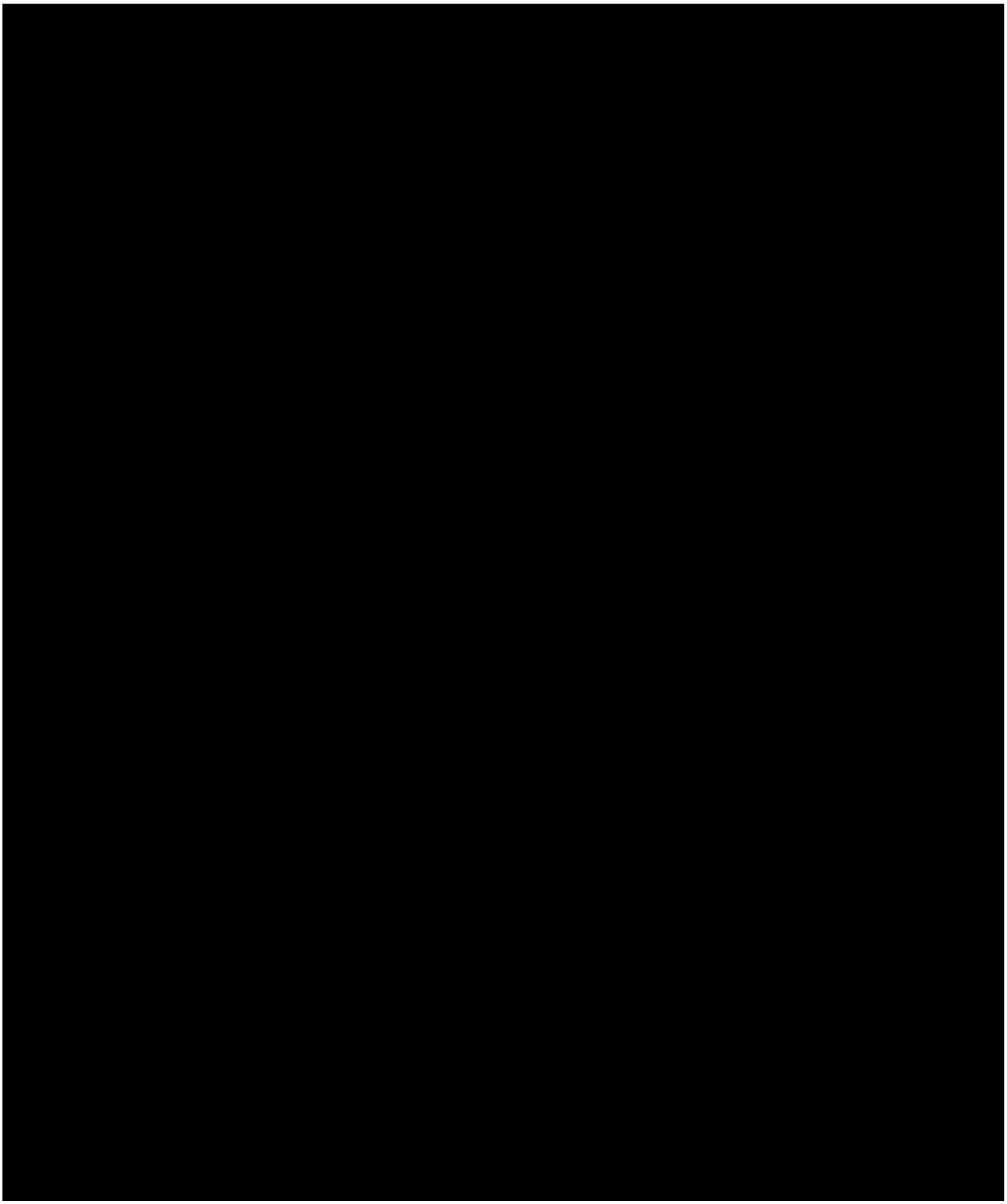














}}

VERIFICATION

I, Michael R. Baranowski, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 18, 2026.

/s/ Michael R. Baranowski

Michael R. Baranowski

VERIFICATION

I, Nathaniel S. Zebrowski, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 18, 2026.

/s/ Nathaniel S. Zebrowski

Nathaniel S. Zebrowski

Michael Baranowski

EXHIBIT 1

Senior Managing Director
Economic Consulting

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Education

B.S. in Accounting, Fairfield University

Supplemental Finance Studies, Kean College

Mike Baranowski heads FTI's Network Industries Strategies practice and provides strategic, financial, and economic consulting services to the telecommunications and railroad and pipeline transportation industries. He has special expertise in analyzing and developing complex costing and cash flow models, conducting detailed operations analysis, and transportation engineering. Much of his work involves providing oral and written expert testimony before courts, arbitration panels and regulatory bodies.

He is a recognized expert in railroad regulatory economics and has assisted FTI's railroad clients in a broad range of litigation and regulatory engagements involving pricing of services, contract disputes, damage calculations and analyses of the specific effects of pending or proposed changes in policy or regulation.

Some of Mr. Baranowski's representative experience includes:

- Development of strategic litigation analyses for large network industry regulatory rate proceedings based on the theory of Constrained Market Pricing and the Stand-Alone cost test. Theory assumes the existence of a hypothetical, efficient competitor and involves detailed analysis of short and long run operations, expenses, capital expenditures and revenues.
- Analysis of market dynamics effecting pricing and development of a suite of modeling tools to assess the regulatory risk of tariff and contract transportation rates for a mix of commodities and services based on key cost drivers and forecasts.
- Expert testimony related to the determination of damages in a variety of commercial contract disputes in the railroad, telecommunications, pipeline and trucking industries.
- Evaluation of market effects of proposed railroad mergers and identification of merger related efficiencies and quantification of the associated savings.

- Going concern and liquidation value estimates for railroad related assets as the basis for trackage rights and competitive access compensation.
- Develop detailed cost and revenue allocation metrics to assess relative profitability of individual asset groups or segments of complex network industries.

Mr. Baranowski holds a B.S. in Accounting from Fairfield University in Fairfield, Connecticut and has pursued supplemental finance studies at Kean College in Union, New Jersey.

Select Railroad Testimony

Surface Transportation Board

November 7, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
March 6, 2017	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.
January 12, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski
July 16, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski
April 26, 2019	Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski
January 26, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski
January 29, 2021	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
April 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Reply Statement on Compensation, Verified Statement of Michael R. Baranowski
May 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement on Compensation, Verified Statement of Michael R. Baranowski
June 21, 2021	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Canadian Pacific Applicants' Response to KCS Reply, Verified Statement of Michael R. Baranowski

October 29, 2021	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Michael R. Baranowski
February 14, 2022	Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, supplemental Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
May 27, 2022	Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Opening Submission of CN, Verified Statement of Michael R. Baranowski
July 12, 2022	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Michael R. Baranowski on behalf of Applicants
August 22, 2022	Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Rebuttal Submission of CN, Verified Statement of Michael R. Baranowski
February 23, 2023	Ex Parte No. 771, Alternative to URCS, Opening Comments of AAR, Verified Statement of Michael R. Baranowski
September 22, 2023	Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Motion of The Association of American Railroads to Extend the Comment Period, Verified Statement and Written Testimony of Michael R. Baranowski and Nathaniel S. Zebrowski
December 20, 2023	Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Reply Comments of The Association of American Railroads, Reply Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
May 3, 2024	Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Opening Statement and Evidence, Verified Statement of Michael R. Baranowski and Nathan Zebrowski
September 23, 2024	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, Reply Supplementary Statement on Compensation, Verified Statement of Michael R. Baranowski
March 14, 2025	Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Reply Statement and Evidence, Reply Verified Statement of Michael R. Baranowski and Nathan Zebrowski
October 23, 2025	Docket No. NOR 42180, Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Statement and Evidence, Verified Reply Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
April 20, 2026	Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Supplemental Submission, Supplemental Verified Statement of Michael R. Baranowski and Nathan Zebrowski

U.S. District Court for the Northern District of Texas, Fort Worth Division

November 7, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Expert Report of Michael R. Baranowski
November 22, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Reply Expert Report of Michael R. Baranowski
December 21, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Rebuttal Expert Report of Michael R. Baranowski

U.S. District Court for the Western District of Washington

December 15, 2023	U.S. District Court for the Western District of Washington, Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Expert Report of Michael R. Baranowski
February 16, 2024	U.S. District Court for the Western District of Washington, Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Rebuttal Expert Report of Michael R. Baranowski

Business Court of Texas, Eighth Division

April 29, 2026	Business Court of Texas, Eighth Division, Cause No. 25-BC08A-0023, BNSF Railway Company vs. CF&I Steel LP d/b/a Rocky Mountain Steel Mills, Report of Michael R. Baranowski
August 12, 2026	Business Court of Texas, Eighth Division, Cause No. 25-BC08A-0023, BNSF Railway Company vs. CF&I Steel LP d/b/a Rocky Mountain Steel Mills, Reply Statement and Supplement of Michael R. Baranowski

Arbitrations and Mediations

April 14, 2017	American Arbitration Association Case No. 01-15-0004-4830 and 01-15-0004-4931, Arbitration Between FirstEnergy Generation LLC and CSX Transportation, Inc. & BNSF Railway Company, Expert Report of Michael R. Baranowski
November 22, 2017	American Arbitration Association Case No. No. 01-16-0003-6208, CSXT Transportation, Inc. v. JEA and Florida Power & Light Co., Expert Report of Michael R. Baranowski
January 26, 2018	American Arbitration Association Case No. No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Expert Report of Michael R. Baranowski
February 16, 2018	American Arbitration Association Case No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Rebuttal Expert Report of Michael R. Baranowski
February 23, 2018	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
April 17, 2018	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski

June 22, 2018	JAMS REF #1100088262, BNSF Railway Company v. Union Pacific Railroad Company, Expert Report of Michael R. Baranowski
March 25, 2019	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
April 26, 2019	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
January 18, 2021	American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Report of Michael R. Baranowski on Behalf of BNSF & NS
February 5, 2021	American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Reply Report of Michael R. Baranowski on Behalf of BNSF & NS
January 14, 2022	Arbitration between The Port of Vancouver, USA and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
May 9, 2025	American Arbitration Association Case No. 01-24-0000-5997, Schneider National Carriers, Inc. vs. BNSF Railway Company, Verified Statement of Michael R. Baranowski on behalf of BNSF Railway Company

Select Pipeline Testimony

Federal Energy Regulatory Commission

November 20, 2019	Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony of Michael R. Baranowski on behalf of Colonial Pipeline
March 20, 2020	Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony to Trial Staff of Michael R. Baranowski on behalf of Colonial Pipeline

Nathaniel S. Zebrowski

EXHIBIT 2

Senior Managing Director
Economic Consulting

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+1 571 830 1050
Nathaniel.zebrowski@fticonsulting.com

Education

B.A. in Economics, Northwestern University

Graduate Certificate in Transportation Policy and Economics, George Mason University

Nathan Zebrowski is a Senior Managing Director in the Network Industries Strategies group of the Economic Consulting segment, located in McLean, VA. He provides financial and economic consulting services to the transportation and energy industries.

Mr. Zebrowski's work combines economic and statistical training with deep industry expertise and project experience. His work includes freight transportation market analysis; competitive assessments and valuations for transportation assets, services, and systems; contract evaluation, negotiation support, regulatory risk assessment, and damages determinations; litigation and expert witness testimony; rate reasonableness inquiries including application of regulatory tests; M&A related analysis and support; and operational, capital investment, and cost studies.

In Mr. Zebrowski's work evaluating network enterprises, he is informed by an intimate knowledge of the fundamental economics related to long-lived network assets, the unique realities affecting network operations and the highly individualized nature of the regional and commodity markets in which transportation businesses participate. He has special expertise in developing complex computer models assessing traffic flows over railroad networks and conducting detailed studies on costs, operations, and pricing of freight transportation services.

Testimony:

March 7, 2016	United States Surface Transportation Board, Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
October 29, 2021	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
February 14, 2022	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
July 12, 2022	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
January 19, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Expert Report of Nathaniel S. Zebrowski
February 14, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Supplemental Expert Report of Nathaniel S. Zebrowski
April 15, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Hearing Testimony of Nathaniel S. Zebrowski
September 25, 2023	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
December 20, 2023	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Reply Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
February 26, 2024	United States Surface Transportation Board, Finance Docket 36744, Canadian National Railway Company—Control—Iowa Northern Railway Company Verified Statement of Nathaniel S. Zebrowski
April 29, 2024	United States Surface Transportation Board, Finance Docket 36744, Canadian National Railway Company—Control—Iowa Northern Railway Company Verified Statement of Nathaniel S. Zebrowski
May 3, 2024	United States Surface Transportation Board, Finance Docket 22218, Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Co. Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski.
March 14, 2025	United States Surface Transportation Board, Finance Docket 22218, Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Co. Reply Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski.
August 15, 2025	United States District Court, Tarrant County, Texas, Cause No. 017-361391-25, BNSF Railway Company v. Amsted Rail Company Inc., Expert Report of Nathaniel S. Zebrowski

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873 (SUB-NO. 33)

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 14

DENSITY CHARTS

Density Charts

- Exhibit 14-A BNSF 2023-2025 Traffic Density System Maps
- Exhibit 14-B NS and BNSF Traffic Density on Requested Trackage Rights: Chicago, IL–Bethlehem, PA
- Exhibit 14-C NS 2024 Historical Gross Tonnage and BNSF Proposed Overhead Trackage Rights Traffic Density
- Exhibit 14-D NS 2023 Historical Gross Tonnage

EXHIBIT 14-A

Categories

- Under 1.0 MGT
- 1.0 to 4.99 MGT
- 5.0 to 19.99 MGT
- 20.0 to 39.99 MGT
- Over 40.0 MGT

35 (33) Labels
Direction
Previous MGT
Current MGT
Direction

BNSF RAILWAY

2023 Traffic Density System Map

System Maintenance and Planning February 1, 2024

File generated on 2/2/2024

• Displayed values represent Millions of Gross Tons (MGT)

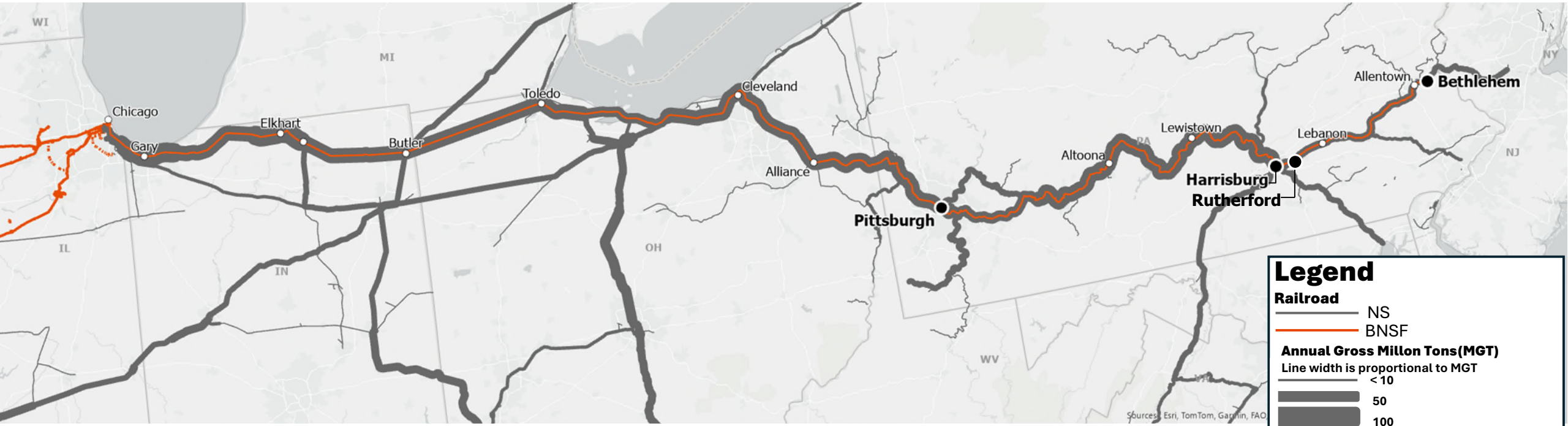
50 0 50 100 150 200
Miles


Categories
Under 1.0 MGT
1.0 to 4.99 MGT
5.0 to 19.99 MGT
20.0 to 39.99 MGT
Over 40.0 MGT
35 (33) Labels
Direction
Previous MGT
Current MGT
Direction
BNSF RAILWAY
2024 Traffic Density System Map
System Maintenance and Planning January 31, 2025
File generated on 1/31/2025
•Displayed values represent Millions of Gross Tons (MGT)
50 0 50 100 150 200
Miles


Categories
Under 1.0 MGT
1.0 to 4.99 MGT
5.0 to 19.99 MGT
20.0 to 39.99 MGT
Over 40.0 MGT
35 (33) Labels
Direction
Previous MGT
Current MGT
Direction
BNSF RAILWAY
2025 Traffic Density System Map
System Maintenance and Planning February 2, 2026
File generated on 2/2/2026
•Displayed values represent Millions of Gross Tons (MGT)
50 0 50 100 150 200
Miles

NS and BNSF Traffic Density on Requested Trackage Rights: Chicago, IL–Bethlehem, PA





BNSF RAILWAY

NS 2024 Historical Gross Tonnage and BNSF Proposed Overhead Trackage Rights Traffic Density

Subdivision	Segment	Subdivision Mileposts	West/South NS Gross Tons (000)	East/North NS Gross Tons (000)	NS Total Gross Tons (000)	BNSF Proposed West/North Gross Tons (000)	BNSF Proposed East/South Gross Tons (000)	BNSF Proposed Total Gross Tons (000)	Combined Total Gross ton (000)
Kenwood Line (CR&I)	Corwith Yard, IL – Near Ashland Avenue Yard, IL	KN-3.10 to KN-0.00	1,089	0	1,089	2,288	2,798	5,086	6,176
Chicago Junction (CR&I)	Near Cermak, IL – CP 518, IL	UW-4.77 to UW-0.00	9,227	15,155	24,381	2,288	2,798	5,086	29,468
Chicago Line	Union Station, Chicago, IL – Berea, OH	CD-523.30 to CD-193.90	51,537	75,848	127,385	2,288	2,798	5,086	132,471
Chicago Line	Berea, OH – Drawbridge (Cleveland), OH	CD-193.90 to CD-181.90	47,956	63,961	111,917	2,288	2,798	5,086	117,003
Cleveland Line	Drawbridge (Cleveland), OH – Alliance, OH	RD-123.20 to RD-67.00	43,686	58,574	102,260	2,288	2,798	5,086	107,347
Fort Wayne Line	Alliance, OH – Rochester, PA	PC-83.20 to PC-25.90	47,662	57,262	104,924	2,288	2,798	5,086	110,010
Fort Wayne Line	Rochester, PA – West Pitt, PA	PC-25.90 to PC-0.00	48,709	56,599	105,308	2,288	2,798	5,086	110,394
Pittsburgh Line	West Pitt, PA – Conpit, PA	PT-353.40 to PT-290.70	37,725	27,730	65,454	2,239	2,654	4,893	70,348
Bell–Perry alternate	Bell, PA – Perry, PA	ML-0.00 to ML-16.20	33,900	58,872	92,771	2,239	2,654	4,893	97,664
Perry–Wing alternate	Perry, PA – Wing, PA	JP-2.90 to JP-0.00	36,223	28,647	64,869	2,239	2,654	4,893	69,762
Pittsburgh Line	Conpit, PA – Harrisburg, PA	PT-290.70 to PT-104.90	43,661	68,681	112,343	2,239	2,654	4,893	117,236
Harrisburg Line	Harrisburg, PA – Wyomissing Junction, PA	HP-112.90 to HP-61.20	34,353	39,329	73,682	198	721	920	74,601
Reading connection	Wyomissing Junction, PA – Tulp, PA	TW-9.40 to TW-8.10	26,093	38,428	64,521	544	404	948	65,469
Reading connection	Tulp, PA – Belt, PA	AF-8.15 to AF-5.40	22,708	30,079	52,787	544	404	948	53,735
Reading connection	Belt, PA – Blandon, PA	TK-5.40 to TK-0.00	27,041	29,290	56,331	544	404	948	57,279
Reading / Lehigh connection	Blandon, PA – Near Burn, PA	RV-7.50 to RV-35.10	29,050	27,110	56,160	544	404	948	57,108
Reading / Lehigh connection	Burn, PA – Bethlehem, PA	EN-93.00 to EN-88.60	16,718	13,513	30,231	544	404	948	31,179
Lehigh Line	Bethlehem, PA – Near Florence, PA	LE-88.60 to LE-86.80	21,370	22,225	43,595	544	404	948	44,543
			22,708.29	30,078.77	52,787.06				

Source: NS_00036471.XLSX (Great Lakes Division) and NS_00036473.XLSX (Keystone Division), twelve months ending December 2024; BNSF proposed overhead trackage rights traffic density from the BNSF operating plan density calculations.

NS 2023 Historical Gross Tonnage

Subdivision	Segment	Subdivision Mileposts	West/South NS Gross Tons (000)	East/North NS Gross Tons (000)	NS Total Gross Tons (000)
Kenwood Line (CR&I)	Corwith Yard, IL – Near Ashland Avenue Yard, IL	KN-3.10 to KN-0.00	946	9	955
Chicago Junction (CR&I)	Near Cermak, IL – CP 518, IL	UW-4.77 to UW-0.00	8,191	12,829	21,019
Chicago Line	Union Station, Chicago, IL – Berea, OH	CD-523.30 to CD-193.90	50,627	75,229	125,855
Chicago Line	Berea, OH – Drawbridge (Cleveland), OH	CD-193.90 to CD-181.90	46,034	63,711	109,745
Cleveland Line	Drawbridge (Cleveland), OH – Alliance, OH	RD-123.20 to RD-67.00	41,994	58,568	100,562
Fort Wayne Line	Alliance, OH – Rochester, PA	PC-83.20 to PC-25.90	44,748	53,897	98,644
Fort Wayne Line	Rochester, PA – West Pitt, PA	PC-25.90 to PC-0.00	47,950	57,323	105,272
Pittsburgh Line	West Pitt, PA – Conpit, PA	PT-353.40 to PT-290.70	39,704	27,873	67,577
Bell–Perry alternate	Bell, PA – Perry, PA	ML-0.00 to ML-16.20	32,647	56,795	89,442
Perry–Wing alternate	Perry, PA – Wing, PA	JP-2.90 to JP-0.00	33,944	28,261	62,206
Pittsburgh Line	Conpit, PA – Harrisburg, PA	PT-290.70 to PT-104.90	44,212	73,234	117,446
Harrisburg Line	Harrisburg, PA – Wyomissing Junction, PA	HP-112.90 to HP-61.20	34,751	40,604	75,354
Reading connection	Wyomissing Junction, PA – Tulp, PA	TW-9.40 to TW-8.10	25,837	39,718	65,554
Reading connection	Tulp, PA – Belt, PA	AF-8.15 to AF-5.40	22,808	31,245	54,053
Reading connection	Belt, PA – Blandon, PA	TK-5.40 to TK-0.00	27,372	30,138	57,510
Reading / Lehigh connection	Blandon, PA – Near Burn, PA	RV-7.50 to RV-35.10	29,918	27,391	57,309
Reading / Lehigh connection	Burn, PA – Bethlehem, PA	EN-93.00 to EN-88.60	16,044	14,182	30,226
Lehigh Line	Bethlehem, PA – Near Florence, PA	LE-88.60 to LE-86.80	21,635	23,269	44,904

Source: NS_00036465.XLSX (Great Lakes Division) and NS_00036467.XLSX (Keystone Division), twelve months ending December 2023.

CERTIFICATE OF SERVICE

I hereby certify that I have caused BNSF's Responsive Application to be served by first-class mail, postage pre-paid, on all persons designated in 49 C.F.R. § 1180.4(c)(5), and I have caused BNSF's Responsive Application to be served electronically or by first-class mail, postage pre-paid, on Administrative Law Judge Jenifer Soulikias and all parties of record in this proceeding and in Docket No. FD 36873.

/s/ Onika K. Williams

Onika K. Williams
Attorney for BNSF Railway Company

November 18, 2026