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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION
AND UNION PACIFIC RAILROAD COMPANY
- CONTROL –
NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY

COMMENTS OF SOUTHERN COMPANY SERVICES, INC.

In accordance with Decision No. 30 in the above-captioned proceeding before the Surface Transportation Board ("STB" or the "Board"), Southern Company Services, Inc. ("SCS") as agent for Alabama Power Company ("APC"), Georgia Power Company ("GPC"), and Mississippi Power Company ("MPC") (collectively, "Southern"), respectfully submits these Comments regarding the proposed acquisition of control of Norfolk Southern Corporation and Norfolk Southern Railway Company (together, "NS") by Union Pacific Corporation and Union Pacific Railroad Company (together, "UP") (UP and NS collectively, the "Applicants" or "UP/NS") (referred to herein as the "Transaction"). SCS is a Party of Record in Finance Docket No. 36873 ("FD 36873") and has a direct and substantial interest in the Transaction.

SUMMARY OF COMMENTS

Southern's rail strategy is aimed at ensuring reliability of coal supply and competitive delivery costs, all with the goal of providing dependable, consistent, and cost-effective electricity to its customers. Maintaining reliable rail service and having meaningful and accessible ways to address any rail service failure are essential to Southern's generation of electricity and, more

broadly, its commitment to provide electric service for millions of area residents, businesses, schools, hospitals, and other customers. Southern's Comments center on the need to preserve actual, real-world railroad competition for its generating facilities, rather than putting faith in a nominally "open" gateway or a temporary post-merger pricing process. For rail-dependent shippers like Southern, there is no room to get this wrong.[1] Any further consolidation must address how rail-to-rail competition will be enhanced. Rail service reliability must also be part of the analysis. If the Board is inclined to approve this Transaction, the Board must "assure a balance in favor of the public interest," and require applicants to "include provisions for enhanced competition" and "where both carriers are financially sound, the Board [should] use its conditioning authority … to preserve and/or enhance competition." 49 C.F.R. § 1180.1(c). Finally, the Board's oversight and accompanying enforcement mechanism must be fully accessible for shippers in terms of timing, costs, and burden to obtain relief.

IDENTITY AND INTEREST OF SOUTHERN

SCS is the services subsidiary of The Southern Company and acts as agent for APC, GPC, and MPC in matters relating to the procurement of rail freight transportation services. The primary commodities shipped by SCS are coal, limestone, and coal byproducts. APC, GPC, and MPC collectively operate four electric generating plants and facilities that would be most impacted by the Transaction.[2] These plants and related facilities rely on competitive rail pricing and reliable

[1] As then Chairman Morgan stated in 2001, "[t]here is little margin for error as we proceed ahead." Major Rail Consolidation Procedures, 5 S.T.B. 539, 604 (2001) ("Major Merger Rules").

[2] Southern has additional facilities for which rail transportation is also critical, though they may not rely on rail transportation for the entirety of their fuel deliveries or they may no longer generate electricity. {{ [redacted]

rail service so that Southern can deliver clean, safe, reliable, and affordable energy solutions for its customers and communities.

APC is an electric utility serving approximately 1.6 million customers in the southern two-thirds of the State of Alabama. APC has one coal-dependent generating plant that is rail served:

- Plant Miller, an approximately 2,640-megawatt facility in West Jefferson, Alabama with {{[redacted]}}

Plant Miller is operated by APC, and ownership of Units 1 and 2 includes APC and PowerSouth Energy Cooperative.

GPC is the largest electric utility in Georgia, serving approximately 2.8 million customers. GPC owns and/or operates two core coal-dependent facilities that are rail served:

- Plant Bowen, an approximately 3,160-megawatt facility in Bartow County, Georgia with {{[redacted]}}
- Plant Scherer, an approximately 3,520-megawatt facility near Juliette, Georgia, including Unit 4, which is retired, with {{[redacted]

[redacted]}}

[3] {{[redacted]}}

[redacted]}}

Plant Scherer is operated by GPC, and ownership includes GPC, Oglethorpe Power Corporation ("Oglethorpe")[5], Municipal Electric Authority of Georgia, the City of Dalton, and Florida Power & Light.

MPC is an electric utility serving most cities, towns, and communities within 23 counties of southeastern Mississippi and approximately 194,000 customers. MPC owns one coal-dependent facility:

- Plant Daniel, an approximately 500-megawatt facility in Escatawpa, Jackson County, Mississippi that is {{[redacted]}}

SCS assists these operating companies in purchasing rail freight transportation services for large volumes of coal and other commodities shipped over long distances and frequently under long-term contracts. Coal for steam generation is transported on unit trains, often consisting of more than 110 cars per train. Due to the volume of coal required and the overland distances

[4] Rule 11 rates refer to an Association of American Railroads rule that allows shipments moving over two or more railroads to be rated and billed separately for each leg of the movement.
[5] Oglethorpe Power Corporation is a Party of Record via a Notice of Intent to participate filed on July 14, 2026.

involved, there often are no economically feasible alternatives to rail transportation of coal to Southern's generation facilities. SCS also assists the operating companies in the purchase of rail transportation for limestone and other commodities and materials to or from all the facilities, as needed. Likewise, SCS assists with managing the approximately 10,500 rail car fleet that is owned or leased to serve the various plants, including overseeing maintenance, storage and repair.

THE PROPOSED MERGER

As UP and NS acknowledge, the Transaction is unprecedented[6] and would create the first transcontinental railroad with a scale and scope far beyond any prior rail combination in the nation's history.[7] It would fundamentally remake the U.S. national rail system with approximately 50% of rail freight traffic under a single railroad.[8] This level of concentration will limit shippers' options, reduce competition, and create rail network resiliency risk.[9] If the proposed acquisition goes forward, rail shippers would be faced with a permanently altered rail marketplace. This

[6] See, e.g., UP/NS Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-11325, STB FD No. 36873, page 2 (filed July 30, 2025).
[7] Union Pacific Press Release (July 29, 2025), https://investor.unionpacific.com/news-releases/news-release-details/union-pacific-and-norfolk-southern-create-americas-first (last visited Oct. 25, 2026) ("This combination is transformational" and creates "First Transcontinental Railroad").
[8] See, e.g., BNSF Comments, BNSF-24, page 2 (filed May 8, 2026). See also CSXT's Motion for Summary Denial, CSXT-19, page 35 (filed Aug. 6, 2026); and V.S. of Elizabeth M. Bailey, Volume 2, page 18, attached to Amended Railroad Control Application (hereinafter, "Application") (filed April 30, 2026) (showing a combined UP/NS would control 45% of Class I gross freight revenue, based on 2024 data). UP claims that the combined UP/NS will control at least 40% of the U.S. ton-miles and 43% of the U.S. carloadings. Union Pacific Website (August 18, 2026) The 50% Market Share Myth: What the Data Actually Shows - Creating America's First Transcontinental Railroad.
[9] Reliability of rail service has long been a key issue for Southern. Southern was an inaugural member of the STB's Rail Energy Transportation Advisory Committee ("RETAC") in 2007 and had senior members of the SCS fuels team at the STB's hearing in Fargo, ND in 2014, pursuant to Docket No. EP 724, United States Rail Services Issues, during the significant service problems in the U.S. rail network at that time.

proceeding is the first to be conducted under the Major Merger Rules,[10] which prioritize enhancing competition as a means to address the profound and difficult-to-remedy impacts of a transcontinental rail merger.

The Board's Major Merger Rules direct applicants to propose measures that "should not simply preserve but also enhance competition." 49 C.F.R. § 1180.1(d). The rules also require applicants, at a minimum, to explain how they would preserve competitive options such as those involving major existing gateways and protect "the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement." 49 C.F.R. § 1180.1(c)(2)(i). The Board has been clear that the "new rules substantially increase the burden on applications to demonstrate that a proposed transaction would be in the public interest."[11] As a result, any major merger considered under the Major Merger Rules carries a "heavier burden."[12]

COMMENTS

Southern's Comments address three main concerns: (1) the economic harm and preservation of practical competitive options; (2) rail service reliability; and (3) the need for Board oversight and effective enforcement. Southern commends the Board for its efforts to require a thorough evaluation of the Transaction and Southern supports the Board's efforts to scrutinize whether Applicants have demonstrated that this unprecedented Transaction is "consistent with the public interest" and whether it will have an adverse effect on competition among rail carriers.[13]

[10] *See* Major Merger Rules.
[11] Major Merger Rules, 5 STB at 539.
[12] Major Merger Rules, 5 STB 539, 545 and 546.
[13] FD 36873, Decision No. 37, slip op. at 3. *See also* Concurring Opinion ("significant, compelling arguments" have been raised regarding the Transaction).

Meaningful enhancement of rail-to-rail competition is needed because the rail landscape would change dramatically with this Transaction. Such enhancement means additional independent railroad access, or materially improved independent routes, that Southern can actually use to solicit competing offers, award business, and hold carriers accountable for price and service. To that end, Southern has identified measures that it believes are necessary if the Board approves the Transaction. These mitigation conditions are aimed at economic harm and the need to protect and enhance competition, address service reliability, and provide a meaningful dispute and enforcement mechanism:[14]

1. To address competition and pricing -
    a. the permanent availability of Rule 11 and segment rates under a pricing methodology that is as transparent as the mileage-based prorate of the corresponding rate offered for single-line service, as UP proposed in the CPKC merger, along with an expeditious dispute and enforcement process;[15]
    b. protections, such as guaranteed, competitively priced Rule 11 rates, ensuring the continued commercial viability of origins served solely by BNSF, including the Eagle Butte and Buckskin mines;[16]

[14] 49 U.S.C. § 11324(c). SCS also has concerns that the combined market power of UP/NS could result in {{[redacted]}}. While the STB does not have jurisdiction over rail contracts, if an increase in market power allows applicants to impose more stringent terms through incorporated tariffs, that creates harm to shippers.

[15] This is broader than the Committed Gateway Pricing proposed by UP/NS but is necessary to protect PRB competition to {{[redacted]}}

[16] This protection is needed for all PRB origin traffic due to the market power of the combined UP/NS system.

c. expanded carrier access to enhance rail-to-rail competition, such as CSX access or trackage rights to reach facilities solely served by the UP/NS system;[17]

d. binding commitments from Applicants to make infrastructure and operating improvements required to keep competitive routes commercially and operationally viable, with the commitments backed up by an expeditious dispute and enforcement process;[18] and

2. To address rail reliability -

a. measurable service and interchange standards with verification rights including, for unit-train coal interchanged at Memphis, standards for interchange dwell time, dispatch priority relative to comparable single-line UP/NS traffic, and locomotive and crew allocation during periods of constrained capacity, with reporting sufficient to show parity of treatment between BNSF-originated and UP-originated coal, and an effective, expeditious dispute and enforcement process.

A. PRESERVATION AND ENHANCEMENT OF PRACTICAL RAIL COMPETITIVE OPTIONS

The proposed Transaction would reduce rail options; therefore, protections are required to protect and enhance competition for shippers consistent with the Major Merger Rules. In the Applicants' Second Response to Decision No. 21, UP-80/NS-78 (filed July 27, 2026) ("Second Response"), UP/NS state that the "public interest case rests on a straightforward proposition: uniting a western network and an eastern network will create a more competitive, more efficient railroad by eliminating mid-continent handoffs that add delay, cost, and complexity to cross-

[17] This would enhance competition {{[redacted]}}

[18] This condition would protect {{[redacted]}}

country movements." Second Response at 7. UP/NS's claim of expanded competition appears to be based on the projection of transforming 10,000 existing UP/NS rail lanes and 88,000 truck pairs[19] to single-line service. *Id.* In addition to a general open gateway commitment, UP/NS propose four new commitments in support of their public-interest case, including an expansion of Committed Gateway Pricing ("CGP"), a Targeted Access Program, 2-to-1 and 3-to-2 shipper protections, and a Rate ADR Program. Second Response at 9-10.

Southern's Comments focus on CGP,[20] which is a pricing mechanism for interline traffic that UP/NS claim will enhance competition.[21] The Applicants contend that the expanded CGP is the equivalent of thousands of haulage agreements, giving BNSF and CSX commercial access to sole-served facilities deep within the legacy NS and UP systems. Second Response at 8. Southern acknowledges that Applicants have expanded the CGP proposal in response to Decision No. 21 such that it now includes bulk unit train traffic and shippers at competitively served BNSF and CSX origins and destinations. Second Response at 8 and 18-20. This expansion is welcome, but it does not supply the concrete, durable protection that coal shippers need. Respectfully, the general open gateway commitment and CGP do not fully preserve competitive options that currently exist and do not enhance competition as directed under the Major Merger Rules. Moreover, neither the general open gateway commitment nor CGP addresses the market power increase resulting from

[19] Truck competition does not generally apply to coal moves which involve large volumes moving in unit trains over long distances.
[20] Southern is focusing on CGP because the Targeted Access Program applies only in terminal areas and Southern facilities are not in terminal areas. Southern is not a 2-to-1 or 3-to-2 shipper. The Rate ADR Program only applies to tariff traffic and only if the Board finds that the anticipated public benefits have not materialized during the oversight period.
[21] Verified Statement of Katherine Novak, attached to UP/NS Application, Vol. 1, page 376 (filed April 30, 2026).

the merger of two financially strong railroads. More protection is needed for the Transaction to meet the public interest standard of the Major Merger Rules.

1. A Physically Open Gateway Is Not the Same as a Commercially Usable Alternative

The combined UP/NS could impair alternative rail options without formally closing a gateway—by increasing the price of a UP/NS segment required for use of the BNSF or CSX option, degrading interchange or service performance, restricting access, imposing less favorable operating terms, or failing to maintain the capacity needed for the route to function. The Board has expressly acknowledged there is sound reason to be concerned about vertical foreclosure of this type.[22]

2. The Expanded CGP Program Does Not Preserve or Enhance Competition

Applicants assert CGP is a "market-based mechanism,"[23] but rates under CGP are not derived from an actual market reflecting rail-to-rail competition for the movement at issue, thereby making CGP inadequate to address the risks associated with the proposed Transaction. CGP requires that the rate for the UP/NS portion of an eligible interline movement be calculated through a complex benchmark formula, not through contemporaneous competition between independent railroads.[24] The CGP rate is set at "the 70th percentile of the UP/NS rates (in dollars per car-mile)" within 92 commodity-distance groupings, with aggregated data used where fewer than 100

[22] Canadian Pac. Ry.—Control – Kan. City S., FD No. 36500, Decision No. 35, slip op. at 66 (served March 15, 2023).
[23] Second Response at 252 (Israel Supp. VS ¶9).
[24] Southern understands that the expanded CGP {{ }}

shipments fall within a grouping and a 250-mile minimum applied to shorter moves. *Id.* at 253–254 & nn.4–6.

a. The 70th Percentile Benchmark Is Arbitrary

Applicants acknowledge they "did not perform any modeling or analysis to determine whether the 70th percentile produces results that would more precisely serve the purposes expressed in 49 C.F.R. § 1180.1(d) than the 75th percentile or the 65th percentile." *Id.* at 43. By design, a 70th-percentile benchmark leaves the rate for a qualifying movement above the rates charged on most comparable UP/NS traffic, assuming, that is, that the categories of traffic types and other parameters described above create a true comparison.

b. The Merged Carrier Can Influence the Benchmark

The benchmark is also subject to the merged carrier's influence on pricing year after year. CGP rates in the first year are based on pre-merger prices, *id.* at 257 n.9, but thereafter are calculated from post-merger UP/NS rates in the "input set," and Applicants' economist concedes "it is advantageous for UP/NS to set rates on routes in the input set to increase the CGP price in order to reduce the effect of this cap." *Id.* at 277 (Israel Supp. VS ¶ 46). UP's expert further acknowledges that his estimates "are only as good as the assumptions underlying them" and that "an estimate of the benefits of the CGP program conducted years from now could yield materially different results." *Id.* at 279.

c. The CGP Calculation Lacks Transparency

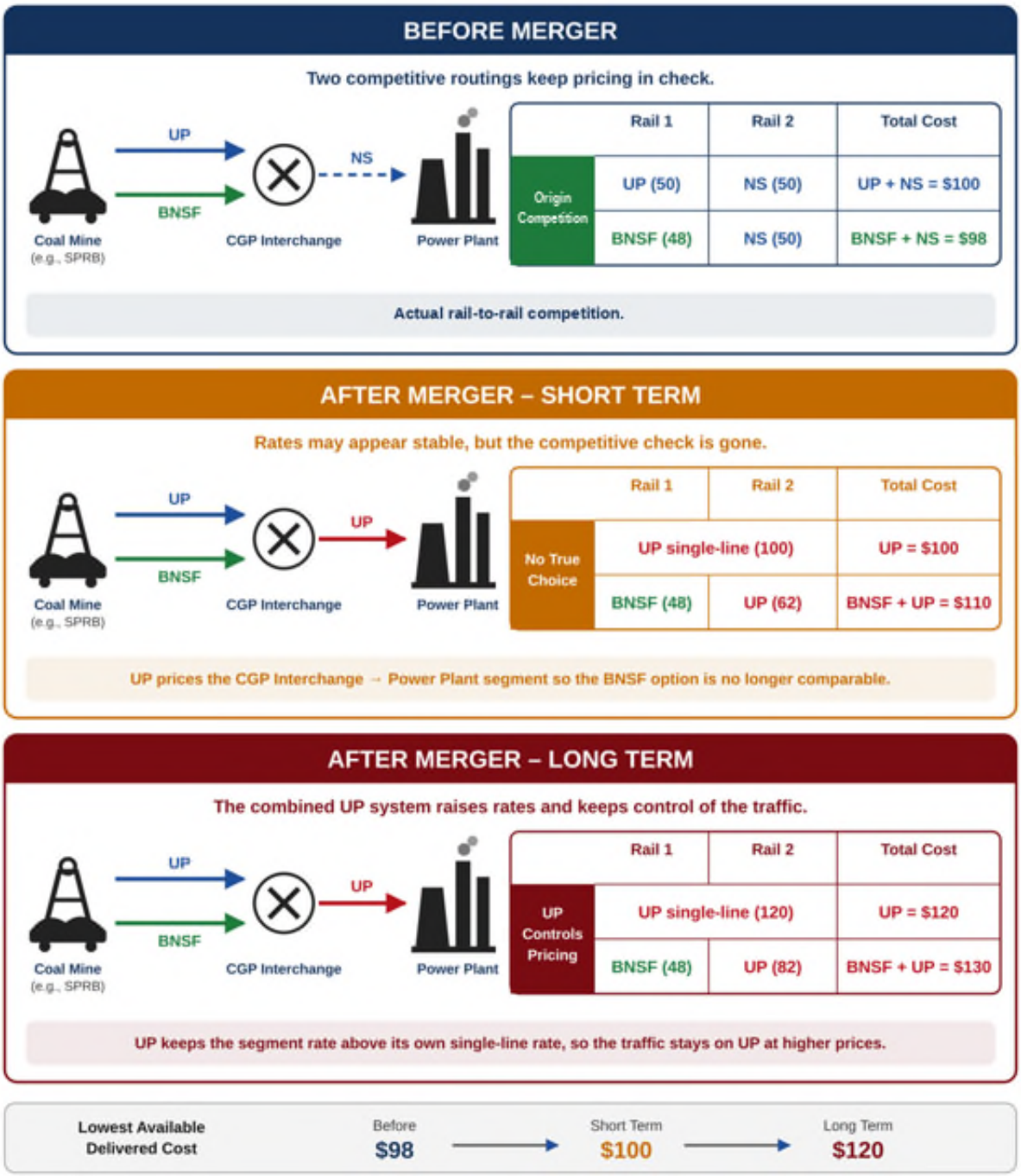
The complex calculation process required in CGP raises the question of whether a shipper will receive enough information to test, verify, and challenge the result in a timely manner before a commercial opportunity is lost. The material issues include a lack of transparency regarding the

traffic used to establish the benchmark, such as the treatment or inclusion of competitive versus captive movements, unit train versus manifest traffic, commodity and distance groupings, whether volume would play any part in derivation of the CGP rate, the use of post-merger UP/NS rates, the information provided to the customer, and available audit and dispute rights. Any one of these factors could skew the CGP rate and be hidden by the black box used for the benchmark.

d. CGP Will Not Protect Against Short- and Long-Term Rate Increases

The methodology does not establish that the CGP rate for a particular movement will preserve rail-to-rail competition that exists today or be commercially competitive with UP/NS single-line service in the future. The hypothetical in Figure 1 below illustrates this concern. As demonstrated in Figure 1, changes in pricing might be small at first, but after the merger is approved, the merged carrier will be able to raise overall rates in both the short term and the long term. UP/NS would be incentivized to raise rates on all traffic, including non-CGP traffic, to push the 70th percentile benchmark higher each year. Over time, CSX and BNSF would be weakened by the combined UP/NS shifting more traffic to its merged single-line service.

Figure 1: Before and After the Merger – Short-Term and Long-Term Rate Impact
Illustrative SPRB Origin to Power Plant Movement via CGP Interchange



Note: Dollar figures are illustrative only and do not represent actual or proposed rates.

e. CGP Does Not Protect Sole-Served BNSF Origins

Potential harm to competition for coal sourcing is also possible for BNSF-origin PRB coal moving through Memphis to Southern's facilities. It is not clear if CGP would apply to these origins.[25] Nevertheless, whether it is a promise to interchange or application of CGP, meaningful competition will not be preserved if the merged carrier could price or operate its required segment in a way that makes the BNSF-origin movements commercially or operationally inferior to a UP/NS single-line option.

As the Board is aware, BNSF mine loadouts in the Northern PRB ("NPRB") are separate from the jointly-served UP and BNSF mines in the Southern PRB ("SPRB"). {{ [redacted] }} Furthermore, UP/NS would also have the incentive to {{ [redacted] }} in the SPRB, making BNSF origin service uneconomic and pricing traffic to favor single-line UP/NS service and foreclose competition with BNSF at the SPRB mine origins.

[25] The original definition of CGP seemed to capture these sole-served mines, and the expansion of CGP to include unit trains should not change that. However, the public information in the various pieces of the Application does not make it clear if CGP will apply to the sole-served BNSF origins to a legacy UP or NS destination.

f. CGP Is Ill-Suited to Unit Train Service

Applicants acknowledge that unit trains are "not handled as part of a general network flow," but instead require a dedicated operating plan designed on a shipment-specific basis, and that unit train pricing typically reflects those customized operating characteristics. Second Response at 33–34. Applicants have argued that a "smoothly" flowing network gives shippers "confidence . . . to make investments, plan production, manage inventories, and ultimately commit more freight to rail."[26] That acknowledgment also underscores Southern's concern that a formula-derived benchmark drawn from broad commodity and distance groupings may not produce short- or long-term competitive rates for coal unit trains.

g. CGP Is Only Temporary

CGP is a time-limited pricing mechanism that would apply only during the oversight period. Even if CGP perfectly preserved existing competition (which it does not, as explained above), its temporary nature makes it inadequate as a protection for any shipper. Shippers need, and the Board should require protection that is permanent.

Applicants assert that CGP only needs to be temporary because the harms are "transitory." Second Response at 37. Applicants state that the harm is transitory because shippers can respond to reduced geographic competition by expanding or building facilities or finding new suppliers. Second Response at 37–38. That premise does not fit Southern's circumstances. Southern's generating facilities are fixed, long-lived assets, and the competitive options Southern has today—several of them the product of Southern's own build-out investments—do not expire on a

[26] Verified Statement of Kenny Rocker and Claude Elkins, attached to UP/NS Application, Vol. 1, page 290 (filed April 30, 2026).

predetermined date. For fixed generating facilities such as Plant Scherer, these protections should remain in place for the operating life of the facility and not expire with the oversight period. Moreover, the burden should not be on shippers to find ways to expand their competition when it is the Applicants asking for permission to merge.

3. A More Workable Gateway Rate Structure Is Needed

If financially healthy railroads are permitted to merge, more competition in the intramodal network is needed. It is widely acknowledged that captive shippers pay higher rates than shippers with access to an additional railroad.[27] {{[redacted]}} This is why rail-to-rail competition is so important. Systemic change is necessary if consolidation of financially sound railroads is permitted.

If the merger is approved, the gateway structure that makes the most sense to Southern is one like the permanent mileage-based prorate of the rate offered to the shipper for the UP/NS "single-line" service, as was proposed by UP in the CPKC merger.[28] The concerns raised by UP in the CPKC merger resonate with Southern. These include the need for an approach that is

[27] Freight Rail Pricing, GAO Report (December 2016) at 19, citing Christensen Associates. An Update to the Study of Competition in the U.S. Freight Railroad Industry. Final Report, Prepared for the Surface Transportation Board, (January 2010).

[28] Verified Statement of Kenny Rocker & John Turner at 18, Union Pac. R.R. Co.'s Comments and Req. for Conditions, Canadian Pac. Ry.—Control – Kan. City S., FD No. 36500 (STB filed Feb. 28, 2022) ("2022 V.S. Rocker/Turner"). Applicants downplay this Verified Statement in response to other parties' comments in the Prima Facie dispute. UP-94/NS-93 at 20. Crucially, the CPKC transaction was not evaluated under the Major Merger Rules. Given that fact, and that the scope and impact of the UP/NS proposal are much greater than those at stake in CPKC, there is a stronger reason to use the 2022 V.S. Rocker/Turner in this Transaction if it is approved.

"concrete, enforceable, and gives complete control of the process to shippers." 2022 V.S. Rocker/Turner at 21.

The workable rate structure needs to support the conditions noted above, see discussion *supra* at 7-8, including the permanent availability of Rule 11 and segment rates under a pricing methodology that is transparent and has an expeditious dispute and enforcement process. Likewise, the gateway protection condition needs to ensure the continued commercial viability of origins served solely by BNSF. In addition, the Board should expand carrier access to enhance rail-to-rail competition, such as CSX access or trackage rights to reach facilities solely served by the UP/NS system and require binding commitments from Applicants to make infrastructure and operating improvements required to keep competitive routes commercially and operationally viable, with the commitments backed up by an expeditious dispute and enforcement process.

B. RAIL SERVICE RELIABILITY

Reliable rail service is essential to Southern's ability to provide dependable, consistent, and cost-effective electricity to its customers. As mentioned above, coal for steam generation moves to Southern's facilities in unit trains and, because of the volumes and distances involved, there often is no economically feasible alternative to rail.

Applicants' commitments do not address the reliability risks created by combining nearly half the nation's rail service under a single carrier. Meaningful rail options are critical to rail system resiliency and reliability, especially in light of the recurring rail operational crises that have affected individual railroads or the network as a whole over the past few decades and in prior mergers. Applicants state that they "have not proposed measuring Committed Gateway Pricing service performance relative to single-line traffic," and acknowledge that CGP "would not be single-line service and would not be as fast or reliable as single-line service. To be clear, CGP

was not intended to create competition with post-merger single line traffic." Second Response at 43. Instead, Applicants offer only a nondiscrimination commitment rather than specific service benchmarks. *Id.* at 44. Applicants claim that service will not be impaired for CGP traffic because the CGP traffic will move in the same trains as UP/NS traffic; however, this assurance does not apply to "traffic moving in bulk unit trains," *id.* at 45—the very service on which Southern relies. Applicants further concede that CGP, as originally proposed, "would not have enabled shippers to help reduce or avoid use of the merged carrier should transitional service problems occur." *Id.* at 51. Applicants' solution to transitional harm that CGP does not address is the Targeted Access Program. Id. at 51-52. However, the Targeted Access Program applies to terminal areas and not to Southern's coal traffic. Rail service reliability with measurable standards and verification rights, see *supra* at 8, must be addressed by the Board if this Transaction is approved.

C. BOARD OVERSIGHT AND ENFORCEMENT

If the Board approves the Transaction, a robust oversight and enforcement mechanism needs to be in place to provide timely resolution of all merger-related disputes in a manner that minimizes the burden on shippers. Applicants state that if a shipper believes UP/NS is not complying with CGP, it "could petition the Board to enforce the CGP condition" or, alternatively, Applicants "would agree to arbitrate any dispute under the American Arbitration Association's Commercial Arbitration Rules." Second Response at 45. Both options mean delay.

Enforcement of merger conditions before the Board is a complex, expensive, and time-consuming process.[29] If a shipper is forced to bring an enforcement action or seek Board

[29] In a more recent dispute concerning BNSF's right to interchange with the Savage Tooele Railroad Company under the UP/SP merger conditions, it has been nearly three years since the dispute began at the Board with no resolution yet. See Union Pac. R.R.—Operation

involvement, the shipper has already suffered harm, and the time and expense that it takes to seek enforcement creates additional harm.

Even if relief is ultimately available via enforcement, it still may not protect a shipper if the decision comes after the relevant sourcing, contracting, or transportation opportunity has passed. Regulatory enforcement after the fact is not equivalent to a shipper's ability to use competition in comparing two offers while a commercial decision is being made. The generation of electricity cannot be put on hold. That is why proposed conditions 1(a), 1(d), and 2(a) include an expeditious dispute and enforcement mechanism. Accordingly, if the Board approves this merger, the oversight framework should include expedited, shipper-accessible procedures for disputes concerning CGP eligibility, benchmark calculations, segment pricing, and interchange and service performance on a shipper's movements, together with information-disclosure obligations sufficient to permit a shipper to verify the combined carrier's compliance.[30]

For all these reasons, Southern proposes that an expeditious dispute and enforcement mechanism be included, as noted in proposed conditions 1(a), 1(d), and 2(a).

Exemption—in Tooele Cnty., Utah, FD No. 36741 and BNSF Ry.—Petition for Enforcement—Interchange with Savage Tooele R.R., FD No. 32760 (Sub-No. 50).

[30] It would also be reasonable under the spirit of the Major Merger Rules to provide that the Applicants hold the burden of proof in a merger-related enforcement action. This would be appropriate considering the size of the Transaction and to ensure that promises and commitments are kept. Making it clear that the burden will be on the Applicants in an enforcement action is also more likely to result in a negotiated agreement before any dispute needs to be brought to the Board.

CONCLUSION

Southern respectfully asserts that, if the Transaction is approved, conditions beyond what Applicants have proposed are needed to preserve and enhance competition.

Respectfully submitted,

/s/ Sandra L. Brown

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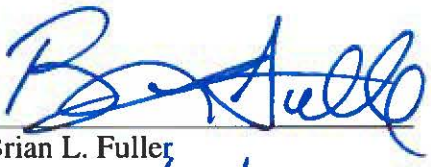
Counsel for Southern Company Services, Inc.

Dated: November 18, 2026

VERIFICATION

I, Brian L. Fuller, declare under penalty of perjury that I am Vice President Southern Wholesale Energy and Coal Services Director at Southern Company Services, Inc., that I have read the foregoing Comments, and that I know and certify that the facts asserted therein with respect to Southern Company Services, Inc. are true and correct, based on records maintained by Southern Company Services, Inc. Further I certify that I am qualified and authorized to make this Verification.



Brian L. Fuller

Date: 11/18/26

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2026, a copy of the foregoing Comments of Southern Company Services, Inc. was served upon all parties of record in this proceeding by first-class mail, postage pre-paid, or electronic filing.

/s/ Sandra L. Brown