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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

COMMENTS OF CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD COMPANY

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Dated: November 18, 2026

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Chicago South Shore & South Bend Railroad Company ("CSS") hereby files these Comments in response to the Application seeking Board approval for the acquisition of control by Union Pacific Corporation ("UPC") of Norfolk Southern Corporation ("NSC") and through NSC of Norfolk Southern Railway Company ("NS") and NS's rail carrier subsidiaries and the resulting common control by UPC of Union Pacific Railroad Company ("UP") and NS.

CSS's Comments include the Verified Statement of Mr. Anthony (Tony) Kazakevicius ("V.S. Kazakevicius"), CSS's Senior Director of Sales & Marketing. Maps showing the CSS system and the details of the relief that CSS seeks appear as Exhibits to Mr. Kazakevicius' Statement. CSS's Comments also include the supporting statement of Mr. David Dech, President and General Manager of the Northern Indiana Commuter Transportation District ("NICTD"), which since 1990 has owned and maintained the 74.65-mile rail line over which CSS operates (and has a perpetual property right) between Kensington and South Bend, IN ("Joint Use Corridor"). NICTD operates commuter rail service between South Bend and Chicago.[1]

[1] CSS's Comments also include supporting letter of United States Congressional Representative Rudy Yakym III (2nd District, Indiana). In his letter, Congressman Yakym articulates his support for the trackage rights relief that CSS requests in this proceeding. In addition, CSS's Comments

In addition, CSS simultaneously is filing a Responsive Application in Docket No. FD 36873 (Sub-No. 41) (CSS-4) seeking trackage rights as a condition under 49 U.S.C. § 11324(c).

CSS takes no position at this time on whether the Board should approve or deny the Primary Application. Nevertheless, CSS requests that – if the Board were to approve the merger application – the Board: (1) should devote significant consideration to the potential impact of competitive foreclosure on the public; and (2) should condition its approval on a grant of trackage rights to CSS to preserve competitive rail service for customers at the Port of Indiana Burns Harbor ("POIBH" or the "Port"). Absent such trackage rights relief, the proposed merger of UP and NS would cause POIBH to become a two-to-one location. Granting the Port access to CSS would ensure that a neutral, competitive service continues to exist for traffic moving between Burns Harbor and a variety of interconnection points with other Class I, Class II, and Class III carriers. CSS service to the Port (which CSS is prepared to provide on a daily basis – *i.e.*, more frequent than current service) also will protect against congestion and other service problems that may result from the proposed merger. The availability of these trackage rights also would help to offset the adverse impact on CSS of vertical foreclosure associated with the merger.

Granting CSS trackage rights and allowing it to compete for business also will benefit NICTD and the commuters it serves. In particular, CSS helps to fund NICTD's passenger service operations, and the funding mechanism that the parties have adopted ties CSS operations on the Joint Use Corridor to use payments funding obligation to CSS business levels. Accordingly, greater CSS participation in Burns Harbor movements will have the effect of

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include the supporting letter of Mr. Ken Long, Managing Director of Tanco Terminals, Inc., which conducts chemical storage and distribution at or through the Port of Indiana Burns Harbor.

subsidizing NICTD's passenger service. As Mr. Dech observes in his attached statement, CSS has paid more than $125 million in fees to NICTD since the 1990 CSS reorganization. Conversely, a loss of CSS business – which could result from the greater foreclosure power of UP-NS post-merger – would have the opposite effect on CSS's support of passenger service and on the shared infrastructure that supports both freight and commuter rail service.

BACKGROUND

CSS is a Class III railroad with a more than 100-year history.[2] CSS's 110-mile line can connect directly with the six largest North American rail carriers. CSS parallels interstate highways and the inland waterways.

[2] CSS is an Indiana General Partnership whose President is Todd Bjornstad. The General Partners of CSS are JOF Transportation Company ("JOF") and SouthShore Corporation ("SSC"), both of which are corporations. JOF owns 40% of CSS and is a wholly owned subsidiary of Anacostia Rail Holdings Company ("ARH"). Bruce A. Lieberman is the President of JOF. SSC owns 60% of CSS. SSC is owned by individual shareholders. Peter A. Gilbertson and Bruce A. Lieberman own a majority of SSC's shares. SSC's President is Peter A. Gilbertson.



CSS plays an important role in the Chicago and Northwest Indiana-area transportation marketplace. CSS interchanges either directly (or through a switching carrier) with each of the Class I carriers as well as a variety of regional and Class III carriers. CSS handles movements of steel products, chemicals, coal, food products, minerals, scrap metal, pig iron, and building products in manifest and unit train service. CSS moves approximately 60,000 carloads per year.

The original CSS began operation just after the turn of the 20th century, moving passengers between northwest Indiana towns such as Michigan City, Gary, East Chicago and Hammond. Shortly thereafter, the booming industrial region found a need for freight service on the line as well. As the local steel industry grew, so too did related industries, by providing raw materials such as coal, coke, scrap iron, lime, and iron ore. The steel mills' customers also

commenced operations in the region, building railcars and components, automobiles, trucks, skyscrapers, bridge girders, stamping plants, appliances, etc. All of this heavy industry was ideally suited to moving products and materials via rail, and CSS has played an integral role, meeting the regions logistical needs for nearly 100 years.

The old "South Shore" line survived several bankruptcies, the latest in the late 1980's. This bankruptcy endangered both freight and commuter passenger service. In fact, the bankrupt carrier had obtained federal regulatory approval to terminate commuter passenger service. In 1990, Anacostia Rail Holdings presented a plan to the U.S. bankruptcy court to separate CSS's freight and commuter operations by creating a new entity to conduct freight operations. *Chicago SouthShore & South Bend R.R. – Acquisition and Operation Exemption – Chicago South Shore and South Bend R.R.*, Docket No. FD 31575, 1990 WL 287138 (ICC Decided Jan. 3, 1990). NICTD obtained authority to provide passenger service over the CSS line and certain other lines in the Chicago area. *Northern Indiana Commuter Transp. Dist. – Trackage Rights Exemption – Chicago Southshore & South Bend R.R.*, Docket No. FD 31585, 1990 WL 287136 (ICC Decided Jan. 4, 1990); *Northern Indiana Commuter Transp. Dist. – Acquisition and Operation Exemption – Chicago SouthShore & South Bend R.R.*, Docket No. FD 31576, 1990 WL 287137 (ICC Decided Jan. 4, 1990).

Later in 1990, NICTD exercised the three-year purchase option that its trackage rights agreement with CSS gave it. NICTD now owns the track and provides commuter service on track shared by the freight operation and dispatched jointly in the Chicago-South Bend Corridor. *Northern Indiana Commuter Transp. Dist. – Acquisition Exemption – Chicago Southshore and South Bend R.R.*, Docket No. FD 31812, 1990 WL 365531, at *2 (ICC Decided Dec. 27, 1990) (exempting from prior approval the acquisition, by NICTD, of SouthShore's 74.65 miles of rail

line between Kensington and South Bend. In 2000, CSS acquired the right to operate approximately 25.888 miles of rail line – as a substitute operator for Norfolk Southern Railway Company – including (1) a portion of the Michigan City Branch line from milepost 136.0 in Dillon, IN to the end of the line, at milepost 158.518 in Michigan City, IN; and (2) approximately 3.37 miles of the South Bend Branch line from milepost 200.369 in Dillon, IN, to the end of the track in Kingsbury, IN. *Chicago Southshore & South Bend R.R. – Operation Exemption – Illinois Indiana Development Co.*, Docket No. FD 33819, 2000 WL 223245, at *1 (STB served Feb. 25, 2000).[3]

NICTD operates commuter service between the Michiana Regional Airport in South Bend, Indiana, and Randolph Street Station in Chicago. The line segment is approximately 90 miles in length. NICTD serves the principal Indiana Communities of Hammond, East Chicago, Gary, Ogden Dunes/Portage, Chesterton, Michigan City, and South Bend. NICTD also serves Hegewisch and neighboring communities of southeast Chicago.

As noted above, increased CSS volumes result in larger payments to NICTD.

COMMENTS

Under 49 U.S.C. § 11324(c), the Board "shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." In evaluating a proposed rail consolidation, the Board "may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities." 49 U.S.C. § 11324(c).

[3] *Illinois Indiana Development Co. – Acquisition and Operation Exemption – Norfolk Southern Ry.*, Docket No. FD 33845, 2000 WL 223247 (STB served Feb. 25, 2000); *Peter A. Gilbertson, et al., and Southshore Corp. – Control Exemption – Illinois Indiana Development Co.*, Docket No. FD 33846, 2000 WL 490748 (STB served April 26, 2000).

The Board's new 2001 merger rules emphasize the importance of protecting competition when considering requests for authority to combine Class I carriers. "Since 1980 at least, we have consistently imposed merger conditions to preserve two railroad service where it existed." *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), at 11 (STB served June 11, 2001). In adopting its new rules, the Board added that, "in any future consolidation cases, we will strive to remedy every competitive harm that would stem from any proposal that we decide to approve. *Id*. at 30; *see also id.* at 31 (the focus of interested parties should be on "remedying competitive and other harm that would likely be experienced by that party as a result of the merger proposal under review. Imposing remedial conditions as appropriate will continue to be our top priority where we decide that a proposal might be in the public interest.").

"Our shift in policy places greater emphasis in the public interest assessment on enhancing competition while ensuring a stable and balanced rail transportation system." *Id.* at 9; *see also id.* at 10 ("Our new rules reflect an intention on our part to offset, through conditions for competitive enhancements, those merger-related harms that cannot be directly or effectively mitigated. Such competitive enhancements could include, but would not be limited to, reciprocal switching arrangements, trackage rights, or elimination of 'paper barriers' on interchange by shortline carriers.").

The Board's new rules also recognize the importance of protecting passenger service. 49 C.F.R. § 1180.1(c)(2)(ii) ("The Board must ensure that essential freight, passenger, and commuter rail services are preserved wherever feasible.").

A. The Board Should Protect Against the Risk of Harm through Vertical Foreclosure

In the *CPKC* merger proceeding, the Board addressed the risk of vertical foreclosure and the risk that the merged entity would engage in service "sabotage" on interline traffic in order to

favor its own single-line service. Overturning its own historic "one lump" presumption against such risks, the Board expressed a recognition of the possibility of competitive harm even in the context of an end-to-end merger. Significantly, the Board cited both UP's and NS's comments in the *CPKC* decision as support for abandoning the prior presumption that vertical consolidations could never result in competitive harm. *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Docket No. FD 36500, at 47 (STB served March 15, 2023) ("*CPKC*") ("[W]hile merger applicants are free to argue that the facts in an individual proceeding warrant application of the one-lump theory, the Board concludes that the one-lump theory does not justify a presumption that a vertical combination will not result in competitive harm.").

While the Board held that the particular facts of the CPKC transaction would not result in competitive harm, the Board based its conclusion largely upon its determination that the transaction was necessary in order to create a "stronger competitor against BNSF, UP, and CN." *Id*. at 47-48 ("Nevertheless, as discussed below, given the not insubstantial conditions being imposed in this decision, the Board determines on the record of this case that this proposed vertical transaction is unlikely to lead to any significant competitive harms, and (as discussed elsewhere in the decision) ***will in fact enhance competition by creating a stronger competitor against BNSF, UP, and CN***.") (emphasis added). It is not at all clear that this same rationale would justify a similar finding in the present proceeding where the proposed transaction would create one dominant carrier with far more market power than any of the other Class I's, particularly given BNSF's expressed disinterest in merging with CSX. At the very least, the Board should recognize the possibility that the merger, if approved, could result in vertical-

foreclosure harm, and the Board should ensure that it has taken sufficient steps to remedy that harm (or otherwise to enhance competition where that risk of harm is most acute).

1. UP's Comments in CPKC Warned Against the Risk of Vertical Foreclosure

In its February 28, 2022 Comments in CPKC, UP argued that the Board should not simply presume that the proposed transaction would not have anticompetitive effects. In particular, UP noted the Applicants' reliance on the "'one-lump' theory to presume that CPKC will have no incentive to force inferior terms on customers who depend on KCSM service in Mexico and ship traffic from Laredo to points served by both CP and UP (or CP and BNSF)." *Id*. at 32. UP added that the one-lump theory, "which the Board has utilized at times in reviews of other mergers, in turn rests on the assumption that KCS must already be collecting the full measure of returns associated with KCSM's existing market power and that merging with CP therefore cannot increase the post-merger firm's ability or incentive to foreclose." *Id*.

UP then argued that, under modern economic analysis, merged carriers do have an incentive to engage in anticompetitive foreclosure conduct:

> While the one-lump theory may apply in some circumstances, it does not apply in this particular case. As [UP Expert] Professor Salop explains, modern economic analysis has shown that when an upstream monopolist (KCSM) and downstream rivals (UP and CP) lack full information about each other's costs and prices, or when the rivals provide differentiated services—*i.e.*, services that shippers view as qualitatively different—the monopolist generally cannot extract the full "one lump," so the shipper retains a surplus. In those circumstances, which exist here, ***the merged carrier does have an incentive to engage in anticompetitive conduct***: to eliminate the shipper's surplus and extract the full "one lump."

Id.

2. NS's Comments in CPKC Warned Against the Possibility that a Merged Entity Would Engage in Service-Based Sabotage

NS's Comments in CPKC similarly warned against the dangers of vertical foreclosure in end-to-end mergers, and NS placed particular emphasis on the risk of service-based "sabotage." Like UP, NS's expert witness John W. Mayo, Ph.D. first objected to any presumed absence of foreclosure risk simply because of the end-to-end nature of the proposed combination:

> 8. [T]he Applicants' application offers unqualified assessments that their proposed merger raises no concerns regarding harm to competition—**simply because it is a vertical merger**. Similarly, the Applicants' economist's analysis, relying on a particular—not general—economic theory sometimes referred to as the 'one-lump theory,' quickly dismisses the possibility that the proposed merger could alter either the incentives or ability of the merged firm to harm competition in the wake of the merger. ***These back-of-the hand dismissals of concerns regarding post-merger competition are unwarranted***.

NS June 9, 2022 Amended Comments, Amended V.S. of John W. Mayo, Ph.D., at ¶ 8 (emphasis added).

Dr. Mayo went on to identify the different forms of foreclosure in a vertical merger context:

> Foreclosure resulting from a vertical merger can arise in two forms. As described in a recent article in the Antitrust Law Journal, "A vertical merger may threaten anticompetitive exclusion by **conferring an incentive for the merged firm unilaterally to foreclose upstream rivals from access to distribution (customer foreclosure) or unilaterally to foreclose downstream rivals from access to a key input (input foreclosure)**."

Id., at ¶¶ 34 (emphasis added). Finally, and most importantly, Dr. Mayo warned against the risk of what he referred to as "sabotage" from a merged rail carrier:

> 37. Threats to competition from post-merger strategies that raise rivals' cost **may arise from either price or nonprice effects**. For instance, while these strategies are typically thought of as being exercised by changes in the post-merger prices charged to rivals, it

> is also possible that these strategies may be manifest through changes in the quality [of service] provided to rivals post-merger. This method of raising rivals' cost is referred to as '***sabotage***.'[62]
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> [62] Beard, T. Randolph, et al., 'Regulation, Vertical Integration and Sabotage,' *Journal of Industrial Economics,* Vol. 49, No. 3 (2001): 319-333, at p. 320.

NS June 9, 2022 Amended Comments, Amended V.S. of John W. Mayo, Ph.D., at ¶ 37 & n.62 (emphasis added).

3. CSS Faces a Significant Risk of Vertical Foreclosure

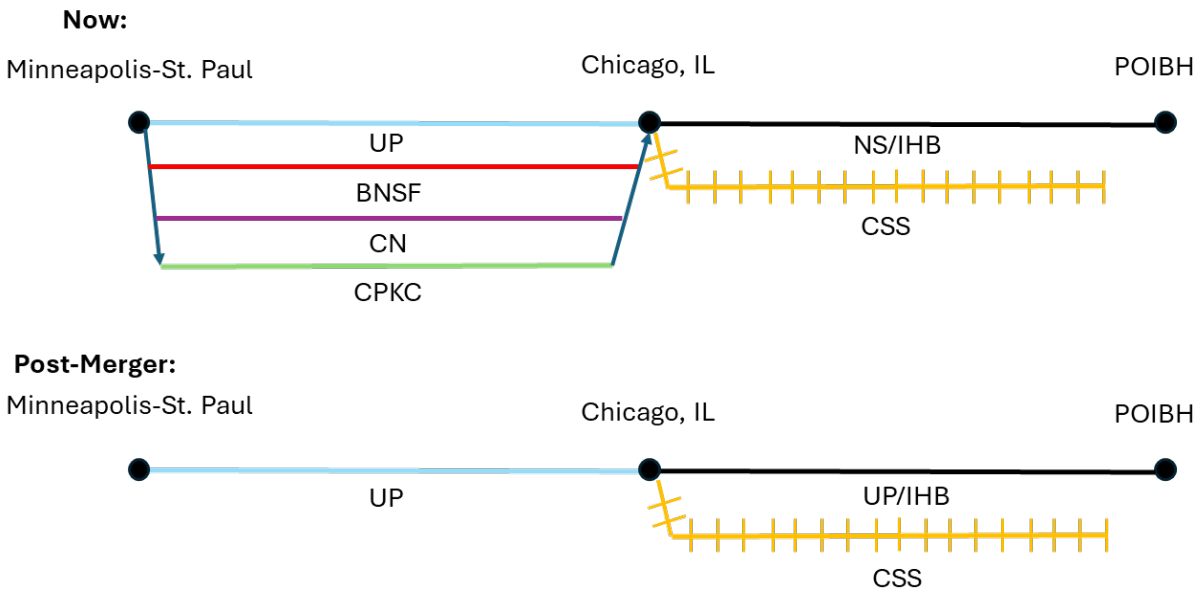
If UP's and NS's warnings in the *CPKC* proceeding are to be taken seriously now – and CSS respectfully submits that the Board should take those warnings seriously – there is a danger that service that CSS historically has provided in conjunction with one of the Applicants no longer will be an option. Instead, there is a risk that, through the different forms of foreclosure that UP and NS each identified, the combined entity could use its market power to divert what formerly had been interline traffic involving CSS to single-line UP service.

This foreclosure could prevent CSS from maintaining interline business that it historically has served at locations to or from which one of the Applicants also has the ability to provide service. In such a situation, there is a risk that the Applicants would favor their own single-line service and thereby could prevent CSS from participating in future interline movements.

For example, CSS currently provides service to two large steel companies; *i.e.*, US Steel Midwest ("USS") and Cleveland-Cliffs Burns Harbor ("Cliffs"), to and from their production facilities located immediately west and east (respectively) of the Port of Indiana Burns Harbor. Some of that traffic moves via CSS to a connection with UP for service to points west of Chicago. After the merger, the combined UP would have an incentive to structure its rates or

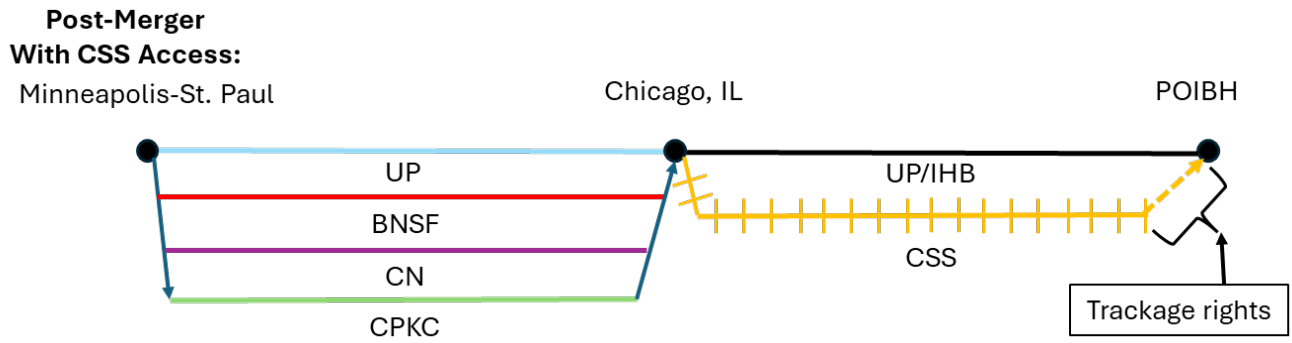
service in a manner that would encourage the shippers to make use of single-line UP service (via the lines of the current NS). The loss of such business would constitute a meaningful and harmful impact of the merger upon CSS.

This same pattern of potential foreclosure also exists with respect to shippers located within the POIBH location itself (and that CSS does not presently serve). For example, multiple Class I service options presently exist between Minneapolis-St. Paul, MN and Chicago for destination service via either NS or IHB to POIBH:



Merger of UP and NS would risk the foreclosure of each of those existing, non-Applicant service options. As UP and NS each argued in *CPKC*, a real possibility of harm in such circumstances exists.

To the extent that the Board approves the merger and CSS experiences the effects of vertical foreclosure, the availability of trackage rights – as described below – would help CSS to offset any business losses resulting from such foreclosure and also would protect the shippers located at POIBH from competitive harm.



CSS would provide a neutral service option between Chicago and POIBH and therefore would maintain the possibility that POIBH shippers could utilize non-Applicant Class I rail service for the western portions of their POIBH movements.

B. The Applicants and the Board Each Recognize the Importance of Preserving Competition at 2-to-1 Points

In their Application, UP and NS have acknowledged the importance of preserving competition at locations where the effect of the consolidation would be to remove one of two competitive options. *See*, *e.g.*, UP-NS April 30, 2026 Cover Letter for Amended Application at 2 ("Using the 100% traffic files, the Amended Application demonstrates the following: • The proposed transaction will not reduce the number of Class I railroads from 2 to 1 or from 3 to 2 in any Business Economic Area in the United States. • The proposed transaction will preserve access to two Class I railroads at all 2-to-1 shipper facilities, and no more than four facilities are at locations where UP and NS are two of only three options. • The proposed transaction will not reduce the number of Class I railroads in any corridor from 2 to 1, and only a small number of carloads move in corridors where UP and NS are two of only three options.").

In order to address 2-to-1 points that they identified, the Applicants proposed "practical, targeted" protections for shippers "currently served by UP and NS that would have no access to another Class I railroad in an unconditioned merger." Amended Application, Vol. 1, at p. 13;

accord id. at 21 ("On the other side of the balance, the proposed transaction does not risk harm to the public interest. As Dr. Elizabeth Bailey discusses in her Verified Statement in Volume 2 of the Application, . . . The proposed transaction will preserve access to two Class I railroads at all 2-to-1 shipper facilities, . . . [t]he proposed transaction will not reduce the number of Class I railroads in any corridor from 2 to 1, and only a small number of carloads move in corridors where UP and NS are two of only three options."); *id*. at 22 ("*Voluntary Conditions that Protect and Enhance Competition*. The Amended Application demonstrates that the balance of benefits and harms decisively favors approval of the proposed transaction. To remove any doubt, however, Applicants are voluntarily committing to standard competition-preserving conditions, *including a commitment to ensure permanent multi-railroad access for 2-to-1 shipper facilities*, an open gateway commitment, *a commitment to preserve access to build-ins and build-outs*, and a commitment not to create new regulatory 'bottlenecks.'") (emphasis added); *id*. at 51 ("Dr. Bailey recognizes that UP and NS have committed to preserve competition to all 2-to-1 shipper facilities.").

The Applicants' Kenny Rocker and Claude Elkins reinforce this same commitment to protecting 2-to-1 shippers. Joint Verified Statement of Kenny Rocker and Claude E. "Ed" Elkins, Amended App. Vol. 1, at 346-47 ("2-to-1 Customers Will Be Protected. 159. For those few customers in the Midwest who might see a change in their competitive landscape—the so-called "2-to-1" customers—we have contacted them and committed that they will retain two Class I railroads serving their facility after the merger. Katherine Novak's statement describes the 2-to-1 customers who will be protected from the loss of any rail-to-rail competition. 160. This small group of 2-to-1 customers simply reflects what the data confirm—a tiny overlap between our networks. UP and NS are committed to making sure even that limited group continues to be

well served as we move forward."). Messrs. Rocker and Elkins similarly emphasize the Applicants' commitment to preserving build-in and build-out options. *Id*. at 347 ("Build-In/Build-Out Options Will Be Preserved. 161. To preserve the competitive status quo, we commit to preserve premerger build-in/build-out options for existing customer facilities served exclusively by UP or NS that would be eliminated as a result of the merger. Consistent with build-in/build-out condition the Board imposed in authorizing the UP/SP merger, an existing exclusively-served customer of UP or NS will be able to raise a claim that the merger deprived it of a build-out/build-in option at any time. If the relevant connecting line is actually built, UP/NS will negotiate in good faith the terms of an agreement that will implement the build-in/build-out remedy. Any technical disputes with respect to the implementation of this commitment will be resolved either by arbitration or by the Board."); *see also* Katherine Novak Statement, Amended App. Vol. 1 at 393-94 ("Applicants are committed to ensuring that the UP/NS merger does not leave any shipper facility currently served by UP and NS and no other railroad (a '2-to-1 shipper facility') without access to at least two Class I railroads after the merger.").

In prior merger decisions, the Board and the ICC have recognized the importance of preserving competition at 2-to-1 points and preserving pre-merger build-out options to access competitive alternatives. For example, the Board approved certain settlement agreements in the UP-SP merger that afforded trackage rights to third-party carriers as a means of preserving competition at 2-to-1 points and to ensure that no shipper with a pre-merger build-out option (to access competition) would lose that option. *UP/SP*, 1 S.T.B. 233, 246-47 (1996) ("Summary of Decision. In this decision, we are taking the following action: (1) we are approving common control and merger of UP and SP as proposed in the primary application;. . . we are imposing as conditions (a) the terms of the BNSF agreement, (b) the terns of the CMA agreement, and (c) the

terms of the URC agreement; (6) we are requiring certain modifications to the terms of the BNSF and CMA agreements, particularly respecting new facilities, transloading facilities, build-out/build-in options, contracts at 2-to-1 points, and storage-in-transit (SIT) facilities.").

With regard to the BNSF settlement agreement in UP-SP, the Board explained that the Applicants':

> basic purpose in entering into the BNSF agreement was to preserve competitive rail service for all 2-to-1 customers of UP and SP. . . . [T]o preserve competitive options for such shippers, they identified all 2-to-1 points (i.e., all points at which service is provided by UP and by SP, but by no other railroad) and then negotiated trackage rights and line sales with BNSF that would provide service to as many of these shippers as possible. Applicants concede that a few 2-to-1 points are not covered by the trackage rights and line sales provided for in the BNSF agreement, but they insist that these points are covered by the agreement's "omnibus" clause (Section 8i), which, they maintain, represents a commitment by UP/SP to enter into arrangements with BNSF under which, "through trackage rights, haulage, ratemaking authority or other mutually acceptable means," BNSF will be able to provide competitive service to all 2-to-1 shippers not covered by the trackage rights and line sales provided for in the agreement.

Id. at 252-53. Notably, the CMA settlement agreement extended the scope of the BNSF settlement agreement:

> The CMA agreement provides, among other things, that the BNSF agreement shall be subject to certain amendments, including amendments: . . . to grant BNSF access to any new facilities . . . located post-merger on any SP-owned line over which BNSF receives trackage rights.

Id. at 254.

In summarizing its decision to impose these settlement agreements as conditions, the Board emphasized the importance of preserving existing competition. *See*, *e.g.*, *id*. at 368 ("Harm to 2-to-I shippers from the merger as conditioned will be negligible. The BNSF agreement permits BNSF to serve all shippers who would otherwise go from two directly serving

carriers to one. In essence, the BNSF agreement will permit BNSF to replace, to a large extent the competitive service that is lost when SP is absorbed into UP."); *id*. at 373 ("We will require as conditions, which we will discuss in detail below, that the 'new facility' provision of the CMA agreement be extended to require applicants to permit BNSF to serve any new facility at any point on any SP or UP segment over which it has been granted trackage fights; that the term 'new facility' include new transload facilities, and that applicants make available all points on their lines (over which BNSF receives trackage fights) to transload facilities, wherever BNSF or some third party chooses to establish them; that applicants extend the build-out and build-in provision contained in the CMA agreement to all shippers with physically feasible connections and remove the time limitation contained in the provision; and that applicants expand Paragraph 3 of the CMA agreement to make immediately available to BNSF at least 50% of the volume under contract at 2-to-1 points on all of the BNSF trackage rights corridors (not limited to just Texas and Louisiana)."); *id*. at 420 ("The BNSF agreement further provides, however, that the term 'new facilities' does not include expansions of or additions to existing facilities or load-outs or transload facilities. We require as a condition that this provision be modified in two respects: first, by requiring that BNSF be granted the right to serve new facilities on both SP-owned and UP-owned track over which BNSF will receive trackage rights; second, by requiring that the term 'new facilities' shall include transload facilities, including those owned or operated by BNSF."); *id*. at 531 (Chairman Morgan, commenting) ("The Board has augmented conditions in the important areas of build-ins and build-outs, transloads, new facilities, storage-in-transit facilities, and contract service.").

C. Burns Harbor Would Functionally Become a 2-to-1 Point

The merger would cause the Port of Indiana Burns Harbor to become the functional equivalent to a 2-to-1 point. Two rail carriers, NS and the Indiana Harbor Belt Railroad ("IHB") currently serve the Port, with IHB using trackage rights over NS. IHB and its owners currently are indifferent as to the connection used for traffic going to (or coming from) west and north of Chicago and shippers can choose multiple options to/from many points. Post-merger, both carriers still will be able to provide service physically, but the one owner (UP) will want them to favor UP single-line service.

As Mr. Kazakevicius explains in his Verified Statement, the merger transaction would render NS (by definition) and IHB (effectively) non-neutral with respect to the interchange of traffic either originating or terminating at the Port. Currently, both NS and IHB are indifferent to the selection of interchange partners for traffic to and from points west and north of Chicago that are not served by NS or IHB. The combined UP-NS will have an incentive to favor its long-haul on any movements originating or terminating on what had been NS's line before the merger. Following the merger, the combined UP-NS would have an incentive to favor its own long hauls and avoid interchanging traffic with competitors.

The same is true of IHB. NS, together with CSX, has 51% control of IHB, giving the combined UP-NS the ability and the incentive to favor its own long hauls. Presently, IHB can originate or terminate traffic from Burns Harbor and is neutral with respect to interchanging traffic either with UP or BNSF (or other Chicago connections including CN, CPKC, IAIS, and WSOR). But post-merger, UP-NS's "veto-power" control over IHB will eliminate IHB's neutrality. NS can be expected to prevail over CSX since NS will be motivated to interchange

with UP-NS. It is possible that CSX may be relatively indifferent to this outcome or may prefer to focus its IHB-related efforts at one or more other locations, *e.g.*, Blue Island, IL.[4]

Accordingly, UP's acquisition of NS will cause both NS and IHB to lose their neutrality and favor interchange with UP over interchange with any other carriers, causing POIBH to become a 2-to-1 area.

D. CSS's Requested Relief Would Preserve Existing Intramodal Rail Competition

CSS seeks: (1) trackage rights to access the Port of Indiana Burns Harbor allowing for operations over approximately 5,390 feet of NS's line extending from the CSS connection at CP 487 on NS's Chicago Line and connecting with POIBH's current or future trackage (along with any ancillary distance along NS's line needed to allow for a change of direction of CSS's trains); with (2) the associated right to interchange with the Burns Harbor Railroad ("BHR") or with whatever common or private rail carrier POIBH elects to use at any given time to operate over the POIBH trackage.

In particular, CSS requests trackage rights over NS's current line: (1) to access the current point of NS's connection to the POIBH trackage; (2) to access any future point of connection between UP-NS's line and the POIBH trackage (*e.g.*, any potential future connection near the current NS-USS connection point); and (3) to allow for movement between the existing point of CSS's access to USS and any current or future point of connection with POIBH. Those trackage rights would extend from CSS's mainline just south of Burns Harbor over a connection with NS that CSS already uses via longstanding agreement to serve the U.S. Steel facility located

[4] https://www.freightwaves.com/news/csx-curtails-operations-at-its-major-yard-in-chicago (April 2026) (referencing CSX's use of IHB's Blue Island switching).

immediately west of Burns Harbor.[5] (The scope of this existing agreement does not extend to allowing CSS to serve the Port itself.) One possible approach for the CSS trains would be as follows: First, CSS trains would leave the CSS mainline via the existing interchange. Second, the CSS trains would reach the NS mainline and clear the location of the switch from the CSS mainline. Third, CSS trains would reverse direction and then proceed to the east/north-east via NS to the existing point of connection with the BHR. After interchanging with BHR, the CSS trains would reverse the foregoing process until reaching the CSS mainline. V.S. Kazakevicius at ¶ 23.[6]

While the proposed trackage rights operation would involve the use of NS's mainline, CSS's use of that line (albeit briefly) would represent only a modest burden relative to the importance of preserving a neutral service option for the Port's many customers. *Id*. Furthermore, the extent of any burden may be minimized if BHR and/or Port were to extend the existing BHR line to access NS to the northwest of milepost 487 near the U.S. Steel facility. CSS then could move trains from its mainline to BHR (via the NS line) without having to reverse direction. *Id*. at ¶ 24.

CSS respectfully submits that such conditional, future access via this simplified approach is entirely consistent with the Board's historic willingness to protect build-out options. In the Burns Harbor situation, the build out would occur in order to streamline interchange, but the justification for relief is equivalent. The Port presently has the ability to build a "western" connection to NS in order to facilitate more efficient operations. Should competitive and/or

[5] CSS currently pays NS for use of this trackage and the associated switches.

[6] The relevant NS line segments are equipped with power switches, thus helping to minimize any disruption potentially associated with CSS's use of the NS line. Such use presumably should be limited to several minutes per movement in each direction.

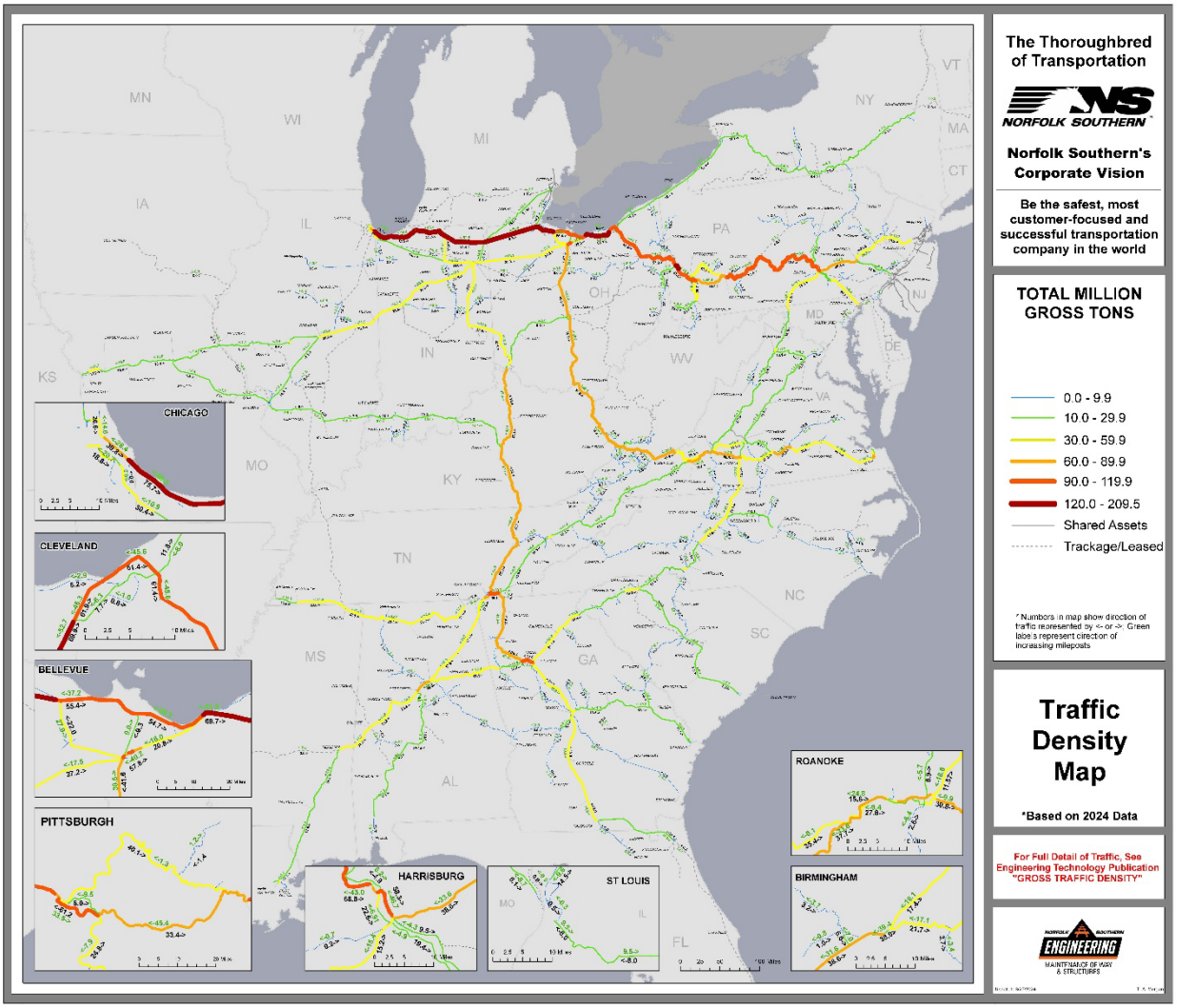
operational reasons justify that construction in the future, the Board should ensure that the combination of UP and NS should not deprive the Port of the potential value associated with such an expansion.

As Mr. Kazakevicius explains in his Verified Statement, it also is possible that CSS could provide a "combined-train" service such that it would access USS using its existing rights (and without having to reverse direction on the NS mainline) and then move east (from the existing connection with the USS trackage) to the current NS connection point with POIBH using trackage rights over NS north of the NS mainline. CSS would be in a position to interchange (with BHR) the balance of the cars in any given combined USS/POIBH train. V.S. Kazakevicius at ¶ 25.

CSS asks the Board to grant these trackage rights as a condition of any approval of the proposed UP-NS merger. Importantly, CSS requests that any agreement governing such trackage rights ensure that the combined UP-NS dispatch the trackage rights in a neutral and non-discriminatory manner and that the Board reserve jurisdiction to address any concerns regarding such dispatch.

E. CSS's Requested Relief Could Alleviate Congestion on the UP-NS Chicago Line and Protect Reliability and Resiliency

Granting the trackage rights and enabling CSS to serve POIBH also will help to relieve congestion along the high-density NS line. As confirmed in the Application, NS's Chicago Line has the highest density on the NS system, and upon information and belief, this line suffers from congestion and related delays:



Amended Application, Density Charts Public Workpapers, "NS Traffic Density 2024.jpg."

Congestion on this line is likely to increase if the merger is approved and Applicants grow their volumes as they have projected to do, especially as the Application includes no plans to expand infrastructure investment in the Chicago Line. Relieving congestion will benefit all rail carriers and users in the Chicago region, including the Applicants. The ability to divert and reroute traffic will also be beneficial if UP-NS experience service problems post-merger, and greater utilization of the CSS line will also enhance resiliency.

F. CSS Involvement in Service to the Port of Indiana Burns Harbor Would Have the Effect of Benefitting NICTD's Rail Passenger Service

As noted above, granting CSS trackage rights and allowing it to compete for business at POIBH also will benefit NICTD and the South Bend-to-Chicago area commuters that it serves. Through their agreed-upon funding mechanism, CSS helps to support NICTD's passenger service operations, with that funding mechanism tied to CSS business levels. As such, an increase in CSS's participation in Burns Harbor rail movements will have the effect of supporting NICTD's passenger service. Since 1990, CSS has paid more than $125 million in fees to NICTD. *See* V.S. Kazakevicius at ¶ 6.

To the extent that foreclosure associated with the UP-NS merger would result in the loss of CSS business to single-line UP alternatives, CSS's support of passenger service would suffer. The consequences of that reduced funding could impact the shared infrastructure that supports both freight and commuter rail service in the northern Indiana/Chicago area. In addition, such reduced funding could impact fare-paying passengers and Indiana taxpayers through the need to make up any lost revenue.

The Board's merger rules recognize the importance of protecting commuter service. 49 C.F.R. § 1180.1(c)(2)(ii) ("The Board must ensure that essential freight, passenger, and commuter rail services are preserved wherever feasible.").

CONCLUSION

For the foregoing reasons, CSS respectfully requests that the Board grant trackage rights to CSS over NS's current line (and to any possible additional, future connection between UP-NS and the BHR).

Respectfully submitted,

CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD COMPANY
505 North Carroll Avenue
Michigan City, IN 46360

By: */s/ Andrew B. Kolesar III*
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Robert D. Rosenberg
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Washington, D.C. 20036
(202) 347-7170
abk@sloverandloftus.com
rdr@sloverandloftus.com

Dated: November 18, 2026

Attorneys for Chicago South Shore & South Bend Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that this 18th day of November, 2026, I caused copies of the foregoing to be served: (i) by email or by first-class mail, postage prepaid upon all parties of record in this proceeding; and (ii) upon the other individuals that the Board identified for service in its Decision No. 5 served on September 26, 2025.

/s/ Andrew B. Kolesar III
Andrew B. Kolesar III

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873

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

VERIFIED STATEMENT OF ANTHONY KAZAKEVICIUS

1. My name is Anthony (Tony) Kazakevicius. My business address is 505 North Carroll Avenue Michigan City, IN 46360. I am the Senior Director of Sales & Marketing of the Chicago, South Shore & South Bend Railroad ("CSS").

I. Purpose and Background

2. The purpose of this Statement is to provide background regarding CSS, to explain the impact of the merger transaction on the shipping public, both generally with respect to the risk of vertical foreclosure and also more specifically with respect to service at Burns Harbor, Indiana. In addition, I will describe a trackage rights condition that would alleviate some of the adverse impact of the merger at that location.

A. Personal Background

3. I am a career short-liner with almost thirty years of short line railroad experience. I joined the CSS in 2020 and currently am the Senior Director of Sales & Marketing. In this role, I am responsible for growing rail traffic through customer and connecting-carrier relationships, marketing, pricing, and industrial development. I previously held sales & marketing roles with the Indiana Harbor Belt Railroad ("IHB"), Indiana Rail Road ("INRD"),

RailAmerica, and the Iowa Interstate Railroad ("IAIS"), where I started my railroad career in 1997. I reside with my family in the northwest corner of Indiana.

B. CSS Background

4. CSS serves the Chicago and Northwest Indiana region with its 110 system miles, including 75 miles of track shared with the Northern Indiana Commuter Transportation District ("NICTD") (which provides commuter service between Northern Indiana and Chicago), 27 miles of freight-only line, and additional miles of trackage rights. I have attached a map of the CSS system as Exhibit AK-1 to this Statement.

5. NICTD owns and maintains 75 miles of railroad right of way that CSS shares. CSS's payments to NICTD consist of a combination of a Maintenance of Way fee (MOW Fee), a Return on Investment Fee (ROI Fee), and Bridge Reserve Amount Fees.

6. Since 1990, CSS has provided over $125 million in funding to NICTD. This shared service approach and the related funding mechanism represent a successful public-private partnership that has been beneficial for the freight and passenger needs of the public in the northern Indiana/Chicago area.

7. CSS provides safe, consistent, and efficient rail service to its more than thirty customers and its many rail interchanges almost daily. We transport steel products, chemicals, coal, food products, minerals, scrap metal, pig iron, and building products, in manifest and unit train service. Our annual volume is approximately 60,000 carloads.

8. CSS maintains connections with each of the Class I rail carriers. We connect with UP, BNSF, CPKC, and NS at Chicago, IL. We connect with CN at Gary, IN. And we connect with CSX at Miller (Gary), IN. Given these connections, CSS is well suited to provide an efficient rail transportation link between Burns Harbor and the balance of the country.

II. Impact of the Merger Upon CSS and Shippers and Requested Conditions

CSS does not take any position at this time on the question of whether the Board should approve or deny the UP-NS Application. Nevertheless, if the Board does elect to approve the merger, the Board should recognize the risk of foreclosure of interline competitive alternatives. In addition, the Board should grant trackage rights to CSS over the current NS Chicago Line near Burns Harbor in order to offset some of the potential foreclosure harm that CSS may experience with respect to its existing customers and to alleviate the harm that shippers located at Burns Harbor otherwise would experience. Specifically, CSS seeks trackage rights over approximately 5,390 feet of the current NS's line: (1) to access the current point of NS's connection to the POIBH trackage; (2) to access any future point of connection between UP-NS's line and the POIBH trackage (*e.g.*, any potential future connection near the current NS-US Steel Midwest ("USS") connection point); and (3) to allow for movement between the existing point of CSS's access to USS and any current or future point of connection with POIBH.

A. Foreclosure Risk Generally

9. There is a danger that service that CSS historically has provided in conjunction with one of the Applicants no longer will be an option after a completed UP-NS merger. In particular, there is a risk that the combined entity could use its market power to divert what formerly had been interline CSS-Applicant traffic to single-line UP service.

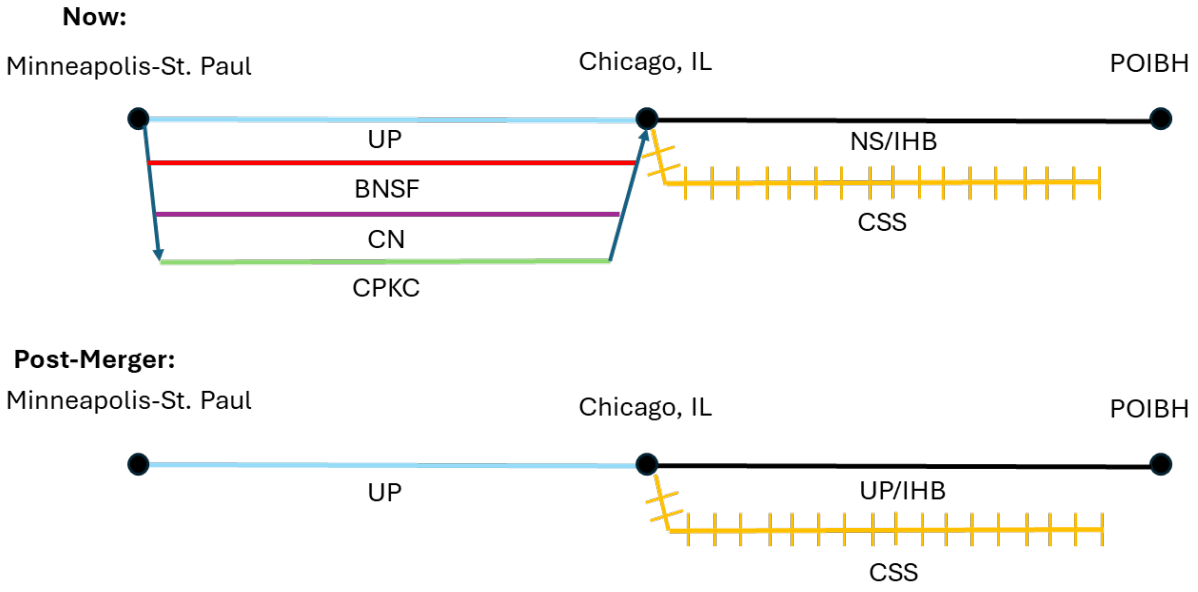
10. Since 1989, CSS has had limited operating rights over certain NS trackage near Burns Harbor through which CSS provides service to and from the USS facility located immediately to the west of POIBH.

11. We also provide service – via a direct connection – to the Cleveland-Cliffs Burns Harbor ("Cliffs") facility located just to the east of Burns Harbor. Cliffs and USS are located

adjacent to, but not within, the Burns Harbor port area itself. CSS provides service to both entities without entering onto the line of (or interchanging traffic with) the Burns Harbor Railroad ("BHR"). BHR operates as a switching carrier over the twelve miles of Port trackage, and as I explain below, BHR is capable of interchanging only with NS and with the Indiana Harbor Belt Railroad ("IHB"). CSS does not presently have physical access to the Burns Harbor facility itself.

12. There is a possibility that the combined UP-NS would price their services in such a manner as to foreclose any interline CSS option where UP would have the option to provide single-line service. It also is possible that a combined UP-NS could use non-price service terms as a means of encouraging customers to favor the single-line UP service.

13. That same risk of foreclosure exists with respect to the shippers currently located at the Port of Indiana Burns Harbor ("POIBH") and that CSS does not have the ability to serve. The following is a basic schematic showing the pattern that such foreclosure could take and using the example of Minneapolis-St. Paul, MN and shippers at POIBH:



14. Currently, there are four Class I rail options for moving POIBH traffic between Minneapolis-St. Paul and Chicago, and then two options (NS and IHB) for moving traffic between Chicago and POIBH. Following the merger, and in the absence of any Board-imposed conditions, UP would control the routing of this traffic between Minneapolis-St. Paul and Chicago to the exclusion of the three other western-segment carriers.

B. Burns Harbor, IN and CSS's Existing Operations

15. POIBH is located on Lake Michigan approximately forty miles east of Chicago. Within the Port itself, the Burns Harbor Railroad ("BHR") provides switching service on twelve miles of track to more than thirty companies, many of which participate in one way or another in the steel industry. BHR interchanges this rail traffic with NS and with the IHB.

16. CSS's main line extends in a generally east-west direction and passes just to the south of POIBH in Porter County, Indiana. This line roughly parallels the NS Chicago Line. This is the same NS line that IHB uses via trackage rights for its access to Burns Harbor. I have attached a map of Burns Harbor and the various rail lines in its vicinity. Exhibit AK-2.

17. As of the time of the CSX/NS division of Conrail, IHB was owned 51% by Conrail, and the primary application in that division proceeding envisioned that this 51% interest was to be retained by Conrail, and thus, post-transaction, IHB became subject to joint control by CSX and NS. *CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corp.*, 3 S.T.B. 196, 413 & n.301 ("IHB is also owned 49% by Soo Line Railroad Company (Soo)").

18. IHB accesses POIBH via trackage rights that it holds on NS from milepost 502.0 at Indiana Harbor in Lake County, IN to milepost 487.0 at Burns Harbor in Porter County, IN.

Indiana Harbor Belt R.R. – Trackage Rights Exemption – Consolidated Rail Corp., FD 32275 (ICC served April 14, 1993).

19. NS's Chicago Line is an extremely high density line, and IHB service over the line is typically only three times per week.

20. The UP-NS merger will cause the Port of Indiana Burns Harbor effectively to become a two-to-one location. As mentioned above, two railroads currently serve POIBH: NS and IHB. Each of those two carriers connects with the BHR, which is internal to the POIBH and provides switching to the industries located within the Port boundaries. Again, IHB is owned 51% as a Conrail Shared Asset, which in turn is owned jointly by NS and CSX. CPKC owns the remaining 49% of IHB. CSS understands that NS and CSX contractually must vote Conrail's interest in IHB in unison, giving NS an effective veto over IHB decisions. If the Board were to approve the proposed UP-NS transaction, UP-NS effectively would inherit NS's blocking position, and UP-NS also would own the former NS line that IHB must use to reach POIBH. In other words, IHB would lose its independence, and POIBH effectively would become a solely served location.

21. In practice, NS handles long-haul POIBH traffic destined to other NS destinations in the east and southeast. Conversely, IHB handles POIBH short-haul business moving to and from other connecting carriers in Chicago, including UP. Post merger, UP will be able to offer single line service to many more destinations than NS can today, including destinations served by UP or by other Class I carriers. Given UP's future ability to control IHB by virtue of the Conrail Shared Assets interest, IHB is unlikely to compete aggressively against one of its owners. It therefore is likely that IHB will cease to be a genuine competitor to UP. Moreover,

the other railroads with whom IHB connects in Chicago (and that currently compete with UP) will be at a new competitive disadvantage.

III. Request for Conditions

22. Unlike IHB or the combined UP-NS, CSS can provide truly neutral carriage alternatives from POIBH to a connection with all other railroads in Chicago including UP. In addition, CSS would provide near daily service to POIBH (as it currently does with respect to shippers located adjacent to POIBH), unlike the less-frequent service that IHB provides (*i.e.*, three days per week).

23. If the Board were to grant trackage rights to CSS over the NS line as I described above, one option for the CSS trains would be to proceed as follows: First, CSS trains would leave the CSS mainline via the existing interchange with NS near milepost 487. (I show the details of the requested trackage rights in my Exhibit AK-2). Second, the CSS trains would reach the NS mainline and clear the location of the switch from the CSS mainline. Third, CSS trains would reverse direction and then proceed to the east/north-east via NS to the existing point of connection with the BHR. After interchanging with BHR, the CSS trains would reverse the foregoing process until reaching the CSS mainline. We anticipate that this trackage rights service would impact NS/IHB operations on the Chicago Line only very briefly for each inbound or outbound CSS crossing.

24. If, at some point in the future, the BHR and/or Port were to extend the existing BHR line to access NS to the northwest of milepost 487 near the U.S. Steel facility, CSS would be able to move from its mainline to BHR (via the requested trackage rights over the NS line) without having to reverse direction. Future access via this simplified approach is consistent with protecting build-out options in merger proceedings. In the Burns Harbor situation, the build out

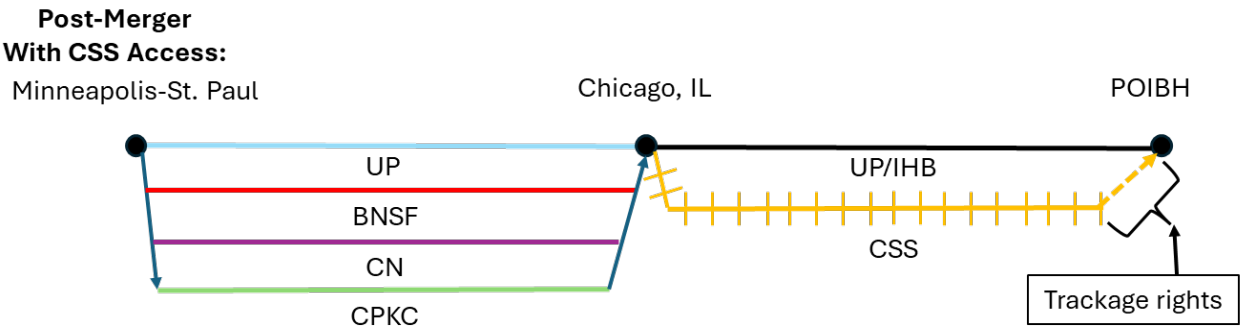
would occur in order to streamline interchange, but the justification for relief is the same. The Port presently has the ability to build a "western" connection to NS in order to facilitate more efficient operations. Should competitive and/or operational reasons justify that construction in the future, the Board should ensure that the combination of UP and NS should not deprive the Port of the potential value associated with such an expansion.

25. It also is possible that CSS could provide a "combined-train" service such that it would access USS using its existing rights (and without having to reverse direction on the NS mainline) and then east move from USS trackage to the current NS connection point with POIBH using trackage rights over NS north of the NS mainline. CSS would be in a position to interchange (with BHR) the balance of the cars in any given combined USS/POIBH train.

26. CSS provides an independent route that is not burdened by the density of freight and Amtrak traffic present on the NS Chicago line. As I mentioned, CSS already provides this service via this connection to USS. CSS pays NS annually to maintain the connection across the NS mainline that it uses to access USS.

27. In order to access the BHR (and to replicate the competition lost through the merger), CSS would operate under UP-NS dispatching control over the current NS line and would pay compensation set under the Board's standard methodology. The condition is operationally feasible and should not impose any meaningful burden on the combined UP-NS.

28. Returning to the schematic that I presented earlier, granting trackage rights to CSS would eliminate the foreclosure risk for shippers located within POIBH and would help to preserve the availability of the three additional, non-Applicant service options west of Chicago:



29. The proposed trackage rights condition would serve the public interest by preserving shipper choice at a Port that handles approximately 8,000 carloads annually, supporting service reliability through a route that avoids an extended movement via the NS Chicago Line, and keeping freight on rail rather than shifting it to truck.

30. The trackage rights also could help to relieve congestion on the current NS Chicago line insofar as this business could move via the far less dense CSS/NICTD line.

31. It also is the case that affording trackage rights to CSS would have the benefit of creating extra resiliency in the event of any service delays on the NS line. In other words, CSS trackage rights over NS to access the BHR could provide a helpful alternative in the event that post-merger volumes lead to service delays on the NS line.

VERIFICATION

I, Anthony (Tony) Kazakevicius, state 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.

Anthony (Tony) Kazakevicius

Executed: November 16, 2026

Exhibit AK-1


CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD
SOUTHSHORE FREIGHT
LAKE MICHIGAN
N
CHICAGO
PROVISO
CICERO
CLEARING
COMMERCIAL AVE. (BRC)
KENSINGTON (CRLNS)
PORT OF CHICAGO
BURNHAM (IHB)
HAMMOND/EAST CHICAGO (CSX)
GARY
GOFF (CN/GRW)
MILLER (CSX)
PORTAGE
BURNS HARBOR (LMIC)
BAILEYTOWN
MICHIGAN CITY
MICHIGAN
INDIANA
NEW CARLISLE
SOUTH BEND (NS)
LA PORTE
STILLWELL (CN)
KINGSBURY
JOLIET
Chicago O'Hare International Airport
Chicago Midway Airport
Illinois Waterway
IAIS/Metra
ILLINOIS
INDIANA
CN to Wisconsin, Canada
CP to Wisconsin, Canada
UP to Wisconsin
WSOR to Madison, WI
UP to Janesville, WI
CP to Iowa
CN to Iowa
UP to Omaha and West Coast
BNSF to Seattle, Denver, St. Paul
IAIS to Peoria
UP to St. Louis
BNSF to Kansas City, Texas and California
CN to Memphis, New Orleans
UP to Evansville; CSX to Nashville and Points South
CSX to Upper Michigan
CN to Detroit, Canada
NS to Toledo Detroit and Points East
CSX to Cleveland, New York and Points East
NS to Cleveland, New York and Southeast
5-9-13
CSS CHICAGO SOUTH SHORE & SOUTH BEND
BRC BELT RAILWAY OF CHICAGO
BNSF
CN
CP CANADIAN PACIFIC
CRL CHICAGO RAIL LINK
CSX
GWR GARY RAILWAY
IHB INDIANA HARBOR BELT
IAIS IOWA INTERSTATE
LMIC LAKE MICH. & INDIANA
NS NORFOLK SOUTHERN
UP UNION PACIFIC
WSOR WISCONSIN SOUTHERN
CSS TRACKAGE RIGHTS
INTERCHANGE

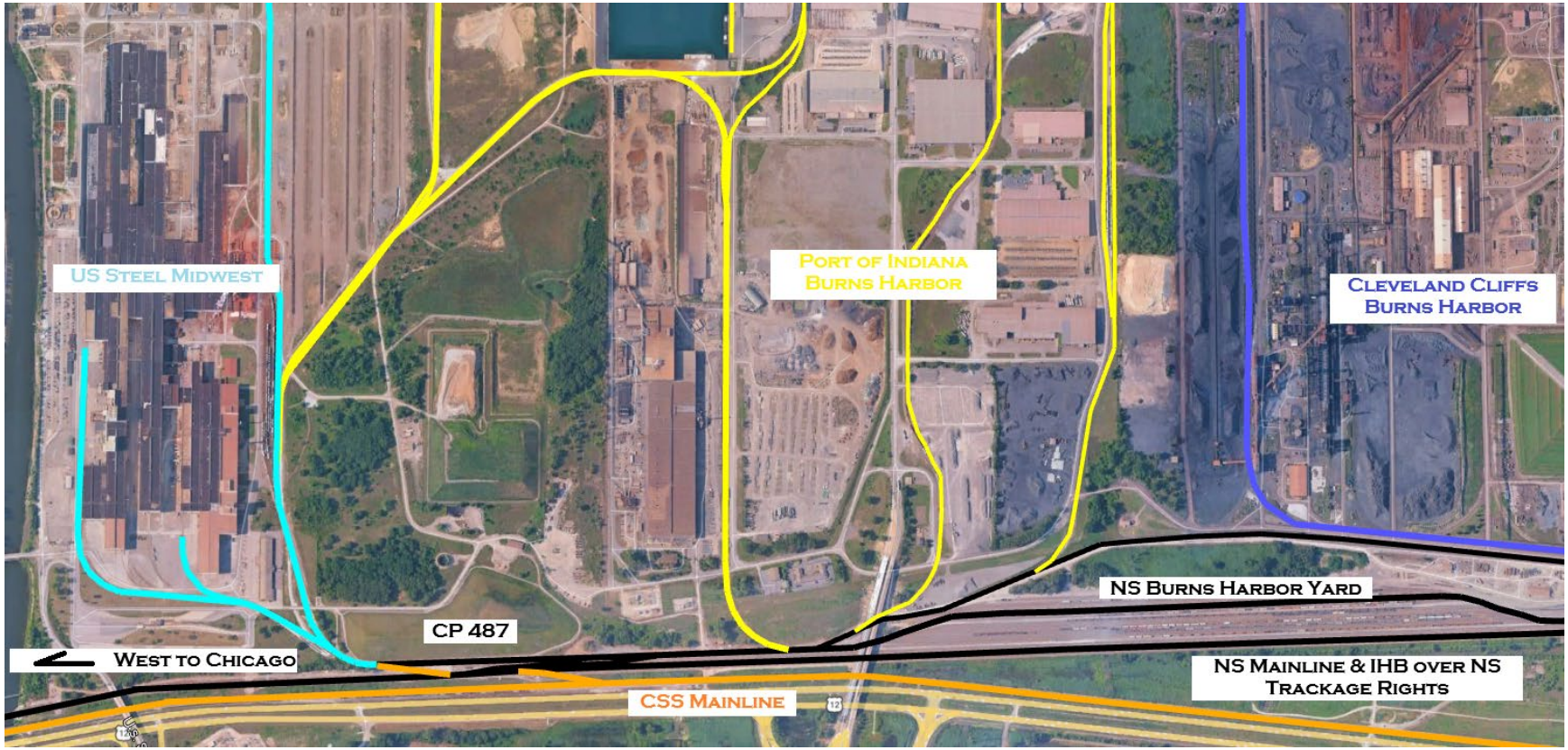
Exhibit AK-2

Port of Indiana Burns Harbor and the Requested Trackage Rights:

1. Port of Burns Harbor and Vicinity General Overview



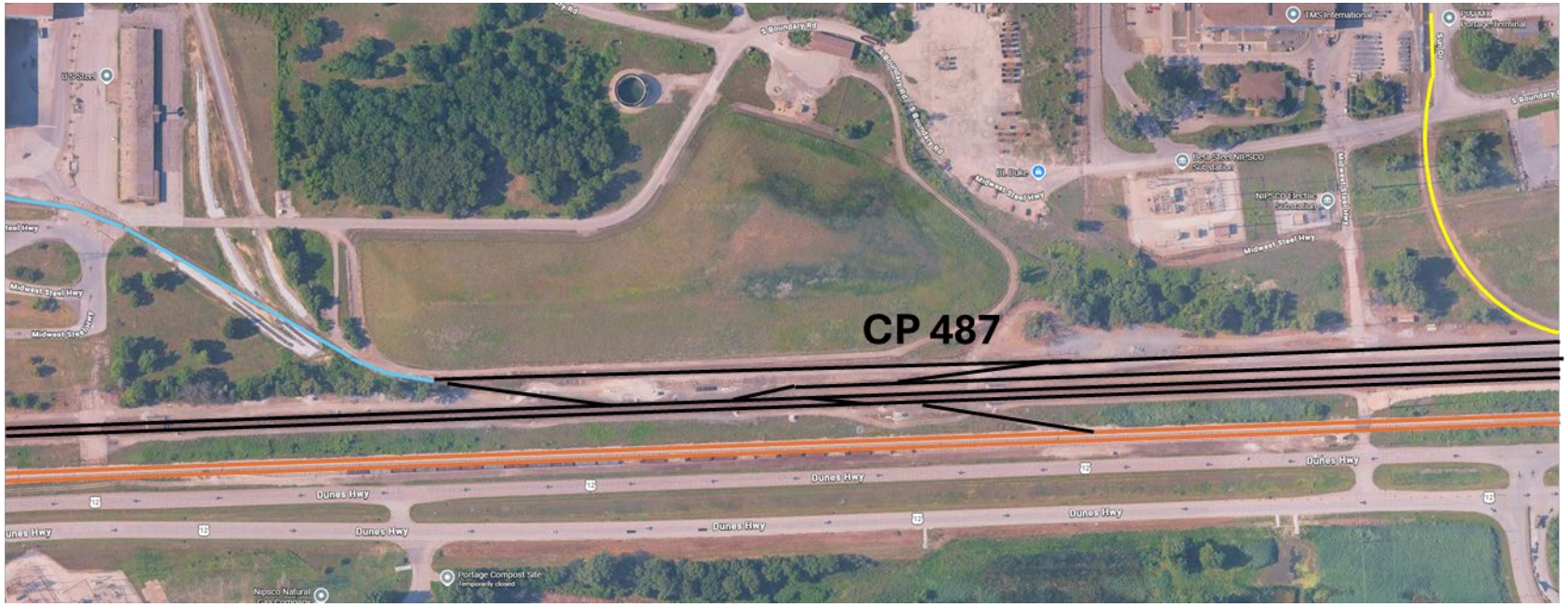
2. Port of Burns Harbor (and Vicinity) Rail Lines Overview

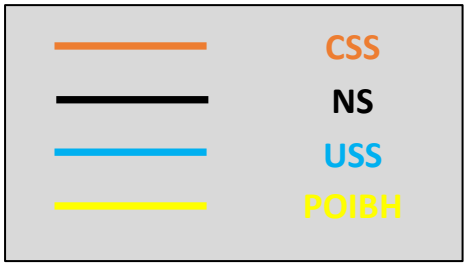


3. Port of Burns Harbor detail near NS CP 487

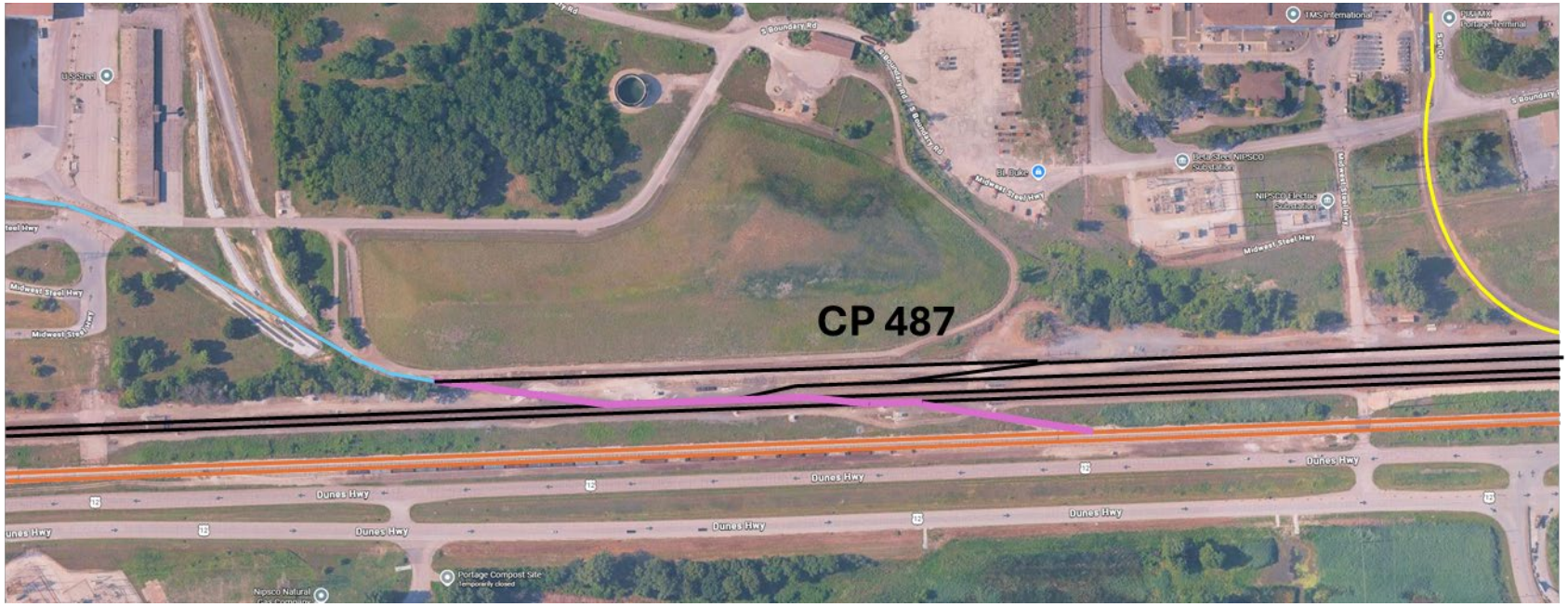


4. Port of Indiana Harbor Detail near NS CP 487 with Current Ownership Indicated





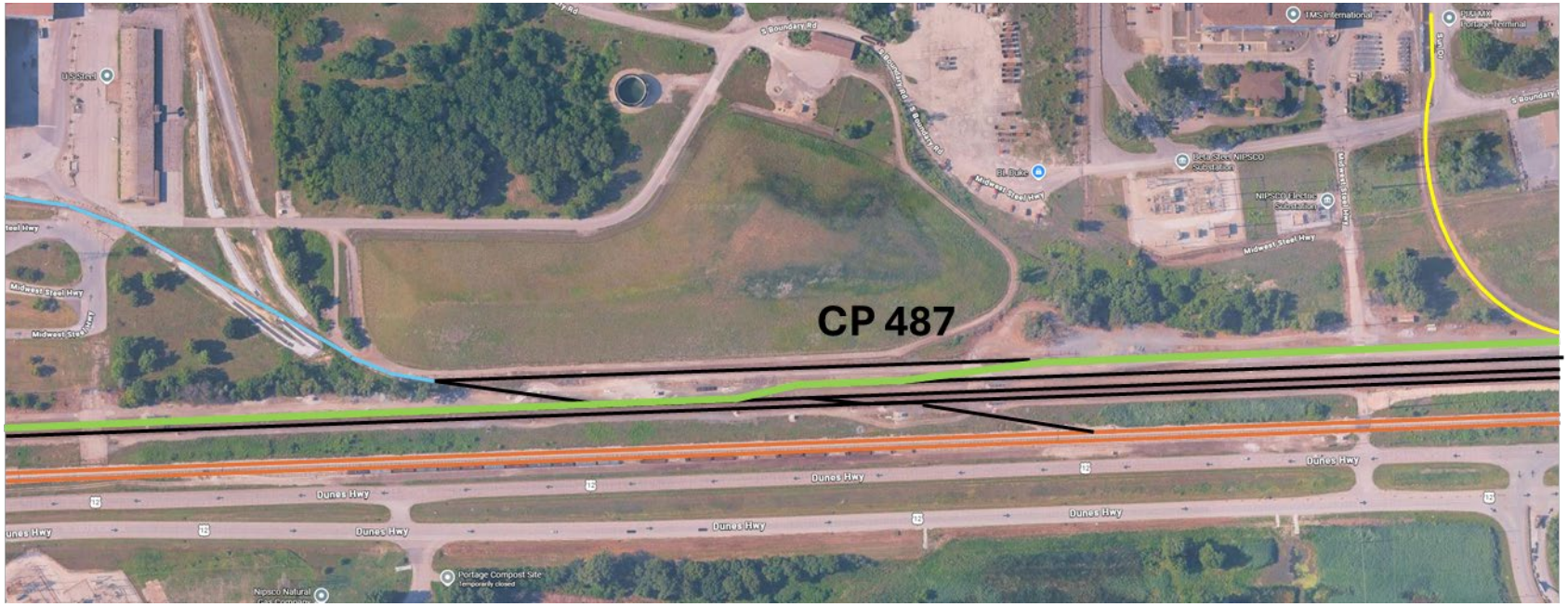
5. Port of Indiana Harbor Detail near NS CP 487 with Current CSS Access Rights over NS Indicated



CSS
NS
USS
POIBH

Current CSS Access Rights

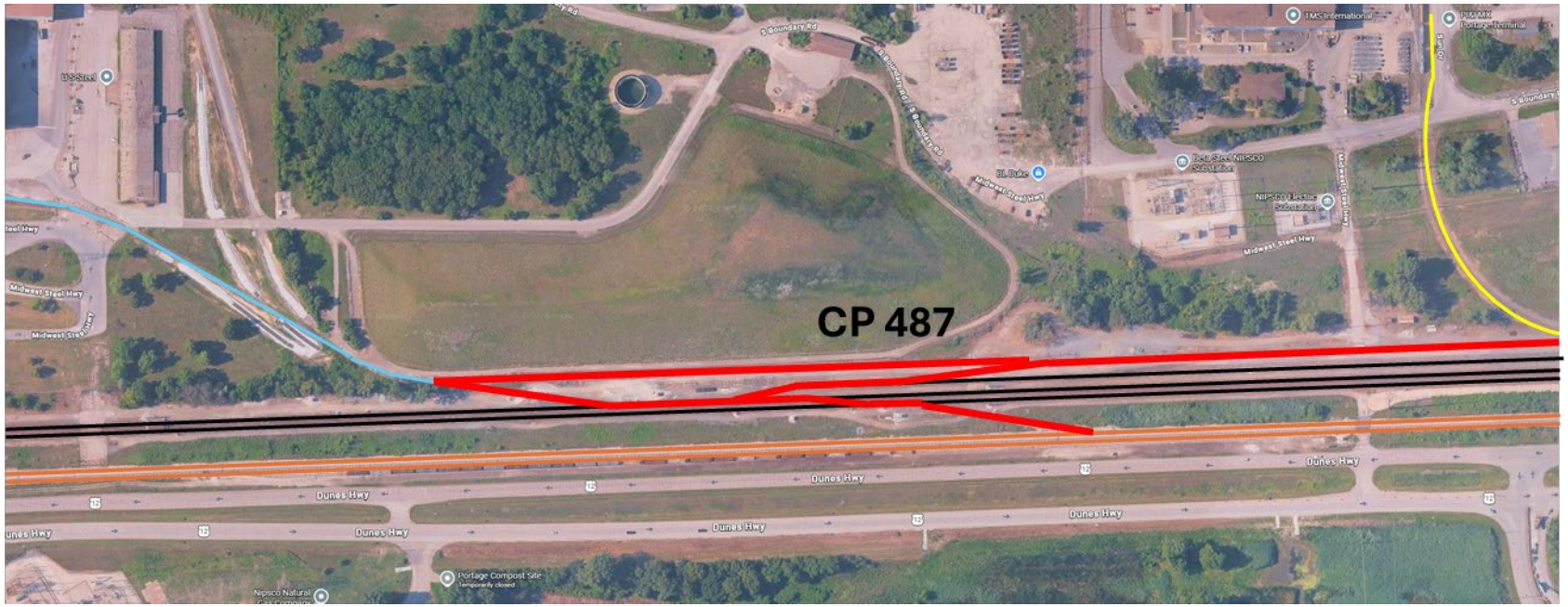
6. Port of Indiana Harbor Detail near NS CP 487 with Current IHB Access Rights over NS Indicated



CSS
NS
USS
POIBH

Current IHB Access Rights

7. Port of Indiana Burns Harbor Detail near NS CP 487 with Requested CSS Access Rights over NS Indicated*



* Note: CSS seeks trackage rights over NS: (1) to access the current point of NS's connection to the POIBH trackage; (2) to access any future point of connection between UP-NS's line and the POIBH trackage (*e.g.*, any potential future connection near the current NS-USS connection point); and (3) to allow for movement between the existing point of CSS's access to USS and any current or future point of connection with POIBH.

CSS
NS
USS
POIBH

Requested CSS Access Rights

Docket No. FD 36873,

Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.

STATEMENT OF DAVID DECH

I am David Dech, President and General Manager of the Northern Indiana Commuter Transportation District (NICTD), which is an independent municipal corporation and a political subdivision of the State of Indiana that operates the South Shore Line commuter rail service.

NICTD is submitting this statement in support of the Chicago, South Shore & South Bend Railroad's (CSS) request for trackage rights in the above-captioned proceeding. The trackage rights are needed to preserve competitive freight rail service for the shippers and receivers at the Port of Indiana Burns Harbor, protect the longstanding public-private partnership between CSS and NICTD, and support the jobs, businesses, and economic infrastructure that depend on reliable rail service throughout Northwest Indiana. I respectfully ask the Board to impose this condition as part of any approval of the proposed Union Pacific-Norfolk Southern transaction.

CSS and NICTD share rail infrastructure, and CSS freight revenue directly supports the maintenance and operation of that infrastructure. This relationship has worked for decades and is an important part of how our railroad operates to serve commuters in Northern Indiana and the greater Chicago region. Since the bankruptcy reorganization of CSS's predecessor, CSS has contributed more than $125 million in payments to NICTD. The arrangement is a strong example of a successful public-private partnership. A reduction in CSS freight revenue resulting from the proposed UP-NS merger would have an adverse direct financial impact on NICTD, the shared infrastructure that supports both freight and commuter rail service, and the ridership that takes over two million passenger trips a year on NICTD.

CSS operates over approximately 110 miles of track in Indiana and Illinois and serves industrial, manufacturing, and port customers throughout Northwest Indiana. Trackage rights over less than one mile of NS, to allow CSS to reach the Port and connect with the Burns Harbor Railroad, would help CSS provide shippers with additional rail options when those shippers otherwise would lose access to competing, neutral service providers. The trackage rights also would

enable Class III carriers to work together and to provide customers with alternatives to a single combined Class I carrier. In addition, expanded use of CSS/NICTD infrastructure would help to relieve congestion on existing freight rail lines. Absent these trackage rights, the merger would reduce competitive options at Burns Harbor.

CSS is a neutral Class III carrier that gives its customers access to multiple Class I railroads. The requested trackage rights are intended to preserve competition by creating additional transportation choices and interchange opportunities and by improving access to short line carriers. The Board's Major Merger Rules recognize the importance of preserving competition when considering a major transaction, and the requested condition furthers that objective.

For these reasons, I respectfully ask the Board to grant the trackage rights that CSS is requesting as a condition on any approval of the proposed UP-NS merger. Preserving competitive freight rail service also protects the NICTD-CSS partnership and the shared railroad infrastructure that supports passenger and freight service across Northwest Indiana and the South Shore corridor. I appreciate the Board's consideration of this request.

I, David Dech, state 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.

David Dech

President and General Manager
Northern Indiana Commuter Transportation District
33 East U.S. Highway 12
Chesterton, IN 46304

Email: dave.dech@nictd.com

Date Signed: November 17, 2026

RUDY YAKYM III
2ND DISTRICT, INDIANA
website: yakym.house.gov

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON WORK AND WELFARE
SUBCOMMITTEE ON OVERSIGHT
SUBCOMMITTEE ON SOCIAL SECURITY

Congress of the United States
House of Representatives
Washington, DC 20515–1402

November 6, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

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

Dear Sir or Madam:

On behalf of Indiana's Second District, I write to express my strong support for the trackage rights conditions that Chicago, South Shore & South Bend Railroad ("CSS") will be filing on November 18, 2026, in the above-captioned proceeding. CSS's requested conditions would preserve competitive freight rail service, protect a longstanding public-private partnership with commuter rail, and safeguard jobs throughout the region I represent. I respectfully urge the Board to impose these conditions as part of any approval of the proposed Union Pacific-Norfolk Southern transaction.

CSS and the Northern Indiana Commuter Transportation District (NICTD), which operates the South Shore Line commuter rail service, share rail infrastructure. CSS freight revenue directly supports the maintenance and operation of this shared infrastructure. If the proposed UP-NS merger reduces CSS's freight revenues, the reduction will have a direct adverse financial impact on NICTD. Since CSS reorganized the prior company that was in bankruptcy, it has paid over $100 million in fees to NICTD. Representing a preeminent public private partnership.

CSS operates approximately 100 miles of track in Indiana and Illinois, providing freight service that supports industrial operations, manufacturing, and port activity across Northwest Indiana. CSS freight service sustains jobs at customer facilities and at CSS itself. The trackage rights CSS has requested, particularly access to Burns Harbor and interchange connections in Chicago, Gary/Tolleston, and the Dillon-Walkerton corridor, would preserve and expand CSS's ability to serve existing customers and attract new business. These rights would also enhance the ability of Class III carriers to work together to provide more shipper options. Without these conditions, the merger risks concentrating rail service in a single combined Class I carrier, potentially reducing service options, increasing costs, and undermining the reliability of rail service for businesses in the region. Reduced rail services may also cause rail volumes to shift to truck, contributing to increased road congestion throughout the region.

CSS is a neutral Class III carrier that currently provides shippers with access to multiple Class I railroads. The trackage rights conditions CSS has requested are pro-competitive: they expand customer transportation choices, create new interchange connections, and provide access to short line carriers. The Burns Harbor request in particular gives Port of Indiana customers additional competitive rail options at no cost to existing operations. The Board's Major Merger Rules recognize that competitive enhancements are "extremely important" in determining whether to approve a major

transaction, and the Board has consistently imposed conditions to preserve competitive rail service for affected communities. The conditions CSS has requested are precisely the type of pro-competitive measures the Board's rules contemplate.

For the foregoing reasons, I respectfully request that the Board impose the trackage rights conditions that Chicago, South Shore & South Bend Railroad will be requesting on November 18, 2026, as conditions to any approval of the proposed UP-NS merger in STB Docket No. FD 36873. These conditions will protect and enhance competitive freight rail service, safeguard the NICTD commuter rail partnership, and preserve jobs throughout Northwest Indiana and the South Shore corridor. I urge the Board to give this request its full and favorable consideration within all applicable laws, rules, and regulations.

Sincerely,



Rudy Yakym
Member of Congress
Indiana's Second District

TANCO terminals, inc.

October 12, 2026

Chief, Office of Case Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

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

Dear Sir or Madam:

I am Ken Long, Managing Director of Tanco Terminals, Inc.. Tanco conducts chemical storage and distribution at or through the Port of Indiana–Burns Harbor. Tanco is submitting this letter to express its support for the trackage-rights and conditions that Chicago, South Shore & South Bend Railroad ("CSS") intends to request in the above-captioned proceeding.

Tanco ships or receives various chemical products through the Port, representing approximately 19,000.90 rail tons in 2025 and currently relies on Norfolk Southern (NS) and Indiana Harbor Belt Railroad (IHB) for access to the North American rail network. CSS's requested trackage rights over approximately one mile of Norfolk Southern yard track between CP 487, and the Port would provide Tanco access to an additional rail carrier and create new routing options.

The additional carrier access would enhance competition, improve service reliability, and provide more transportation choices during congestion or service disruptions. It would also reduce the operational and commercial risks associated with the single rail line used by both NS and IHB to get to Burns Harbor. In particular, our customers would appreciate additional options for rail service and provide a more completive environment for pricing and service. The more options the better. Without reliable and competitive rail options, freight volumes may also shift to truck, contributing to increased road congestion in the Port area. The requested rights can provide these benefits without impairing existing Port operations and with minimal impact on the merging carriers.

For Tanco, an additional rail option would improve operational flexibility and provide an alternative means of moving freight when existing service is unavailable, delayed, or commercially impractical, increasing transportation choices without displacing existing service.

Tanco respectfully requests that the Board grant CSS's requested trackage-rights conditions as conditions of any approval of the proposed transaction in Docket No. FD 36873. These conditions are necessary to protect and enhance competitive rail service and preserve competitive rail service options for Tanco and other Port customers.

Respectfully submitted,

Ken Long,
Managing Director
Tanco Terminals, Inc.