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Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: **Docket No. FD 36873** Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Members of the Surface Transportation Board:

The Open Markets Institute (OMI) respectfully submits these comments in opposition to the proposed merger of Union Pacific Corporation (UP) and Norfolk Southern Corporation (NS). OMI is a non-profit organization whose mission is to safeguard our political economy from concentrations of private power that undermine fair competition and threaten liberty, democracy, and prosperity. For the reasons set forth below, OMI asks that the merger be rejected.

Railroads seeking to merge must demonstrate that the merger is "consistent with the public interest."[1] They carry the legal burden. To determine if a merger involving two Class I railroads is in the public interest, the Surface Transportation Board ("Board" or "STB") must consider, at a minimum, the public interest criteria outlined in 49 U.S.C. § 11324(b). The Board does this by balancing potential benefits such as "improved service, enhanced competition, and greater economic efficiency" with harms including "anticompetitive effects, potential service disruptions, or other merger-related harms."[2] In the end, this merger clearly fails that balancing test. The past is prologue for why a merged Union Pacific and Norfolk Southern would cause significant public harm.

The Merger Presents Significant Harm

Following the passage of the Staggers Act of 1980, the rail industry underwent rapid consolidation.[3] An industry that had more than 70 Class I railroads in 1970 has only six today.[4] Even saying "six railroads" is overstating the options that many shippers have. Most shippers

[1] 49 U.S.C. § 11324(c).
[2] 49 C.F.R. § 1180.1(c).
[3] *Major Rail Consolidation Procedures*, 5 S.T.B. 546 (2001).
[4] *Canadian Pac. Ry. Ltd.—Control—Kan. City S.*, STB Docket No. FD 36500, slip op. at 180 (served Mar. 15, 2023) (Primus, Board Member, dissenting).

face an eastern and western rail duopoly,[5] and many are captive to a single railroad.[6] The result of these mergers has been an unprecedented concentration of economic and political power in the railroad industry. A UP-NS merger would further concentrate power in the industry, accelerating the harms of previous railroad mergers described below.

Higher Rates

Railroads have used their economic power to significantly increase rates. According to the STB's own Rate Reform Task Force, shippers "feel that they have little bargaining power with respect to the contracts they are offered."[7] This is evidenced by the increase in rail rates after the merger frenzy of the 1990s. Adjusted for inflation, rates increased more than 37 percent from 2004 until 2022.[8] Railroads have also significantly increased "non-transportation" rates, including demurrage and accessorial charges. Between 2018 and 2021 demurrage charges increased 78 percent, and accessorial charges increased 132 percent.[9]

Captive shippers are squeezed especially hard. Rates for captive shippers now represent "half of rail revenue," nearly double the share coming from captive shippers in 2004, a sign that railroads are flexing their merger-enabled market power.[10] While railroad volume remained flat between 2004 and 2019, non-competitive farm product revenue increased 195 percent, non-competitive food product revenue increased 430 percent, non-competitive wood product revenue increased 354 percent, non-competitive pulp and paper product revenue increased 241 percent, non-competitive chemical product revenue increased 188 percent, non-competitive stone and glass product revenue increased 139 percent, non-competitive metal product revenue increased 335 percent, and non-competitive transportation equipment revenue increased 358 percent.[11]

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[5] *The Rail Mega-Merger That Could Transform American Supply Chains*, Economist (Jul. 24, 2025), https://www.economist.com/business/2025/07/24/the-rail-mega-merger-that-could-transform-american-supply-chains.

[6] U.S. Gov't Accountability Off., GAO-17-166, *Freight Rail Pricing: Contracts Provide Shippers and Railroads Flexibility, but High Rates Concern Some Shippers* (2016), https://www.gao.gov/assets/gao-17-166.pdf.

[7] Rate Reform Task Force, Surface Transp. Bd., *Report to the Surface Transportation Board* 11 (2019), https://www.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf.

[8] Surface Transp. Bd., Off. of Econ., *Annual Rail Rate Index Study: 1985–2022* (2024), https://www.stb.gov/wp-content/uploads/Annual_Rail_Rate_Index_Study_2022.pdf.

[9] U.S. Gov't Accountability Off., GAO-23-105420, *Freight Rail: Information on Precision-Scheduled Railroading* 34 (2022). Railroads have repeatedly used demurrage charges in a way that did "not [achieve] its statutory purpose of incentivizing the efficient use of railcars." Elvis Ndembe, *Freight Rail Industry Dynamics and STB's 2021 Demurrage Policy Revisions: An Empirical Analysis*, 183 Transp. Pol'y 104154, 1 (2026).

[10] Bill Stephens, *Influential Shipper Group: No Rail Mergers Without Better Service, Pricing, and Competition*, Trains (July 31, 2025), https://www.trains.com/pro/freight/class-i/influential-shipper-group-no-rail-mergers-without-better-service-pricing-and-competition/.

[11] In this analysis, "non-competitive" means traffic with a revenue to variable cost ratio greater than 180 percent. Escalation Consultants, Inc., *Economic Analysis: Consolidation and Increasing Freight Rail Rates* 9–10 & app. at i–v (June 2021), https://www.freightrailreform.com/wp-content/uploads/2021/07/Economic-Analysis-Consolidation-and-Increasing-Freight-Rail-Rates.pdf.

There is no practical avenue for rate relief; because of the inaccessibility and high cost of rate cases, the STB has not adjudicated a rate case since 2018.[12]

A UP-NS merger would accelerate the increase in prices. After the merger, UP would control "50 [percent] of all rail shipments originating on Class I railroads in the United States" and a significantly higher percentage of movements of certain commodities and in certain regions.[13] This creates significant opportunities for UP to use its market power, resulting in higher prices for customers.

First, after the merger, UP could use its increased market power to foreclose interchanges. A customer that previously had access to a UP-CSX route or an NS-BNSF route would be effectively required to take a UP-NS single-line route instead, and, as history has shown, UP would undoubtedly raise prices on such customers. Even in situations where the interchange remains physically open, a merged UP could still raise customer rates through "short hauling" other railroads by carrying freight much farther on its single-line network before handing it off to BNSF or CSX for its final destination, leading BNSF and CSX to increase freight rates for the short-haul trip. In turn, this allows UP to raise rates on its own segment of the trip.

Any "open gateway" conditions are likely to be ineffective in preserving competition and preventing higher rates. UP itself rightly derided such conditions in its Final Brief in opposition to the CPKC merger, saying, "A shipper could never prove a particular gateway rate is not 'commercially reasonable' unless the Board establishes a rule for judging whether such a rate is 'commercially reasonable.'"[14] In its application, UP offers no such rule, despite evidence that its concern with the CPKC gateway conditions has largely borne out. As other commenters in this docket have noted, "[commenters believe that] no gateway rate disputes have been submitted to the Board or an arbitrator post-CPKC merger" despite diversions in rail traffic.[15]

Second, UP could also use its newfound market power to tie a customer's captive, short-haul movements to use of UP's long-haul routes, increasing rates even on non-captive traffic. Even if rates are not explicitly tied, a customer is limited in its ability to negotiate lower rates with UP on competitive traffic if it is also dependent on UP to carry its captive traffic.

Third, a UP-NS merger would almost certainly lead to a second transcontinental merger. The market pressures of being "short hauled" by a merged UP make such a merger inevitable,

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[12] Surface Transp. Bd., *Rail Rate Cases at the STB (1996 to Present)* (2019), https://www.stb.gov/wp-content/uploads/Rate-Case-List-11-19-2019.pdf.
[13] BNSF Ry., *Not All Market Share Metrics Tell the Same Story* 1, https://www.bnsf.com/ship-with-bnsf/preserve-rail-competition/Merger-Market-Share-Facts.pdf (last visited Nov. 15, 2026).
[14] FD 36500, Union Pacific Railroad Company's Final Brief at 15.
[15] Opening Comments of the National Grain and Feed Association at 14, *Union Pac. Corp.—Control—Norfolk S. Corp.*, STB Docket No. FD 36873 (Nov. 17, 2026) (NGFA-5).

despite what BNSF and CSX might claim. This would further increase market power and prices and was explicitly the outcome that the Board wanted to avoid when promulgating the 2001 merger guidelines.[16] In short, UP and NS have failed to demonstrate that the merger would not result in higher prices; a UP-NS merger would grant UP the ability to continue raising rates on shippers, ultimately hurting the American public.

Worse Working Conditions, Pay, and Safety

The negative effects of concentrated economic power in the rail industry go far beyond the rates that shippers pay. Mergers also lead to lower worker pay, degraded working conditions, and the erosion of union bargaining power.[17] Railroads' abuse of this power accelerated as hedge funds and activist investors forced railroad management to adopt so-called "precision scheduled railroading" (PSR) to lower railroads' operating ratios.[18] Under the guise of PSR, UP and NS cut nearly a third of their workforces between 2016 and 2026.[19] Previous rail mergers, including the most recent merger between Canadian Pacific and Kansas City Southern, promised job growth, but the combined CPKC has experienced a net job loss.[20] The same can be expected for a UP-NS merger.

This drastic reduction in workforce size leads to significant worker harm. According to a survey of the Brotherhood of Railway Signalmen (BRS), "57 percent [of offices] say their territories have expanded [and] they can't keep up."[21] According to railroad maintenance-of-way employees, "87 percent [of employees] said working conditions are worse today than five, ten, fifteen years ago" and "91 percent [of employees] attributed [the degradation of working conditions] to PSR," with "65 percent explicitly [citing] reduced manpower" and "pressure to cut corners."[22]

Any UP-NS merger would further consolidate economic power, giving UP a greater ability to squeeze its workers. As part of the transaction, UP is paying NS shareholders $20

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[16] *Major Rail Consolidation Procedures*, 5 S.T.B. 545 (2001).
[17] *Canadian Pac. Ry. Ltd.—Control—Kan. City S.*, STB Docket No. FD 36500, slip op. at 179 (served Mar. 15, 2023) (Primus, Board Member, dissenting) ("In addition to extracting economic rents and undermining democratic processes, highly concentrated industries are also better positioned to degrade working conditions, depress wages, and impair or eliminate organized labor.").
[18] Phillip Longman, *Train Drain*, Wash. Monthly (Oct. 29, 2024), https://washingtonmonthly.com/2024/10/29/train-drain/.
[19] Teamsters Rail Conf., *UP's "Jobs For Life" Promise: Correcting the Record* 2 (Sept. 2026), https://blet.org/wp-content/uploads/2026/09/1_UP-Jobs-For-Life-Jobs-Factsheet.pdf.
[20] Comments in Opposition of the Bhd. of Locomotive Eng'rs & Trainmen, Ill. State Legis. Bd. at 1, *Union Pac. Corp.—Control—Norfolk S. Corp.*, STB Finance Docket No. 36873 (Nov. 13, 2026).
[21] Brotherhood of Maintenance of Way Employes IBT, *Labor Attorney Rich Edelman Provides Scorching Testimony to the Surface Transportation Board*, YouTube (Apr. 29, 2022), https://www.youtube.com/watch?v=UVYAAGNgcM0.
[22] *Id*.

billion in cash in addition to issuing shares to existing NS shareholders.[23] This will require that UP take on significant debt to finance the transaction, as UP's cash and short-term investment position as of the end of the third quarter of 2026 was only $3.1 billion.[24] Notably, UP CEO Jim Vena has explicitly rejected rail unions' requests to fill attrition, a clear indication that UP is planning on paying back this extensive debt with savings from attrition—leading to worse, more unsafe working conditions.[25]

This is made more concerning by the fact that Union Pacific is a particularly bad actor when it comes to using its market power to the detriment of its workers. UP's consistent squeezing of workers leads to safety issues—a 2021 audit of Union Pacific by the Federal Railroad Administration (FRA) found that UP had a "concerningly high number of safety incidents."[26] As of 2024, UP's derailment rate was the "highest of any Class I railroad."[27] More concerningly, the FRA was forced to cancel a safety culture audit after Union Pacific interfered by coaching employees on how to respond.[28] A merger between UP and NS creates a risk that UP's industry-worst safety culture will be adopted at NS. As rail labor unions have noted, "Railroaders have learned from experience that merging two railroads together with differing cultures carries with it inherent safety risks."[29]

UP's "jobs for life" guarantee is no real solution. As BLET national president Mark Wallace aptly described, it is "fool's gold." There are no protections ensuring employees keep the same locations or job descriptions. As Wallace noted, "Unless you have it in writing what your location is going to be, that you're going to be [practicing the same] craft, and that your income is protected, then none of that matters to me—it doesn't matter to our members. . . . Our members didn't take a job in a small town in a community so they could be ripped away from that community [and] have to finish their career somewhere else."[30]

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[23] Union Pac. Corp., Quarterly Report (Form 10-Q) (for the quarterly period ended Sept. 30, 2026) (filed Oct. 22, 2026), https://www.sec.gov/Archives/edgar/data/100885/000010088526000321/R27.htm.
[24] Press Release, Union Pac. Corp., Union Pacific Reports Third Quarter 2026 Results, at 3 (Oct. 22, 2026), https://investor.unionpacific.com/static-files/6f16f7a4-3c9f-496a-8eb2-17944d5d6c65.
[25] Teamsters Rail Conf., *supra* note 19, at 1-2.
[26] Fed. R.R. Admin., *FRA Audit Report: Union Pacific (UP) Railroad* (2021), https://railroads.dot.gov/sites/fra.dot.gov/files/2021-12/Final%202021-UP%20Special%20Audt%2006-1%20Report%2011-3%20clean.pdf.
[27] Press Release, U.S. Senate Comm. on Com., Sci., & Transp., Cantwell Probes Union Pacific Railroad Following Interference With Federal Audit of Company's Safety Culture (July 25, 2024), https://www.commerce.senate.gov/press/dem/release/cantwell-probes-union-pacific-railroad-following-interference-with-federal-audit-of-companys-safety-culture/.
[28] David Shepardson, *Union Pacific Railway Interfered in Federal Safety Audit, Agency Says*, Reuters (July 26, 2024), https://www.reuters.com/business/autos-transportation/union-pacific-interfered-federal-safety-audit-senator-2024-07-26/.
[29] *BLET, BMWED to Oppose the Proposed Union Pacific-Norfolk Southern Merger*, Brotherhood of Locomotive Eng'rs & Trainmen (Dec. 17, 2025), https://blet.org/news/blet-bmwed-to-oppose-the-proposed-union-pacific-norfolk-southern-merger/.
[30] James Baratta, *Union Pacific Tried to Conceal 'Offhand' Remarks Threatening Shippers*, Am. Prospect (Nov. 12, 2026), https://prospect.org/2026/11/12/union-pacific-tried-to-conceal-offhand-remarks-threatening-shippers/.

The STB is required to consider the interests of rail employees affected by the transaction.[31] When evaluating whether the transaction is in the public interest, the STB should listen to the voices of the rail unions that represent 70 percent of UP-NS workers—including BLET, BMWED, BRS, IAM, TCU/IAM, IBEW, and TWU[32]—which have come out in vehement opposition to the merger. UP and NS have failed to show that the interests of employees are protected.

Service Meltdowns

Railroads' actions to implement PSR—reducing workforce, selling off assets, and closing yards—are enabled by concentrated economic power and significantly degrade service quality. In just the decade prior to 2024, a time when Class I railroads were aggressively adopting PSR, railroads experienced 13 major operational meltdowns, averaging more than one a year.[33]

Union Pacific is a particularly notable example of PSR-enabled service meltdowns. For example, during a 2022 meltdown, Union Pacific "issued over 1000 embargoes due to congestion on its network, which was nearly ten times as many embargoes as any other railroad."[34] The Board has previously noted that UP's service meltdowns were "exacerbated by UP's reductions to its [train and engine] workforce and by limitations with the carrier's prior visibility measures."[35]

UP's aggressive cuts have significant consequences for rail customers. For example, Union Pacific's PSR-driven closure of its Global 3 facility significantly contributed to the pandemic-era railroad meltdown. As analyst Larry Gross mentioned, "If you don't have any additional capacity in your hip pocket [because of the closure of Global 3], even moderate disruptions put you in a world of hurt."[36] In another notable 2023 example, "millions of chickens faced starvation because of Union Pacific's failure to deliver animal feed trains on time."[37]

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[31] 49 U.S.C. § 11324(b)(4).
[32] Oleksandr Batrak, *IBEW Joins Six Rail Unions Opposing Union Pacific's Norfolk Southern Deal*, Ry. Supply (Oct. 9, 2026), https://www.railway.supply/ibew-joins-six-rail-unions-opposing-union-pacifics-norfolk-southern-deal/.
[33] *State of the Rails* at 6, *Growth in the Freight Rail Indus.*, Docket No. EP 775 (STB Sept. 20, 2024) (statement of Rick Paterson, Loop Capital), https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1726847223399/308740.pdf.
[34] *Oversight Hr'g Pertaining to Union Pac. R.R.'s Embargoes*, Docket No. EP 772, slip op. at 1 (STB served Apr. 17, 2024). A "meltdown" is a severe deterioration in operational metrics—train speed, terminal dwell, cars online, etc.—over a period of several weeks.
[35] *Oversight Hr'g Pertaining to Union Pac. R.R.'s Embargoes*, Docket No. EP 772, slip op. at 5 (STB served Apr. 17, 2024).
[36] Matthew Jinoo Buck, *How America's Supply Chains Got Railroaded*, Am. Prospect (Feb. 4, 2022), https://prospect.org/2022/02/04/how-americas-supply-chains-got-railroaded/.
[37] Longman, *supra* note 18.

A UP-NS merger is likely to make an already fragile railroad system more fragile. One only has to look to the last UP megamerger, the 1996 merger between Union Pacific and Southern Pacific. That merger caused a two-year rail meltdown, leading the Board to impose a 15-month merger moratorium in the industry.[38] Recent mergers have not fared better. The recent CPKC merger created significant service disruptions, with the Board noting that the combination created "higher terminal dwell at key yards, slower average velocity, and decreased on-time performance and industry spot and pull."[39]

The Board must consider the service problems that a combined UP-NS would create.[40] Given the applicants' track records and the history of rail mergers, a bigger, combined railroad would undoubtedly cause even greater service harms.

Concentrated Political Power and Retaliation

In evaluating the effects of the merger, the Board "must consider, but [is] not limited by, the policies embodied in the antitrust laws."[41] As antitrust scholars have noted, a central purpose of the antitrust laws was to "endow the public with the ability to restrain corporate power" because legislators recognized that unchecked corporate power allowed corporations to "[wield] enough power to undermine democratic institutions."[42] In other words, the antitrust laws function to restrain corporations' political power.

In the current, concentrated railroad market, Union Pacific has already demonstrated that its concentrated economic power translates to concentrated political power. The recent retaliatory threat issued by UP's Chief Executive Jim Vena is a perfect representation of the ways that railroad corporations use their leverage over shippers. Vena's threat—enabled by UP's economic power—discourages political participation by shippers who might have brought their concerns about the merger before the Board.[43]

The applicants' behavior during this merger proceeding is another indication of UP's belligerence, enabled by its concentrated power. Board Member Kloster has already noted that the merger application is lacking in "transparency and depth" and that the railroads "do not offer

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[38] *Pub. Views on Major Rail Consolidations*, 4 S.T.B. 546, 550 (2000).
[39] Letter from Patrick J. Fuchs, Chairman, Surface Transp. Bd., to Keith Creel, President & Chief Exec. Officer, Canadian Pac. Kan. City Ltd., at 1 (June 17, 2025), https://www.stb.gov/wp-content/uploads/309673.pdf.
[40] 49 C.F.R. § 1180.1(c)(2)(iii).
[41] 49 C.F.R. § 1180.1(c)(2).
[42] Daniel A. Hanley, *Realizing the Full Promise of the Antitrust Laws* 15–16 (Mar. 11, 2026), https://ssrn.com/abstract=6434242.
[43] *Union Pac. Corp.—Control—Norfolk S. Corp.*, STB Docket No. FD 36873, slip op. at 3 (S.T.B. Nov. 4, 2026) (stating that the Board has "serious concerns about whether Vena's statement at SWARS—as reflected in the recording—may be influencing certain stakeholders' willingness to participate in this proceeding or share their own views without fear of commercial repercussions.").

a very robust plan" to preserve competition—part of their strategy to "[let] the line out slowly."[44] This is similar to UP's past behavior. In a recent proceeding about Union Pacific's use of embargoes, the Board described UP's conduct as "border[ing] on the contumacious" and stated that its behavior "cannot be viewed as acceptable conduct by a railroad subject to the Board's statutory authority."[45] If the railroads are treating the merger review process with such belligerence, it is a clear indication that they will treat any enforcement of competitive access conditions or oversight with the same belligerence. In the meantime, shippers, communities, and workers will face the harms. A merged railroad that controls an even greater percentage of the nation's freight is sure to continue abusing its concentrated power.

The Merger Will Present Few Benefits

Faulty Promises

UP and NS claim that their merger will take 2.1 million trucks off the road by offering more efficient single-line service and eliminating the need for interchange on short-haul "watershed" traffic and on long-haul traffic.[46] Again, the past is prologue for why these claims should not be taken at face value. In the last decade, UP and NS "grew non-coal carloads by a total of only 0.3%."[47] Achieving UP's targets of 13 percent growth in intermodal volume in three years would require a rate of growth that modern freight railroads have never achieved.[48]

The diffusion of the operating-ratio-maximizing mindset of PSR is the primary reason that railroads, especially UP and NS, have failed to deliver volume growth and bled traffic to trucks. As mentioned in previous sections, as UP and NS have adopted PSR, their service quality has declined. As multiple rail shippers and consultants have noted, "[R]ail service performance is simply not good enough. Shippers [who the consultants] surveyed expressed disappointment in rail's poor on-time performance and lack of shipment visibility and accurate ETA's. . . . [S]hippers are not expecting 'fast' service nor even the same degree of reliability as trucking. But they do expect substantially more transit time consistency and a more responsive approach to problem resolution if they are going to risk their freight on rail."[49]

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[44] *Union Pac. Corp.—Control—Norfolk S. Corp.*, STB Finance Docket No. 36873, Decision No. 37, slip op. at 5 (S.T.B. Sept. 18, 2026) (Kloster, Board Member, concurring).
[45] *Oversight Hr'g Pertaining to Union Pac. R.R.'s Embargoes*, Docket No. EP 772, slip op. at 1 (STB served Apr. 17, 2024).
[46] Applicants' Second Response to Decision No. 21 at 182, *Union Pac. Corp.—Control—Norfolk S. Corp.*, STB Fin. Docket No. 36873 (July 27, 2026), https://www.up-nstranscontinental.com/wp-content/themes/ud/assets/images/UP_NS_July_Filings.pdf.
[47] Martin J. Oberman, *Opinion: UP-NS Still Has a Long Way to Go*, Trains (Oct. 14, 2026), https://www.trains.com/pro/freight/class-i/opinion-up-ns-still-has-a-long-way-to-go/.
[48] Rob Russell, *Rail Growth from Truck Conversions: Projected vs. Realistic – Part 1 of 5*, Railway Age (Jan. 15, 2026), https://www.railwayage.com/freight/class-i/rail-growth-from-truck-conversions-projected-vs-realistic-part-1-of-5/?RAchannel=home.
[49] Adriene Bailey, *Growth in the Freight Rail Industry*, Railway Age (Aug. 29, 2024), https://www.railwayage.com/regulatory/growth-in-the-freight-rail-industry/.

Shippers are not receiving that consistent service. Of the intermodal shippers that shifted from rail to truck, half cited "transit reliability" as a primary driver of their move.[50] The Board can look to the many shipper comments in this docket and others that describe how UP and NS have failed to deliver reliable service and growth. As several analysts have noted in previous proceedings, the railroads' major operational meltdowns are a core reason shippers are opting for trucks.[51]

Given this inconsistency in service quality, carload growth is unlikely. Growth in carload traffic requires customers to invest in infrastructure. As one analysis noted, "The costs of connecting a five-spot working track, a switch lead and a switch into an industrial lead was [sic] $1.5 million on average in 2017. . . . That average cost in 2025. . . is just over $2.2 million to shippers."[52] Because the railroads provide such spotty service, customers have little incentive to undertake large capital investments to grow rail volumes.

Even if UP and NS fix the transit reliability problems, other problems will persist. For example, the railroads have shed locomotive power, terminal and track capacity, and other equipment and infrastructure. UP has estimated that nearly a third of its truck conversions will come from lanes with no rail market share and nearly half of its conversions will come from lanes where rail is priced higher than truck. Without renewed investments, that volume will not be converted. Additionally, as one analysis noted, there is likely not enough container, chassis, or well car capacity to sustain UP's growth projections.[53] UP is unlikely to make sufficient investments in capacity to entice growth; it has already reduced its planned merger-related capital expenditures by $100 million.[54]

Assuming, charitably, that service problems are fixed and investments are made, substantial conversion on the scale of what UP and NS have proposed is *still* unlikely. First, UP and NS have failed to account for the additional, rail-specific costs shippers must bear, such as "additional labor, blocking and bracing materials, specialized loading equipment, training, inspection and time at the shipping facility," when building their truck conversion models.[55] Second, conversion on such a scale is unlikely because the application uses overly optimistic assumptions and models. As one commentator has noted, the models employ overly broad

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[50] James Miller & Michelle Bowling, *Bridging the Rail-Shipper Gap*, Oliver Wyman (Nov. 2025), https://www.oliverwyman.com/our-expertise/insights/2025/nov/shippers-demanding-better-rail-pricing-and-services.html.
[51] Paterson, *supra* note 33, at 6.
[52] Rob Russell, *The Watershed Market and Requirements for Carload Growth: Part 2 of 5*, Ry. Age (Feb. 3, 2026), https://www.railwayage.com/freight/class-i/the-watershed-market-and-requirements-for-carload-growth-part-2-of-5/.
[53] Rob Russell, *Part 3 of 5: Intermodal Conversion – It's Not Easy*, Ry. Age (Feb. 10, 2026), https://www.railwayage.com/intermodal/part-3-intermodal-conversion-its-not-easy/.
[54] David Lassen, *UP scraps some merger-related capacity improvement projects*, Trains (Apr. 30, 2026), https://www.trains.com/pro/freight/class-i/siding-projects-dropped-in-changes-to-capital-plans-for-up-ns-merger/.
[55] Bob Granatelli, *Freight Rail Costs That Don't Appear in Freight Rates*, Railway Age (Oct. 5, 2026), https://www.railwayage.com/regulatory/freight-rail-costs-that-dont-appear-in-freight-rates/.

commodity groupings and geographic generalization, assuming that because a railroad operates within a specific county, it can or will connect to the specific plants producing or receiving the freight.[56]

Finally, there is little reason to believe that a merger is necessary to achieve the volume growth that the applicants desire. The Board must consider whether any benefits of the merger could be achieved by other means.[57] As the Board correctly notes in its Class I merger policy statement, "Private-sector initiatives, such as joint marketing agreements and interline partnerships, can produce many of the efficiencies of a merger while risking less potential harm to the public."[58]

Those means are available. Railroads have a long history of providing successful interline services. The "Alphabet Route" of the 20th century, for example, provided interline service from railroads including the W&LE, the P&WV, and the NYNH&H without exacerbating the issues that arise with concentrated market power.[59] Modern railroads have also successfully used interline service. As former STB Chairman Marty Oberman noted, "BNSF and CSX have moved containers from Los Angeles-Long Beach to Atlanta under an interline agreement for 20 years. UP and NS themselves run efficient interline service via the Meridian Speedway. UP and Canadian National launched the Falcon service in 2023 with Ferromex. And even while this application has been pending, UP signed reciprocal interline agreements with CN. Presumably UP did so expecting them to succeed."[60] UP and NS can also increase volumes with commercial innovation, such as "new customer service tools[] or streamlining the freight quote process."[61]

In anticipation of missing any conversion targets or public benefits, the applicants are already backing off previous conversion claims, saying that they "disagree with the premise that achievement of a merger's public benefits can be measured by traffic diversions."[62] New single-line service, they argue, is a public benefit "regardless of whether a single carload is diverted to UP/NS."[63] Clearly, there is little reason to believe that a merged UP-NS will provide significant growth for the rail industry.

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[56] Bob Granatelli, *A Model Is Not a Shipment*, Railway Age (Oct. 7, 2026), https://www.railwayage.com/regulatory/a-model-is-not-a-shipment/.
[57] 49 C.F.R. § 1180.1(c).
[58] 49 C.F.R. § 1180.1(c).
[59] Adam Burns, *The "Alphabet Route" (Railroad): Photos and History*, Am. Rails (Sept. 15, 2026), https://www.american-rails.com/alphabet.html.
[60] Oberman, *supra* note 47.
[61] Byron Porter, *Bringing a Knife to a Gunfight*, The Pacific (Jun. 2, 2026), https://byronporter.substack.com/p/bringing-a-knife-to-a-gunfight.
[62] Applicants' Second Response to Decision No. 21, *supra* note 46, at 113.
[63] *Id*. at 67.

Measures to Preserve Competition Are Insufficient

While harms can never truly be "offset,"[64] UP and NS have provided little in the way of competitive enhancements to create net benefits. The applicants' offer of "committed gateway pricing" (CGP) to prevent foreclosure at gateways leaves much to be desired. CGP would only apply to "manifest carload shipments between UP/NS sole-served facilities… and BNSF or CSXT sole-served facilities… that are interchanged in Chicago, St. Louis, Memphis, or New Orleans. CGP does not apply to intermodal or unit train shipments, shipments of finished vehicles, shipments to and from storage-in-transit facilities or facilities owned by rail carriers or their affiliates, or certain specialized shipment types that present heightened operational capacity and risk concerns."[65] As a result, other railroads have argued that CGP covers less than 1 percent of rail traffic.[66] Worse yet, CGP would end after the Board's oversight period expires.

UP and NS's service assurance plan is also poor. The arbitration program that they propose "applies only to non-exempt commodities shipped under tariff service[] and does not apply to contract service or exempt commodities, unless otherwise agreed."[67] This provision is a paper tiger, given that the overwhelming majority—more than 75 percent—of rail freight is shipped under contract rates, according to a 2016 Government Accountability Office study.[68]

While the Board may be inclined to accept the merger with competitive enhancements or with a service assurance plan, it should not do so. History shows that behavioral remedies are often a poor way to circumscribe the heightened market power of a powerful firm.[69] As former Board Member Primus wrote in his dissent in the CPKC merger, "[R]egulated firms are able to work around such restrictions, particularly as circumstances change over time" and "[i]t can also be difficult for agencies and courts to enforce these remedies effectively and address loopholes."[70]

The history of the rail industry generally, and Union Pacific specifically, exposes the fallacy that behavioral remedies can successfully address merger harms. For example, terms regarding BNSF's trackage rights in the Lake Charles area, rights originally granted as part of the

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[64] It is difficult to scientifically or objectively balance the harms to one shipper/worker/community to potential benefits to other shippers/workers/communities.
[65] *Union Pac. Corp.—Control—Norfolk S. Corp.*, Docket No. FD 36873, slip op. at 20 (S.T.B. May 28, 2026).
[66] *Id.*
[67] Application, Service Assurance Plan, Vol. 2, App. B.
[68] U.S. Gov't Accountability Off., *supra* note 6, at 14.
[69] *See* Daniel A. Hanley, *The Structural Directive: Vindicating the High Purpose of the Antitrust Laws*, CPI Antitrust Chron., June 2026, at 11-12 ("[B]ehavioral remedies. . . allow a liable party the opportunity to engage in creative lawyering to circumvent their restrictions and avoid potentially decades of court-supervised micromanagement and supervision of a firm's behavior.").
[70] *Canadian Pac. Ry. Ltd.—Control—Kan. City S.*, STB Docket No. FD 36500, slip op. at 179 (STB served Mar. 15, 2023) (Primus, Board Member, dissenting).

UP-SP merger in 1996, were still being decided before the STB 30 years after the merger.[71] As BNSF noted, "UP created [the Lake Charles] problem over 30 years ago during the UP/SP merger by promising to provide BNSF with competitive access to customers on a rail line that UP owned jointly with KCS, without obtaining KCS's consent for that BNSF access. Rather than fixing the problem, UP spent years fighting access after the fact. . . . For many customers, a remedy delayed that long is a remedy that provides little meaningful value."[72]

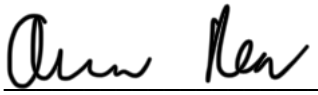
Even for this merger, UP's leadership has already shown signs that it will render any trackage rights agreements useless. As UP CEO Jim Vena noted, "If [Union Pacific] allowed X railroad to run on our railroad for 800 miles, we would charge them a per car-mile charge that actually would make it more expensive for them to get to that destination… I thought about just agreeing [to competitors' trackage rights requests] because guess what: We would just reset the price higher for us."[73] Clearly, no number of competitive "remedies" can fix a fundamentally bad merger.

[71] *STB Turns Down BNSF Bids to Serve Customers on Union Pacific (Additional Update)*, Trains (July 21, 2026), https://www.trains.com/pro/regulatory/stb-turns-down-bnsf-bid-to-serve-quarries-on-union-pacific/.
[72] *Id*.
[73] *Union Pacific Blasts Rival Railroads' Trackage Rights Requests*, FreightWaves (Sept. 18, 2026), https://www.freightwaves.com/news/union-pacific-blasts-rival-railroads-trackage-rights-requests.

Conclusion

The Open Markets Institute strongly opposes the proposed merger between Union Pacific and Norfolk Southern and asks that the STB reject the merger. UP and NS have clearly failed to meet the public interest burden that is necessary for the STB to approve the transaction. The transaction would clearly cause significant public harm while presenting few, if any, public benefits. Customers will face higher rates and worse service, and workers will face worse working conditions, pay, and safety. A merged UP-NS will also wield outsized political power, enabling retaliation against customers. These are a mere sampling of the harms that this merger will present. Other parties have submitted comments regarding how this merger will hurt specific railroad crafts, farmers, manufacturers, trackside communities, short line railroads, and others. It is important that their voices be heard and that the Board reject this harmful merger.

Respectfully submitted,



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Dated: November 18, 2026
cc: All Parties of Record

CERTIFICATE OF SERVICE

I certify that on November 18, 2026, I served a copy of this document by electronic mail or first-class mail, postage pre-paid, upon all parties designated as Parties of Record on the service list of this docket at the time of this filing.

Sincerely,



Arnav Rao
Transportation Policy Lead
Open Markets Institute

November 18, 2026