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Honorable Chairman Patrick J. Fuchs
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Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423

November 18, 2026

Re: Finance Docket No. 36873, Union Pacific Corporation and Norfolk Southern Corporation, Control and Consolidation – Comment Opposing Amended Application

The Office of the Indiana Attorney General ("Indiana") respectfully submits this comment to the Surface Transportation Board ("Board") to oppose the proposed merger of Union Pacific Corporation ("UP") and Norfolk Southern Corporation ("NS") (collectively "the Applicants"). As the "Crossroads of America,"[1] Indiana has a strong interest in enhancing rail infrastructure and affordability for in-state shippers and protecting safety for Hoosier rail workers.[2] Indiana also carries the authority to

[1] H.C.R. 6, 80th Leg., Reg. Sess. (Ind. 1937) (formally recognizing "Crossroads of America" as Indiana's state motto).

[2] *See* Press Release, U.S. Senator Todd Young, *Young Announces More than $75 Million for Rail Infrastructure Projects Across Indiana* (Oct. 21, 2026), https://www.young.senate.gov/newsroom/press-releases/young-announces-more-than-75-million-for-rail-infrastructure-projects-across-indiana/;
Press Release, SMART-TD, *SMART-TD Endorses U.S. Sen. Mike Braun (R-Indiana) as the Next Governor of the Hoosier State!* (Apr. 12, 2024), https://www.smart-union.org/smart-td-endorses-u-s-sen-mike-braun-for-indiana-governor/ (emphasizing now-Governor Mike Braun's pro-rail worker legislative efforts).

investigate mergers, acquisitions, and other transactions that may substantially lessen competition under Section 7 of the Clayton Act.[3]

The Board in its exclusive jurisdiction[4] is faced with a historic decision: whether a combined UP-NS—the first transcontinental, end-to-end rail system of its kind in the United States—will be in the public interest and enhance competition within the rail industry under the Board's 2001 Major Rail Consolidation Procedures ("2001 Rules").[5] As the Board has made clear in requesting additional information from Applicants' Amended Application, the UP-NS merger is the first major rail merger to be evaluated under the 2001 Rules, which were "forged following real-world consequences emanating from a 1990s wave of major mergers,"[6] including UP's acquisition of Southern Pacific Railroad in 1996 and NS's partial acquisition of Consolidated Rail in 1997.[7] The Board could not be more correct in thinking the "consequences [of a combined UP-NS] cannot be ignored, assumed away, or overlooked based on vague intentions or empty promises."[8]

Indiana is opposed to the Applicants' Amended Application and has two goals in providing this comment. First, to illuminate the inherent competitive harms posed by the Applicants' proposed transaction, Indiana wants to emphasize key antitrust principles to consider when reviewing the Applicants' Amended Application while

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[3] 15 U.S.C. § 18.
[4] 49 U.S.C. §§ 11321–11325.
[5] 49 C.F.R. § 1180.1(c) ("[M]ergers serve the public interest only when *substantial and demonstrable gains* in important public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms.") (emphasis added); 49 U.S.C. § 11324(c) (authorizing the Board to approve a rail merger when it is in the public interest); 49 U.S.C. § 10101 (directing the Board to promote safety, efficiency, good working conditions, an economically sound and competitive rail transportation system, and the needs of public and national defense when evaluating a major rail merger).
[6] *See Union Pac. Corp.–Control–Norfolk S. Corp.* (Decision No. 21), FD 36873 (STB served May 28, 2026) ("Decision 21"), slip op. at 18.
[7] *See Public Views on Major Rail Consolidations*, 4 S.T.B. Ex Parte No. 582, at 550, 553 n.10 (Mar. 17, 2000) (imposing a fifteen-month moratorium on major rail mergers, citing UP's 1996 acquisition of Southern Pacific Railroad and NS's 1997 partial acquisition of Consolidated Rail within the relevant history leading up to the rail merger moratorium); *W. Coal Traffic League v. STB*, 216 F.3d 1168 (D.C. Cir. 2000) (upholding the Board's rail merger moratorium).
[8] Decision 21, slip op. at 18.

mapping those principles onto the Board's 2001 Rules. Second, Indiana hopes to communicate the severe downstream, multi-industry, on-the-ground impacts a rail merger like the kind proposed by the Applicants could have—relying on Indiana as a case study.

Broad Antitrust Considerations. Federal antitrust law has long recognized the myriad horizontal and vertical anticompetitive harms that can arise from the merger of competing firms.[9] As eloquently summarized by our colleagues in Texas,[10] a merger violates federal antitrust law if it (i) eliminates substantial head-to-head competition between firms; and (ii) limits (or threatens to limit) rivals' access to products or services necessary to compete within a relevant market.[11] Furthermore, empirical economic evidence shows a positive correlation between high market concentration and high customer prices,[12] and federal antitrust enforcers have successfully brought numerous cases based on the downstream harms posed by a horizontal merger.[13]

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[9] *See* U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, MERGER GUIDELINES §§ 2.2, 2.5.A, 2.5.C, 2.10 (2023) (recognizing the following head-to-head and incidental harms to competition posed by a horizontal merger: (i) the elimination substantial competition between firms or entry into a concentrated market, (ii) the reduction of rivals' access to products or services necessary for competition; and (iii) the suppression of competition within labor markets based on lowered wages or otherwise worsened working conditions post-merger).

[10] *See* Hon. Ken Paxton (Office of the Texas Attorney General), Comment on Deficiencies in the Amended Application, *Union Pac. Corp.–Control–Norfolk S. Corp.*, FD 36873, No. 312118 (Aug. 28, 2026).

[11] *Id.* at 2–6, 9–11.

[12] *See* Herbert Hovenkamp & Carl Shapiro, *Horizontal Mergers, Market Structure, and Burdens of Proof*, 127 YALE L. J. 1996, 2001–02 (2018) (collecting economic studies).

[13] *See*, *e.g.*, *United States v. Philadelphia National Bank*, 374 U.S. 321, 370 (1963) (holding that "[a]nticompetitive effects in one market" cannot "be justified by procompetitive justifications in another"); *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1053 (5th Cir. 2023) ("[T]here are myriad ways in which [a merged firm] could engage in foreclosing behavior . . . such as by making late deliveries or subtly reducing the level of support services."); *United States v. JetBlue Airways Corp.*, 712 F. Supp. 3d 109, 152 (D. Mass. 2024) ("'[I]f anticompetitive effects of a merger are probable in *'any'* significant market," the merger violates Section 7 [of the Clayton Act].") (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 337 (1962)) (emphasis added); *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1082 (D.D.C. 1997) (holding that evidence of two merging stores charging higher prices in areas where each store faced no competition demonstrated an adverse effect on competition, as it showed the combined stores' ability to raise prices above competitive levels).

The 2001 Rules' "Public Interest" and "Enhanced Competition" Requirements. The 2001 Rules require that the Board must adhere to something beyond standard federal merger review under Section 7 of the Clayton Act. The Board must evaluate whether a merger of two Class I railroads is in the public interest.[14] To satisfy the public interest requirement, applicants must show that the merger would produce "substantial and demonstrable gains in important public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency."[15] These benefits must "outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms."[16] The Board is further directed to promote safety, efficiency, good working conditions, an economically sound and competitive rail transportation system, and the needs of public and national defense when evaluating a major rail merger.[17] In absence of these public benefits to rail service, competition, and economic efficiency, "the Board *does not favor* consolidations that reduce the transportation alternatives available to shippers,"[18] even if a proposed Class I railroad merger could provide more efficient and responsive transportation.[19]

When evaluating the competitive effects of a merger, the Board also sets a higher bar for rail applicants to receive merger approval. While government enforcers and private plaintiffs under Section 7 of the Clayton Act must show that a merger may substantially lessen competition within a relevant market for it to be considered unlawfully anticompetitive,[20] the Board requires major rail applicants to

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[14] *See* 49 U.S. § 11324(c).
[15] 49 C.F.R. § 1180.1(c).
[16] *Id.*
[17] 49 U.S.C. § 10101.
[18] 49 C.F.R. § 1180.1(a) (emphasis added).
[19] 49 C.F.R. § 1180.1(c) ("Although further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately.").
[20] 15 U.S.C. § 18.

demonstrate that their proposed merger would both *preserve and/or enhance* competition within the rail industry.[21]

Applicants' claim that end-to-end rail consolidations do not present the risk of foreclosure or anticompetitive harm is false. The 2001 Rules alone make expressly clear that "[a]ny railroad combination entails a risk that the merged carrier would acquire and exploit increased market power."[22] The Board has repeatedly recognized that where a complementary merger between two Class I railroads would result in vertical competitive harm—by presenting the risks of diminished service to competing line hail carriers, impaired tracking rights, or increased prices on interline movements—the merger may not be consistent with the public interest or enhance competition under the 2001 Rules.[23] Moreover, the Board has specifically rejected the notion that end-to-end railroad combinations are incapable of diminishing or eliminating competition.[24] These rebuttals to merging firms' efficiency claims post-consolidation are consistent with concerns raised by the 2023 Merger Guidelines promulgated by the U.S. Department of Justice and Federal Trade Commission.[25]

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[21] *See* 49 C.F.R § 1180.1(c) (emphasis added).
[22] *See* 49 C.F.R § 1180.1(c)(2)(i).
[23] *See Can. Nat'l Ry. Co.–Control–EJ&E W. Co.* (Decision No. 16), FD 35087 (S.T.B. served Dec. 24, 2008) ('CN/EJ&E'), slip op. at 15 (recognizing "the vertical effects that might result" where an acquiring carrier gains "the potential … to impair the terms of trackage rights, interchange, or service associated with competing line haul carriers" that work with the acquired carrier); *Can. Nat'l Ry. Co.–Control–Iowa N. Ry. Co.* (Decision No. 3), FD 36744 (S.T.B. served Jan. 14, 2025) ('CN/IANR'), slip op. at 7–9 (recognizing that acquiring carrier "might raise its rivals' costs" through its control of "a line that currently provides neutral access to alternative line haul railroads"); *Can. Pac. Ry. Ltd.–Control–Kans. City. S.* (Decision No. 35), FD 36500 (S.T.B. served Mar. 15, 2023) ('CP/KCS'), slip op. at 65–67 ("Even in mergers … without horizontal network overlap … potential adverse competitive impacts can include diminished service and/or increased prices on interline movements that have the effect of foreclosing efficient competitive options. These adverse impacts may arise where … a carrier that once provided neutral access to multiple competing railroads is then acquired by one of those competitors and has an incentive post-merger to favor its own new single-line routing over interline alternatives.")
[24] *CP/KCS*, slip op. at 4, 27 ("Even end-to-end mergers . . . can pose competitive risks, and indeed this decision overturns prior agency precedent that did not sufficiently recognize such concerns.").
[25] U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, MERGER GUIDELINES § 3.3 (2023) (requiring merging parties to demonstrate four additional criteria for their claimed efficiencies to adequately rebut the post-merger reduction of competition: (i) the efficiency could not be achieved without the merger, (ii) the efficiency is independently and objectively verifiable, (iii) the efficiency will prevent a reduction in competition, and (iv) the efficiency is not the result of other anticompetitive conduct).

Harm to Indiana Shippers. A combined UP-NS will likely increase prices for Indiana shippers without substantial benefits to competition. Given the Applicants' proposed Committed Gateway Pricing (CGP) program applies to less than one percent of rail traffic,[26] many Indiana shippers will likely not enjoy the locked-in 70th percentile rate for interline charges that UP and NS would be willing to set for eligible shippers. Even for the few Indiana shippers that would get to choose CGP as an alternative to the shipper-centered mandatory pricing standards laid out by Association of American Railroad's Railway Accounting Rules,[27] the Applicants' own economist, Dr. Mark Israel, acknowledges that CGP alone does not perfectly rebut the loss of independent pricing competition in a post-UP-NS world.[28] Moreover, Dr. Mark Israel's CGP analysis indicates that 50% of Indiana shippers would be likely to face rate increases.[29]

The risk of increased rates for shippers following the UP-NS merger has intensified in light of the recently unearthed retaliatory pricing comment made by UP's CEO Jim Vena during the Southwest Association of Rail Shippers conference in March 2026. Suppose UP CEO Jim Vena were to act on his claim (or offhanded "humor" as Mr. Vena has recently called it)[30] that UP would increase rates for

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[26] Decision No. 21, at 20.

[27] Under Rule 11 of the Railway Accounting Rules, each rail carrier sets its own interline rates, and the shipper combines those rates to calculate end-to-end price. This gives shippers access to all rail carriers' rates to allow shippers to compare and make decisions on the most cost-effective option for their transportation needs. *See Railway Accounting Rules*, AM. ASS'N OF R.RS., https://public.railinc.com/sites/default/files/documents/RAR.pdf (last visited Nov. 18, 2026). *See also Rule 11 Rail Rates Explained: Split-Rate Moves and How to BoL Them (2026)*, STEEL WHEEL LOGISTICS (May 16, 2026), https://steelwheellogistics.com/blog/rule-11-rail-rates-explained.

[28] *See* UP & NS, Amended Application, *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873, No. 311221, Verified Statement of Mark Israel § IV.B.3, ¶ 177 ("Israel Report") ("[T]he CGP proposal creates an incentive to compete less aggressively"); *id.* at ¶ 167 ("[U]sing the incumbent carrier's rate (UP/NS in this application) as an input for establishing the gateway rates can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur" absent CGP as a gateway pricing mechanism).

[29] *See* Grand Trunk Corporation, Comments on Completeness of Union Pacific and Norfolk Southern's Amended Application, *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873, No. 311315, Figures 1–3 (May 8, 2026).

[30] James Baratta, *Union Pacific Tried to Conceal 'Offhand' Remarks Threatening Shippers*, THE AM. PROSPECT (Nov. 12, 2026), https://prospect.org/2026/11/12/union-pacific-tried-to-conceal-offhand-remarks-threatening-shippers/; Stuart Chris, *EXCLUSIVE: 'Humor is Good,' Union Pacific CEO Says*

shippers who "didn't want a seamless railroad by three or four extra percent to teach [those opposed shippers] a lesson."[31] This would go beyond a mere *incentive* to raise prices. In a traditional antitrust investigation, such a statement could be treated as a textbook indication that a firm was aware of its substantial market power, referring to the firm's "ability to raise prices above those that would be charged in a competitive market."[32]

Indiana Industries Affected by Applicants' Proposed Transaction. A combined UP-NS is poised to have a detrimental impact on every vertebra of Indiana's economic backbone. Sitting within Watershed region with multiple vital East-West interchange points via Chicago and Kansas City, Indiana carries intersections for five Class I railroads: NS, CSX Transportation, Canadian National Railway ("CN"), Canadian Pacific Kansas City Limited ("CPKC"), and UP—a combined 3,124 miles of rail.[33] NS has the most Class I rail mileage in the State, with 1,439 miles spanning Indiana.[34] NS's Indiana lines include the Chicago Line subdivision (which runs from Chicago, along Lake Michigan, through La Porte, and to the La Porte-St. Joseph County line) and the NS Chicago District subdivision (which runs from Chicago, through Hammond and Valparaiso, to the La Porte-Starke County line).[35] Some smaller railways, like the Indiana & Ohio Railway Company

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of Video Rate Threat, FREIGHTWAVES (Nov. 5, 2026), https://www.freightwaves.com/news/exclusive-humor-is-good-union-pacific-ceo-says-of-video-rate-threat.

[31] James Baratta, *Union Pacific Tried to Conceal 'Offhand' Remarks Threatening Shippers*, THE AM. PROSPECT (Nov. 12, 2026), https://prospect.org/2026/11/12/union-pacific-tried-to-conceal-offhand-remarks-threatening-shippers/.

[32] *United States v. E. I. du Pont de Nemours & Co*., 351 U.S. 377, 391 (1956). *See also United States v. JetBlue Airways Corp.*, 712 F. Supp. 3d 109, 152 (D. Mass. 2024) ("The key question in determining whether a transaction may substantially lessen competition by dampening the firm's disruptive force is whether the firm 'play[s] a special role in th[e] market that constrains prices.'" (quoting *H&R Block, Inc.*, 833 F. Supp. 2d 36, 80 (D.D.C. 2011))); *United States v. Microsoft Corp.*, 253 F.3d 34, 56–57 (D.C. Cir. 2001) (citing a plethora of behavioral evidence in upholding lower court's monopolization holding, adding that a defendant's "pattern of exclusionary conduct could only be rational 'if the firm knew that it possessed monopoly power'" (internal citations omitted)).

[33] *Freight in Indiana*, ASS'N OF AM. R.RS., https://www.aar.org/indiana/ (last visited Nov. 18, 2026).

[34] *Id.*

[35] *Regional Freight Rail Network*, NW. IND. REG'L PLAN. COMM'N, https://www.in.gov/nirpc/transportation/freight-planning/regional-freight-rail-network/ (last visited Nov. 18, 2026).

("IORY"), are already seeking trackage rights from NS over several interchange points between Ohio, Indiana, and Illinois "to insulate IORY and its customers from any potential negative impacts of the Proposed [UP-NS] Transaction."[36] Understandably, a complementary merger between NS and UP necessitates concern for the rail-reliant segments of Indiana's supply chain.

Indiana is a national leader in manufacturing and production for several industries that are reliant to some extent on freight rail transportation. including steel production, automotive manufacturing, chemical manufacturing, agriculture, and coal production. The industry-by-industry breakdown of projected impacts flowing from UP's acquisition of NS is illustrated below:

- **Steel and Automotive Manufacturing.** Indiana is the largest steel producer in the United States,[37] with 10.8 million tons (117,600 units) originating in Indiana and 17.6 million tons (153,500 units) terminating in Indiana.[38] A combined UP-NS is projected to control 80% of metal product shipments to and from Indiana.[39] Any delays or increased shipper rates for these materials would likely impact Indiana's automotive manufacturing market, which accounts for $30.68 billion (or 6%) of Indiana's total gross domestic product.[40]
- **Chemical Manufacturing.** Indiana is the second-largest chemicals manufacturer in the United States, with chemical exports being valued at $33.3 billion.[41] In terms of chemical rail movement, 3.9 million tons (or 42,100 units) originate in Indiana and 5.1 million tons (or 53,200 units)

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[36] Indiana & Ohio Railway Company, Description of Anticipated Responsive Application, *Union Pac. R.R. Co—Control—Norfolk Southern*, FD 36873, No. 312264 (Sep. 9, 2026).
[37] *U.S. Steel Production*, STEELORBIS, https://www.steelorbis.com/steel-production-by-country/us-steel-production/ (last visited Nov. 18, 2026).
[38] *Freight in Indiana*, ASS'N OF AM. R.RS., https://www.aar.org/indiana/ (last visited Nov. 18, 2026).
[39] *UP-NS Merger Factsheet*, BSNF, https://bnsf.com/discover/preserverailcompetition/merger-resource-center (last visited Nov. 18, 2026).
[40] *Indiana*, ALL. FOR AUTO. INNOVATION (2024), https://www.theautos.org/industry-insights/in.
[41] *Chemical Manufacturing Top Six in 2025*, U.S. BUREAU OF LAB. STATS. (Aug. 28, 2026), https://www.bls.gov/mxp/publications/industry-pamphlets/charts/chemical-exports-top-6.htm.

terminate in Indiana.[42] The kinds of chemicals transported by rail into and out of Indiana are essential for almost every corner of commerce, including agricultural production, water treatment, and plastic and polymer production, among others.[43]

- **Agriculture.** Indiana is one of the top five producers of corn and soybeans in the United States.[44] Corn and soybean comprise the majority of the 8.3 million tons (or 82,800 units) of farm products originating in Indiana.[45] From ethanol and biofuel production to feeding poultry and livestock on farms throughout the Midwest,[46] impairing Indiana's capacity to efficiently deliver corn and soybeans via the U.S. rail system could blunt Indiana's economy as well as food and energy systems throughout the United States.
- **Coal.** Indiana is one of the top ten-leading coal producers in the country,[47] with 10.6 million tons (or 90,400 units) originating in Indiana and 17.6 million tons (or 153,500 units) terminating in Indiana.[48] Because coal remains an essential power source for electricity in Indiana[49] and continues to fuel Indiana's industrial and steel manufacturing,[50] any supply chain

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[42] *Freight in Indiana*, ASS'N OF AM. R.RS., https://www.aar.org/indiana/ (last visited Nov. 18, 2026).
[43] *Do Trains Move Chemicals*?, ASS'N OF AM. R.RS., https://www.aar.org/issue/freight-rail-chemical-industry/ (last visited Nov. 18, 2026); *Rail Safety*, AM. CHEM. COUNCIL, https://www.americanchemistry.com/better-policy-regulation/transportation-infrastructure/rail/rail-safety (last visited Nov. 18, 2026).
[44] *Corn, Grain - Production, Measured in BU - Year - Sep Forecast - United States Ranking – 2026*, U.S. DEPT. OF AGRIC. (Sep. 2026) (on file with Indiana); *Soybeans - Production, Measured in BU - Year - Sep Forecast - United States Ranking – 2026*, U.S. DEPT. OF AGRIC. (Sep. 2026) (on file with Indiana).
[45] *Freight in Indiana*, ASS'N OF AM. R.RS., https://www.aar.org/indiana/ (last visited Nov. 18, 2026).
[46] IND. SOYBEAN ALL. & IND. UNIV. KELLEY SCH. OF BUS., THE VALUE OF INDIANA AGRICULTURE (Oct. 2019) (on file with Indiana).
[47] Bruno Venditti, *Mapped: The States That Produce the Most U.S. Coal*, YAHOO! FINANCE (Sep. 8, 2026), https://finance.yahoo.com/energy/articles/mapped-states-produce-most-u-174805555.html (for visualizations, citing *Coal Production and Number of Mines by State and Mine Type, 2024 and 2023*, U.S. ENERGY & INFO. ADMIN., https://www.eia.gov/coal/annual/pdf/table1.pdf (on file with Indiana).
[48] *Freight in Indiana*, ASS'N OF AM. R.RS., https://www.aar.org/indiana/ (last visited Nov. 18, 2026).
[49] *Electricity in Indiana in 2025/2026*, LOWCARBONPOWER, https://lowcarbonpower.org/region/Indiana (last visited Nov. 18, 2026).
[50] *Indiana Coal by the Numbers*, IND. DEP'T OF NAT. RES., https://www.in.gov/dnr/reclamation/coal-in-indiana/indiana-coal-by-the-numbers/ (last visited Nov. 18, 2026).

bottle-necking affecting coal distribution or access in Indiana poses a detriment to Indiana's energy and industrial infrastructure.

Indiana urges the Board to consider carefully the antitrust principles above, including the Board's own requirement to evaluate what is in the public interest. As detailed throughout this comment, the Board's decision will greatly impact shippers, rail workers, and citizens of the Hoosier State. We appreciate the Board's consideration of this submission.

Sincerely,



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