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Before the Surface Transportation Board

Docket No. FD 36873

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

# Comments of Recycled Materials Association

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The Recycled Materials Association ("ReMA") submits its comments to the Surface Transportation Board ("STB" and "Board") on the application of Union Pacific Railroad ("UP") to acquire Norfolk Southern Railway ("NS") (collectively "Applicants") in STB Finance Docket No. 36873. The proposed transaction is the largest rail merger ever to be proposed in the United States. If approved, it would vest unprecedented market power in the combined UP/NS network which would extend across the United States from coast to coast. ReMA has substantial concerns that this merger will cause systemic competitive harm and potentially severe service disruption that outweigh the claimed merger benefits. Also, because the Applicants have failed to adequately address these risks by offering remedies that would mitigate the harm and enhance rail-to-rail competition, ReMA does not believe that the transaction would serve the public interest and, thus, it should be denied by the STB.

## I. Statement of Interest

ReMA, formerly the Institute of Scrap Recycling Industries, represents more than 1,700 companies that play a critical role in supplying recycled materials to America's manufacturing industries. The recycled materials industry is integral to the U.S. economy, transforming surplus and end-of-life materials into essential components of daily life and providing high-quality

resources for everything from national infrastructure to consumer products. The roads we drive on and the cars we drive in, the rebar that strengthens our buildings and beams that support our bridges, the wires that bring electricity and communications into our homes and offices, and the boxes that bring consumer goods and food to our homes are all made with recycled materials. In 2025, the industry generated $184 billion in economic impact and supported over 603,000 direct and indirect jobs across the nation.[1]

In the same year, the domestic recycled materials industry processed over 135 million metric tons of recycled material including 65 million metric tons of recycled iron and steel, and 42 million metric tons of recovered paper and fiber. These are critical components of the manufacturing supply chain, for example, nearly 70% of the steel manufactured in the United States is made from recycled iron and steel.[2] The transportation of recycled materials connects collection and processing points with mills, smelters and other manufacturers across an extensive logistics network, moving millions of tons of valuable resources while creating significant economic value, supporting national security, and fostering employment opportunities across the supply chain.

Freight rail is central to that logistics network, ensuring recycled materials reach our nation's steel mills, aluminum and copper smelters, paper mills, and plastics and glass reclaimers. For many ReMA members, rail is the only practical mode of transportation – particularly for commodities that cannot be moved efficiently or safely by truck, whether due to

[1] Recycled Materials Ass'n, *Our Impact*, https://www.recycledmaterials.org/our-impact/ (last visited Nov. 18, 2026); Recycled Materials Ass'n, *ReMA Releases Economic Impact Study on Earth Day, Highlighting Recycling as a $184 Billion Engine of U.S. Manufacturing and Environmental Progress* (Apr. 22, 2026), https://www.recycledmaterials.org/press-release/rema-releases-economic-impact-study-on-earth-day-highlighting-recycling-as-a-184-billion-engine-of-u-s-manufacturing-and-environmental-progress/.

[2] Steel Mfrs. Ass'n, *About Us*, https://steelnet.org/about-us/ (last visited Nov. 18, 2026).

distance, density, or sheer volume. Recycled materials may require specialized rail equipment, including gondolas, high-cube boxcars, hoppers, and other commodity-specific cars that are not readily replaced by trucks.

Whether these materials travel more than 200 miles or considerably less, there are also many instances where shipments of recycled material must move by rail to accommodate manufacturers' operational needs. For example, domestic steel mills that rely on recycled metal often require rail service even when located within 200 miles, simply to manage the vast volumes associated with their feedstock requirements. For these facilities, trucking is not an effective competitive alternative to rail.

Because many recycled-materials operations are served by only a single railroad they are "captive" and face monopolistic pricing and other unreasonable practices with limited options or remedies. For cross-country shipments, they depend on open gateways where traffic is interchanged between railroads to reach customers. ReMA's captive shippers are particularly vulnerable to service disruptions, pricing pressure, equipment and manpower shortages, and supply-chain delays due to the lack of rail alternatives. For some operations, the certainty of competitive and reliable rail service is a matter of continued operation or closure.

Without a strong, diversified, freight rail system, the recycled materials industry cannot reliably supply the domestic manufacturers that depend on recycled feedstock. Competitive rail access is therefore essential to ReMA members' ability to reliably supply those manufacturers. A reduction in rail competition or service reliability risks causing supply-chain disruption, lost domestic manufacturing opportunities, and economic harm in communities across the country.

## II. The 2001 Merger Rules Require Applicants to Meet a Heightened Public Interest Standard

This is a major merger proceeding. Under 49 U.S.C. § 11324 and the Board's 2001 major-merger rules, the Board must protect effective competition, adequate service, and a competitive, efficient, and reliable national rail system.[3] The Applicants must do more than identify potential operating efficiencies or benefits to the combined carrier; they must demonstrate substantial and demonstrable public benefits that outweigh the transaction's competitive, service, and other public-interest harms.[4]

The Board's rules recognize that consolidation among Class I railroads may reduce competition, threaten essential service, and create transitional service risks. The Applicants must therefore demonstrate that this transaction will provide real, enforceable, and merger-specific benefits to the shipping public, and that those benefits could not be achieved through other alternatives.

In evaluating the transaction, the Board must place "greater emphasis in the public interest assessment on enhancing competition."[5] Specifically, "[t]o offset harms that would not otherwise be mitigated," the applicants must "explain how the transaction and conditions they propose would enhance competition."[6] The Board recognized that competitive enhancements are needed to counter risks that service may break down during the transition, promised benefits may never arrive, and the Board's own conditions may fail to cure the resulting harm to competition.[7]

[3] 49 U.S.C. § 11324(b)(5), (c); 49 C.F.R. § 1180.1(b).
[4] 49 C.F.R. § 1180.1(c).
[5] *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 546 (2001).
[6] 49 C.F.R. § 1180.1(c)(2)(iv).
[7] *Major Rail Consolidation Procedures*, 5 S.T.B. at 547.

It is important that the Board not treat the Applicants' characterization of the transaction as "end-to-end" as dispositive that it would not cause competitive harm. This would be consistent with the Board's recent precedent in the CPKC merger where it found that vertical mergers can reduce competition and cause price increases and service declines on interline movements.[8] Nor should the theoretical availability of truck transportation be treated as a substitute for rail competition where the record demonstrates that trucking is not a commercially viable alternative, which is often the case for shipments of recycled materials that are heavy, shipped in large volumes, or moving longer distances. It is vital that the Board evaluate whether shippers will retain economically viable rail-to-rail alternatives.

## III. Competitive and Efficient Rail Service is Vital to ReMA's Members

For ReMA's members, rail access is market access. Recyclers depend not only on the carrier serving their operation, but also on the competitive options created by interchange, gateway access, short line connections, and the ability to reach multiple consuming markets. The loss or weakening of any of those options can narrow market access, diminish leverage in negotiations, reduce equipment availability, and make shippers more vulnerable to service disruptions and higher pricing.

Competitive access is also essential to ReMA members' ability to reliably supply recycled materials to domestic manufacturers. Reduced rail competition or service reliability can disrupt those supply chains, diminish domestic manufacturing opportunities, and cause economic harm in communities across the country. Rail-to-rail competition is especially important for commodities that cannot be readily diverted to trucks because of volume, density, equipment

[8] *Can. Pac. Ry. Ltd.—Control—Kan. City S.*, No. FD 36500, Decision No. 35, slip op. at 46, 65–66 (S.T.B. served Mar. 15, 2023).

requirements, facility infrastructure, or customer demand, such as ferrous scrap. A truck alternative that is theoretically available but operationally or economically impractical does not discipline rail rates or service in the same way as a competing rail option.

## IV. The Proposed Merger Is Unprecedented in Size and Scope and Will Further Harm Rail Competition

With just four U.S. Class I railroads controlling over 90% of freight traffic,[9] the anticipated UP-NS merger marks one of the most consequential reviews that the STB has undertaken. The transaction would create a transcontinental carrier operating approximately 50,000 route miles across 43 states.[10] That expanded reach creates substantial risks for shippers that depend on competitive interline service, gateways, and connections with other Class I and short line railroads.

The Applicants emphasize that the transaction will create new single-line service and reduce transit time for some movements. ReMA recognizes that eliminating an interchange may benefit certain customers in certain lanes, but faster transit time is not synonymous with reliable service which is more important for the types of commodities shipped by ReMA's members. Indeed, service challenges often occur at the local level during the first and last miles of the movement and not at interchanges. Nor does single-line service answer the broader question of whether the merger will enhance rail competition for existing rail-dependent shippers who ship bulk manifest traffic and do not use long-distance intermodal service.

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[9] S. Comm. on Commerce, Sci. & Transp., Majority Staff, *The Current Financial State of the Class I Freight Rail Industry* 3 (Sept. 15, 2010) (citing Association of American Railroads, Railroad Ten-Year Trends, 1999-2008 (Feb. 2010)).

[10] Union Pac., *Union Pacific and Norfolk Southern to Combine, Creating America's First Transcontinental Railroad – A Message from Kenny Rocker, EVP, Marketing & Sales* (July 29, 2025), https://www.up.com/announcements/customer-news/CN2025-13.

A single-line option does not address the risk of increased market power over captive traffic, reduced access to competitive gateways, and fewer interline alternatives. It also cannot substitute for a reliable supply of railcars, predictable switching, functioning interchanges, responsive customer service, meaningful accountability when service fails, and reasonable accessorial practices.

The expansive market power that would vest in the combined UP/NS will allow it to foreclose interline routes that compete with its own single line routes. It could accomplish this by pricing its portion of interline movements that are captive to UP/NS at one end and served at the other end by UP/NS and another railroad higher, to foreclose competition at the gateway, and shift traffic onto its single line network. In such cases, the advantage gained by UP/NS to increase its single line traffic would not necessarily occur because of greater efficiencies but because it manipulated the interline pricing to foreclose the competing interline routes.

When traffic must be interlined because only UP/NS serves one end of a movement, and the other end is served by another carrier, UP/NS can reduce competition by extending its monopoly segments for far greater distances. Today, all traffic must be interchanged at Mississippi River gateways because no western railroad operates in the east, and no eastern railroad operates in the west. However, if UP and NS combine, it will be incentivized to keep traffic on its network for as long as is possible to increase its revenue, profits, and cost recovery. In doing so, UP/NS will be incentivized to change gateways, where possible, to “short-haul” the connecting railroad. Applying this model across the UP/NS network will cause substantial harm to its rival railroads. Indeed, based on the extensive overlap of the NS and CSX networks in the eastern United States, CSX will be especially weakened as a viable competitor as its mileage,

revenue, profits, and cost-recovery are significantly reduced. ReMA's members need more rail-to-rail competition, not less.

Reducing the effectiveness of UP/NS' competitors will undermine rather than serve the public interest. By diverting interline traffic to its own single-line routes and short-hauling connecting carriers on traffic that must be interlined, the combined UP/NS could reduce the traffic, mileage, and revenue available to competing railroads while leaving those carriers with substantial fixed network costs. Over time, that loss of traffic density could weaken their ability and incentive to maintain service, invest in capacity, or compete aggressively for the remaining traffic, ultimately increasing pressure for additional rail mergers. However, more mergers will further reduce the availability of independent service providers who can transport ReMA's members' commodities, which undercuts the public interest.

## V. The Merger's Claimed Benefits are Limited and Fail to Outweigh the Harmful Impacts

As explained, ReMA has serious concerns that the merger will cause adverse impacts to rail competition and service. Those concerns are amplified because the primary benefits of the transaction claimed by Applicants are not material for ReMA's members. As noted, for scrap and recycled material commodities shipped in bulk as manifest traffic, service reliability and consistency are more important than marginal reductions in schedule transit time, which contrasts with intermodal service where speed is often prioritized. Claimed benefits in service performance from reduced handling at interchanges also are not significant since most service challenges occur during the first and last mile.

The Applicants' projected diversion of an estimated 2.1 million truckloads to rail is likewise focused on truck-competitive traffic. That claim does not establish a benefit for rail-dependent shippers for whom truck transportation is not a meaningful competitive alternative

based on volumes, weight, distance, infrastructure, or equipment capacity. This is especially the case for ferrous scrap movements. The public-interest analysis cannot be so narrowly defined as focusing on prospective traffic that may shift from truck to rail while disregarding the merger's effects on existing captive and rail-dependent customers.

## VI. The Applicants' Proposed Protections Are Inadequate to Address Competitive Harm or Service Disruption Risks

The Applicants propose two gateway protections but neither would *enhance* competition as required by the Board's rules. Applicants call Committed Gateway Pricing ("CGP") "a genuine and meaningful enhancement of competition,"[11] but even a cursory review reveals it would only preserve competition for a tiny portion of traffic, at four gateways, for a limited time. CGP applies to less than 2% of all rail traffic.[12] It also narrowly applies to only four gateways at Chicago, St. Louis, Memphis, and New Orleans,[13] and only to connections with BNSF and CSX, excluding CN, CPKC, and Class II and III railroads.[14] CGP proportional rates provided to BNSF and CSX for interline traffic with UP/NS would be based on UP/NS rates on other traffic,[15] allowing UP/NS to manipulate CGP pricing. As BNSF explained, by raising rates on traffic outside of CGP, UP/NS can raise the rates on traffic within CGP.[16] CGP also would expire with

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[11] Applicants' Second Response to Decision No. 21 (UP-80/NS-78) at 18, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed July 27, 2026).
[12] BNSF Ry. Co.'s Motion to Summarily Deny Amended Railroad Control Application for Failure to Present a Prima Facie Case (BNSF-46) ("BNSF Mot.") at 3, 16, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Aug. 6, 2026) (citing Grand Trunk Corp.'s Comments on Completeness of Union Pacific and Norfolk Southern's Amended Application (CN-15) at 25–26, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed May 8, 2026); *see also Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873, Decision No. 21, slip op. at 20 (S.T.B. served May 28, 2026).
[13] UP-80/NS-78 at 32.
[14] *Id.* at 31–32.
[15] *Id.* at 253, 277 (Israel Supp. V.S. ¶¶ 9, 46).
[16] BNSF Mot. at 15.

the Board's oversight period.[17] Thus, right when the Applicants' expanded market power truly will take hold (after weakening their competitors), this gateway protection would disappear.

Applicants also promise to keep major gateways open "on commercially reasonable terms."[18] But this vague commitment does not satisfy the Board's requirement that Applicants produce "effective plans to keep open major existing gateways."[19] Without a clear standard as to what constitutes commercially reasonable terms, neither rail customers nor the Board can measure the impacts. Regardless, nothing in the open gateway promise rises to an enhancement of competition that would offer ReMA's members new rail access options.

Moreover, the application fails to offer meaningful service remedies to address the serious risk of service disruptions. Past rail mergers have resulted in transitional and permanent service impacts with heightened costs for shippers. Competition is the principal mechanism that disciplines rates, service quality, and responsiveness; voluntary assurances from a sole service provider are not a substitute for competition or enforceable remedies. While each transaction is unique, these historical experiences underscore why industries that rely heavily on rail, such as the recycled materials industry, need firm assurances that network performance, service reliability, and competitive access will be preserved and strengthened under any approved structure. ReMA members cannot absorb extended periods of car shortages, missed switches, terminal congestion, delayed interchange, unreliable transit times, or poor communication with customers.

[17] UP-80/NS-78 at 37.
[18] *Id.* at 38; Amended Application, Vol. 1 (UP-39/NS-37) at 348 (Rocker/Elkins V.S. ¶ 164), *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Apr. 30, 2026).
[19] *Major Rail Consolidation Procedures,* 5 S.T.B. at 546–47.

For recycled-materials operations, history shows that a rail service failure disrupts deliveries to mills and manufacturers, increases demurrage and storage costs, strands valuable material, and interrupts production schedules. These harms cannot be captured by broad systemwide averages or general assurances of improved service.

The Applicants' proposed commitments and service remedies do not adequately address this risk. Their arbitration program excludes the vast majority of rail traffic because it covers only "non-exempt commodities under common carrier service."[20] Many of ReMA's members who are most dependent on rail ship exempt commodities, such as ferrous scrap and waste paper, and most traffic moves under contracts not common carrier tariffs. Applicants' claim that contract remedies would apply instead disingenuously ignores the well-known fact that contractual service protections are extremely rare and that captive shippers lack the market leverage to secure them. Shippers in a captive situation have no ability to negotiate fair terms.

Claims that exempt shippers facing serious service disruption must first petition the STB to revoke exemptions to hold the Applicants accountable for harm caused by the merger[21] only amplify ReMA's concerns that Applicants' motives are to serve their self-interest rather than the public interest. Regulatory relief in this situation has proven to be expensive, time consuming and not productive, since the Board has determined that relief is prospective only, prohibiting the recovery of damages.[22] This avoids holding the offending railroad accountable for the harm it causes to its customers, and reduces the incentives needed to help ensure reliable service. Even if a ReMA member first pursues regulatory relief and endures the legal costs and uncertainties

[20] UP-80/NS-78 at 119–20.
[21] *Id.* at 126–27.
[22] *See Sanimax USA LLC v. Union Pac. R.R.,* No. NOR 42171, slip op. at 4 (S.T.B. served Feb. 25, 2022).

simply to access the arbitration remedy (which is far from certain), UP/NS could then "cure" the service problem, denying the shipper any remedy.[23] Also, the service arbitration remedy includes major limitations since it expires in three years,[24] allows recovery of only one year of direct damages, is capped at $2 million, and excludes lost profits and injunctive or equitable relief.[25]

In response to the Board's information requests about the application, the Applicants proposed a Targeted Access Program ("TAP") that would allow temporary reciprocal switching to address service problems. Unlike the damages program, TAP reaches exempt commodities, but it covers only carload traffic moving under common carrier rates and excludes contract, intermodal, and unit train traffic,[26] and applies to sole-served facilities in a terminal area.[27] The main problem with TAP, however, is that it involves convoluted procedures undermining its effectiveness. TAP applies if certain service metrics fail to be met by UP/NS. A shipper must first request its own service metrics[28] and then show that its 12-week average on-time arrival or spot-and-pull performance fell below pre-merger levels and below 70% or 85%, respectively.[29] UP/NS then has 30 days to cure,[30] and absent any cure, the shipper has five business days to request the temporary switching remedy, which lasts for only six months. TAP is not a workable solution. A service remedy that becomes available only after months of degraded performance cannot protect a recycler from accumulating inventory, demurrage and storage costs, missed mill deliveries, and disruption to consumer production.

[23] UP-80/NS-78 at 121, 124.
[24] *Id.* at 119–20.
[25] *Id.* at 124–25.
[26] *Id.* at 127–28 & n.236; *id.* at 194 (App. A § 9.2).
[27] *Id.* at 23–24; *id.* at 193 (App. A § 7.1(a)-(b)).
[28] *Id.* at 190 (App. A § 1.1).
[29] *Id.* at 189, 191 (App. A, Defs. 5-6, §§ 2.2-2.3).
[30] *Id.* at 191 (App. A § 3.1).

One of the main drawbacks to TAP is that UP/NS may respond to a shipper's request by demanding arbitration of its affirmative defenses,[31] including "extraordinary surges in volume," the actions of third parties, "the customer's failure to increase its operations to help address surges in volume," and any switch that would "require significant capital investment."[32] The time involved to secure metrics, request switching, arbitrate defenses and disputes over the switch fee and more (which may include discovery), and allow for appeals makes it highly unlikely that this remedy will ever be used, even with certain proposed time limits.[33] Counting only the program's proposed deadlines, a shipper experiencing a service meltdown would be forced to wait more than four months (and longer if UP/NS appeals) to know if it could even secure the time-limited reciprocal switching remedy.[34]

ReMA members need simple and enforceable assurances that service to their facilities and customary routes will not degrade, including meaningful protections related to railcar supply, switching frequency, interchange reliability, transit time, terminal dwell, customer-service responsiveness, and accessorial charges.

## VII. None of the Proposed Conditions Remedy the Merger's Structural Harms

ReMA does not believe that the conditions proposed by the Applicants would effectively ameliorate the transaction's structural harms. None of the gateway pricing commitments, reporting requirements, and proposed service remedies effectively replace or enhance the independent rail-to-rail competition, routing alternatives, and negotiating leverage that would be lost or weakened through the creation of a transcontinental UP-NS carrier.

[31] *Id.* at 191–92 (App. A §§ 3.4-3.5).
[32] *Id.* at 193 (App. A § 7.1(d)-(f)).
[33] *Id.* (App. A § 6.2).
[34] *See id.* at 190–94 (App. A §§ 1.1, 3.1, 3.4-3.5, 6.2, 10.1).

Where the principal concerns arise from increased market power, reduced interline competition, and the long-term effects of concentrating control over a larger national rail network, the Applicants' proposed conditions cannot substitute for the competitive discipline provided by independent carriers. The Board's heightened standard requires enhancements to competition, not merely commitments intended to prevent further deterioration, and none have been offered here.

The Applicants bear the legal burden to show that this unprecedented merger transaction serves the public interest. The Board's rules require the Applicants, and not affected parties, to "propose remedies to mitigate and offset competitive harms,"[35] and they must explain how the conditions they propose would enhance competition.[36] As explained, Applicants have failed to meet this burden. It is unreasonable to shift this burden to ReMA, other rail customers, and even the Board, to determine how to fix the systemic competitive harm and expanded service disruption risks that will likely occur if the transaction is approved.

## VIII. Conclusion

For the reasons outlined, ReMA respectfully urges the Board to deny the UP-NS merger application. The Applicants have failed to demonstrate that the transaction will enhance competition for recycled-materials shippers, provide reliable and enforceable service benefits, or produce public benefits sufficient to outweigh the merger's risks to captive and rail-dependent customers.

The recycled materials industry supports American jobs, domestic manufacturing, and essential supply chains. Its continued success depends on a freight rail system that is competitive,

[35] 49 C.F.R. § 1180.1(c)(2)(i).
[36] *Id.* § 1180.1(c)(2)(iv).

efficient, and reliable. The proposed UP-NS transaction does not satisfy the Board's heightened public-interest standard and should not be approved.

Respectfully submitted,

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November 18, 2026

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2026, a copy of the foregoing Comments was served by electronic mail or first class mail on the service list for Finance Docket No. 36873.

___/s/ Karyn A. Booth_____
Karyn A. Booth