REDACTED VERSION – TO BE PLACED ON PUBLIC RECORD

UP-133/NS-128

313112

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
November 19, 2026
Part of
Public Record

Docket No. FD 36873

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

APPLICANTS' RESPONSE TO CPKC LETTER

RAYMOND A. ATKINS
CARRIE C. MAHAN
MATTHEW J. WARREN
ALLISON C. DAVIS
MARC A. KORMAN
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

November 19, 2026

I. INTRODUCTION

In a letter filed October 30, 2026 ("CPKC Letter"), CPKC asked the Board to dismiss the Amended Application on the grounds that UP's CEO had threatened to retaliate against shippers that oppose the proposed UP/NS merger. That request should be denied. The CPKC Letter relies on a single comment made in a single speech in March 2026, which the Board and Applicants have previously addressed. To be clear, Applicants will not retaliate against customers or other stakeholders for expressing their views on the merger or in any other proceeding before the Board. CPKC's request lacks support in Board precedent and is contrary to the public interest. The Board should review the proposed transaction on its merits.

Applicants take seriously the issue of retaliation. As the Board has recognized, immediately after the issue was first raised in this proceeding, Applicants affirmed that they "'will treat all customers and stakeholders fairly, regardless of the views they express.'" Decision No. 45 at 2–3 (quoting Applicants' Supplement at 10 (July 27, 2026)). UP's CEO, Jim Vena, confirmed that when Applicants talk to customers about the merger, "'[w]e are not threatening them. We want their feedback, so we can better understand their business and help them win in the marketplace.'" *Id.* at 3 (quoting Vena Letter at 3 (July 27, 2026)). Applicants do not and will not tolerate retaliation of any kind against any stakeholder for any position that a stakeholder may take, or any statements a stakeholder might make, in this proceeding or any other Board proceeding. Applicants believe in the benefits of the proposed transaction and encourage their customers to support the transaction if they agree. But whether a customer supports the transaction, opposes the transaction, or is neutral about the

transaction will not have any impact on how either UP or NS does business with that customer or on Applicants' commitment to provide every customer with the service we sold them.

In an open letter to customers published on its website after Decision No. 45, UP reemphasized its commitment to treat all customers and stakeholders fairly regardless of the views they express about the merger. UP's letter also reminded customers that they can bring any concerns about retaliation directly to the Board. The letter is attached as Exhibit A.

In addition, in a Verified Statement that accompanies this filing, Mr. Vena confirms that his statement at SWARS was not intended as a threat and apologizes for any misunderstanding. He also affirms Applicants' commitment not to retaliate. Applicants expect that the Board will hold Applicants to their commitment and apply the same standard to all parties in this proceeding. No customer or other stakeholder should have any reason to doubt that it may participate in this proceeding, and express whatever views it holds, without commercial or other consequences.

As discussed further below, the Board has ensured that shippers have a full opportunity to participate in this proceeding by making clear that it will not tolerate retaliation, by extending deadlines, and by offering a confidential path to reporting intimidation. And shippers have participated, both individually and through trade associations, by filing an unprecedented number of comments with the Board. No precedent supports dismissing an application in these circumstances, and such a dismissal would withhold the benefits of the transaction from shippers and the public.

II. BACKGROUND

The CPKC Letter focuses primarily on one remark that Mr. Vena made during his keynote address at the annual conference of the Southwest Association of Rail Shippers ("SWARS") on March 17, 2026—one remark within the context of a broader speech and within the context of an extensive record of public statements about the merger by Mr. Vena personally and Applicants more generally over the past year.[1]

About 900 shippers and other industry stakeholders attended the SWARS conference, including representatives from BNSF, CSXT, and CPKC, as well as the press.[2] On March 23, 2026, in the immediate aftermath, *Railroad Weekly* published a report about the conference and the keynote address. The report described Mr. Vena's substantive discussion of the proposed merger at length, and then noted the comment at issue:

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[1] *See, e.g.*, https://www.up-nstranscontinental.com/ (UP/NS merger website); https://www.up.com/announcements/customer-news (collecting customer communications); https://www.up.com/press-releases/growth/setting-record-straight-260116 (discussing UP participation at winter meeting of Midwest Association of Rail Shippers).

There has been no shortage of coordinated, countervailing messaging from opponents of the merger. *See, e.g.*, https://stoptherailmerger.com/get-involved/; https://bnsf.com/discover/preserverailcompetition/merger-resource-center; https://www.cpkcr.com/en/media/Rail-Consolidation-Updates.

[2] SWARS Annual Conference Attendee List, https://web.cvent.com/event/9576436e-92af-4742-ba23-996e2f2e32ab/websitePage:b3200c82-d55f-4dc9-8c59-c9c89d5f1c1d (last visited Nov. 18, 2026).

}[3]

The press report continued that "{

}"[4]

Four months later, in a letter dated July 16, 2026, U.S. Senator Tammy Baldwin brought the comment to the Board's attention. The Board quickly issued an order stating that it "will not tolerate retaliation and will ensure that its processes are fair, transparent, and open to all stakeholders." Decision No. 28 at 4 (served July 22, 2026). The Board also provided a public response to Senator Baldwin that highlighted the confidential pathways available to shippers wishing to report intimidation, retaliation, or other improper conduct. *See* Letter from Board Members Fuchs, Schultz, Hedlund, and Kloster to U.S. Senator Baldwin (July 22, 2026), https://www.stb.gov/wp-content/uploads/Reply-to-Sen.-Baldwin-1.pdf.

Applicants responded to the Board's Decision No. 28 less than one week later, stating in a public filing that they "will treat all customers and stakeholders fairly, regardless of the views they express." Applicants' Supplement at 10 (July 27, 2026). The filing included a letter from Mr. Vena to the Board stating: "We're confident in

[3] Applicants are providing a complete version of the March 23, 2026, edition of *Railroad Weekly* as Exhibit B. Applicants have designated the material as "Confidential" because a paid subscription is required for full access to *Railroad Weekly*.

[4] *Id.* The press reporting did not even mention Mr. Vena's anecdote about outcompeting his brother on the racquetball court, an anecdote that CPKC now attempts to equate with a threat. *See* CPKC Letter at 4.

our plan and its great public benefit. When we talk to our customers, they see the benefits too. We are not threatening them. We want their feedback, so we can better understand their business and help them win in the marketplace." Vena Letter at 3 (July 27, 2026).

On August 6, 2026, BNSF, CSXT, CPKC, and a group of shipper associations made up of the American Chemistry Council, American Fuel & Petrochemical Manufacturers, Alliance for Chemical Distribution, National Industrial Transportation League, and The Fertilizer Institute asked the Board to summarily deny the Amended Application for failure to present a prima facie case. Neither CPKC nor any of the other parties claimed that Mr. Vena's statement warranted terminating this proceeding. In Decision No. 37, the Board denied the requests, explaining that its "determination on this 'unprecedented' Transaction will be better informed by a more complete record." Decision No. 37 at 4 (served Sept. 18, 2026).

On October 1, 2026, in response to discovery requests propounded by CPKC, UP produced a video recording of Mr. Vena's remarks at the SWARS conference. UP designated the video confidential, which means the video was available for use in this proceeding by CPKC and the other parties that had signed the appropriate undertaking to the Board's Protective Order, including all of the opposing Class I railroads and all of the major trade associations representing rail shippers.

On October 6, 2026, CPKC filed a motion asking the Administrative Law Judge in this matter to order UP to redesignate the video as public. The ALJ granted CPKC's motion on October 23. *See* Decision No. 43 (served Oct. 23, 2026).

On October 30, 2026, CPKC filed the letter at issue here, asking the Board to find that "this proceeding has been irretrievably tainted" and to terminate it "without granting Applicants the control authority that they seek." CPKC Letter at 2.

On November 4, 2026, the Board denied UP's appeal of the redesignation order. The Board also reiterated that it "will not tolerate actual or threatened retaliation against a stakeholder for participating in this or any other proceeding before the Board." Decision No. 45 at 3.

On November 17, 2026, Kenny Rocker, UP's Executive Vice President for Marketing & Sales, issued an open letter to customers, reiterating that:

> As I have said before, we will not retaliate against our customers for views they express regarding the merger. We will treat all customers and stakeholders fairly, regardless of the views they express, and regardless of whether they express those views to us or to the STB. And if you have concerns about intimidation or retaliation that you do not feel you can share with us, you can and should reach out in a confidential manner to the STB.[5]

With this filing, Mr. Vena is submitting a Verified Statement to ensure the record is clear on the issue of retaliation:

> Applicants are committed to treating all customers and stakeholders fairly, regardless of the views they express about the merger. We will not retaliate against them for actions they may take in connection with this proceeding, whether individually or in connection with a trade association or other coalition.

[5] *See* Exhibit A.

III. ARGUMENT

Dismissing the Amended Application would not be an appropriate response to Mr. Vena's comment at the SWARS conference, for multiple reasons. First, the Board has acted decisively to protect the integrity of the proceeding. Second, shippers have filed robust comments in this proceeding, as have their trade associations, whose purpose is to address issues that individual members might be reluctant to raise for any reason. Third, Board precedent does not support the extraordinary action CPKC requests. Fourth, dismissing the Amended Application without evaluating its merits would serve only the interests of parties seeking protection from the merger's procompetitive effects and would deprive the public of the merger's substantial benefits.

A. The Board has ensured the integrity of this proceeding.

The record refutes CPKC's claim that Mr. Vena's comment at the SWARS conference "irretrievably tainted" this proceeding. CPKC Letter at 2. To the contrary, contemporaneous reporting of the comment focused on Mr. Vena's detailed explanation of potential merger benefits, characterized the comment as a {

} *See* Exhibit B (*Railroad Weekly*, Mar. 23, 2026).

Further, when Senator Baldwin raised concerns about the comment in a letter to the Board, the Board acted swiftly and firmly to ensure the integrity of the proceeding. The Board issued a decision stating that it "will not tolerate retaliation and will ensure that its processes are fair, transparent, and open to all stakeholders."

Decision No. 28 at 4. It publicly responded to Senator Baldwin with the same message and also encouraged shippers who believed they faced retaliation to contact its Office of Public Assistance on a confidential basis. *See* Letter from Board Members to Sen. Baldwin (July 22, 2026).

Applicants responded to the Board's decision by confirming in a public filing that they "will treat all customers and stakeholders fairly, regardless of the views they express." Applicants' Supplement at 10 (July 27, 2026). The filing included a letter from Mr. Vena to the Board affirming that Applicants were not threatening customers. *See* Vena Letter at 3 (July 27, 2026).

During the intervening months, Applicants continued to make their public case for the merger, and CPKC and other merger opponents continued to make their public case against the merger, in both cases urging customers and other stakeholders to express their views to the Board.

After CPKC reignited the "retaliation" issue—first by pressing to make the video of Mr. Vena's remarks public and then by filing its letter on October 30—the Board again acted to ensure the integrity of the proceeding when it issued Decision No. 45. In that decision, the Board again emphasized that it "will not tolerate actual or threatened retaliation." Decision No. 45 at 3. It went further by also extending the deadline for notices of intent to participate, offering a confidential path for reporting intimidation, and ordering UP to produce specific information to the Board. *See id.* at 4 & Appendix A.

CPKC's claim that Mr. Vena's comment may have deterred participation in this proceeding is fully addressed by the Board's decisions.

B. Extensive public comments confirm the integrity of this proceeding.

CPKC's claim that participation may have been deterred is also belied by the significant public comment in this proceeding.

By November 18, comments raising concerns about the merger were filed by approximately 25 individual shippers and approximately 30 trade associations, whose shipper members represent every major commodity group and every region of the country.

Trade associations may not represent the views of all of their members.[6] However, trade associations raising concerns about the merger plainly represent the views of their members who hold those concerns. And trade associations exist in large part to present members' views robustly in order to influence public policy, even when the individual members may be reluctant to express their views publicly. CPKC's own letter makes this point by attaching a statement from the CEO of the Alliance for Chemical Distribution that "[t]rade associations are here to represent companies for situations just like this." CPKC Letter, Exhibit Q (Eric Byer, LinkedIn).

Applicants disagree with many of these trade associations and will address their concerns in their reply comments. However, the trade associations' submissions

[6] The Amended Application includes support statements from hundreds of shippers, not even including the more than 800,000 agricultural shippers represented by the various agricultural cooperatives that submitted support letters. Many of those shippers are members of the trade associations listed above.

ensure that the perspectives and evidence of shippers who oppose the merger will be fully aired. CPKC's cynical effort to discourage participation and shift the blame to Applicants by raising the specter of retaliation has failed. The Board can therefore be confident that it will have all the information it needs to evaluate the merits of the proposed merger under the statutory criteria established by Congress. *See* 49 U.S.C. § 11324(b).[7]

C. Board precedent requires evaluation of the merger's merits.

CPKC claims that the Board's authority to terminate this proceeding is supported by "[a]n unbroken line of precedent." CPKC Letter at 9. It is not. CPKC does not identify a single decision in which the Board, the Interstate Commerce Commission, or any other federal agency or court terminated an analogous proceeding without considering the merits based on allegations that interested parties had been discouraged from participating. No such decision exists. To the contrary, Board precedent establishes that even an applicant's proven, unlawful

[7] Applicants disagree with CPKC's implicit suggestion that the Board's merger approval decision should turn on the perceived level of public support or public opposition. Individual stakeholders may support or oppose a merger for a variety of reasons, some of which are consistent with the statutory public interest criteria, and some of which are not. For example, the Board should not give any weight to opposition from parties who seek to protect themselves from competitors who will become even more competitive as a result of a merger. *See* Donald Kochan, *Merger Review and the Anti-Competitive Self Interest of Competitors in the Commenting Process*, George Mason University Law & Economics Research Paper Series, 26-21 (Nov. 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7696678. Assessing the level of public opposition compared with public support can also be misleading. Behavioral economics has long recognized that individuals are more strongly motivated to avoid losses than to achieve gains. *See* Amos Tversky & Daniel Kahneman, *Loss Aversion in Riskless Choice: A Reference-Dependent Model*, 106 Q.J. Econ. 1039 (1991).

conduct—a threshold that CPKC has not come close to meeting here—is only one factor to weigh in evaluating the merits of a proposed transaction.

CPKC principally relies on a case involving patent fraud, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). In *Hazel-Atlas*, the Supreme Court held that the historic power of equity allowed courts to set aside a judgment based on a patent obtained through "a deliberately planned and carefully executed scheme to defraud not only the Patent Office, but the Circuit Court of Appeals." *Id.* at 245. CPKC's allegations bear no resemblance to the proven fraud in *Hazel-Atlas*.

CPKC also relies on a case involving an effort to unlawfully influence an agency official, *WKAT, Inc. v. FCC*, 296 F.2d 375 (D.C. Cir. 1961). In *WKAT*, the D.C. Circuit upheld an FCC decision to strip a broadcasting license after evidentiary hearings established that the applicants had made "[s]urreptitious efforts to influence an official charged with the duty of deciding contested issues." *Id.* at 383. CPKC's allegations bear no resemblance to the proven unlawful effort to influence an agency decisionmaker in *WKAT*.

The Board precedent CPKC cites confirms that the Board does not dismiss proceedings like this one without considering the merits, even when misconduct is proven. Instead, the Board weighs any such misconduct as part of its evaluation of the overall merits. For example, in *Central of Georgia*, the ICC found that the St. Louis-San Francisco Railway ("Frisco") had unlawfully acquired control of the Central of Georgia Railway ("Georgia"), but held that the proven violation was "not necessarily a bar to approval" of Frisco's application to control Georgia. *Cent. of Ga.*

Ry. Co. Control, 307 I.C.C. 39, 43 (1958). The ICC evaluated the full record, weighing both the favorable and unfavorable aspects of the proposed transaction, including the statutory violation, before concluding that the transaction was not in the public interest. *See id.* at 41–44.

CPKC also references *Gilbertville Trucking*, in which the Supreme Court upheld an ICC decision similar to *Central of Georgia*. In *Gilbertville Trucking*, the Supreme Court recognized the ICC's policy of evaluating a transaction's merits, explaining that a control violation was not an automatic bar to approval and "will give way to a clear showing of public interest in approval." *Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 129 (1962); *see also, e.g.*, *Detroit & Cleveland Navigation Co.—Control—Denver-Chicago Trucking Co., Inc.*, 58 M.C.C. 599, 609 (1952) ("[E]ach such case must be determined on the basis of its own record, and we have granted the applications in some cases on the ground that the public interest is paramount and that the applicants had clearly met their burden of proving that the control for the future would be consistent with the public interest.").

Finally, CPKC cites two cases involving intimidation and retaliation, but neither supports terminating this proceeding. In *Red Ball*, the ICC found that protestants had tried to dissuade supporting witnesses from testifying. In response, the agency censured the protestants "but [did] not take any official action against them." *Red Ball Motor Freight, Inc., Extension—California*, 128 M.C.C. 77, 81–82 (1977). In *PYCO*, which involved an application for a forced line sale, the Board considered the line owner's threats to retaliate against shippers for service

complaints as evidence of the inadequacy of existing service—one of the five statutory criteria in its public interest test—but still evaluated the other four criteria in ruling on the merits. *See PYCO Indus.—Feeder Line Acquis.—S. Plains Switching*, FD 34890 at 12 (STB served Aug. 31, 2007).

D. Dismissing the Amended Application without evaluating its merits would be contrary to the public interest.

Applicants are proposing a transformative transaction—one that combines two complementary railroad networks to create the Nation's first transcontinental railroad. Denying the public the potential benefits of the merger because of a comment would not only be contrary to precedent, but also contrary to the public interest.

The public deserves to have the merger reviewed on the merits, just as the Board held in its decision denying the opponents' earlier requests that the Board summarily deny the Amended Application. Applicants have submitted extensive evidence showing that the proposed merger is consistent with the public interest. New single-line service made possible by the merger will provide shippers faster transit times, greater reliability, and lower logistics costs; substantially enhance competition between railroads and between rail and truck; increase railroad employment; create a safer railroad operating environment by eliminating car handlings; improve public safety and reduce taxpayer costs by removing traffic from highways; and strengthen military logistics and America's economic security. The combination will not reduce the number of railroads serving customers in the East or the West, and Applicants have committed to the same open gateway conditions that

the Board imposed on the *CPKC* merger to preserve interline options. The Board shall approve this proposed transaction if it finds "the transaction is consistent with the public interest." 49 U.S.C. § 11324(c). The Board would not be fulfilling its statutory duty if it dismissed the Amended Application without evaluating Applicants' proposal under the criteria in § 11324(b).

Dismissing the Amended Application also would be contrary to the public interest because there is no evidence of harm that could justify such extraordinary relief. As noted above (in Section III.A), the Board has already mitigated any potential harm: the Board acted decisively to ensure the integrity of the proceeding at the first suggestion that anyone may have understood Mr. Vena's comment as a threat. And there have been extensive public comments—from both shippers and their trade associations—providing their perspectives about the transaction, ensuring that the Board will have all the information it needs to evaluate the proposed merger's merits. Furthermore, the Board has authority to address retaliatory conduct that violates the Interstate Commerce Act as an unreasonable practice under 49 U.S.C. § 10702 and can order appropriate relief for violations of that provision under 49 U.S.C. § 10704. In these circumstances, dismissal would be a disproportionate response.

Finally, in evaluating CPKC's request, the Board should consider CPKC's motivation for seeking dismissal. Mr. Vena made the comment at issue eight months ago, in March, before approximately 900 conference attendees, including competitors and the press. *Railroad Weekly* reported it within a week. Senator Baldwin raised it

with the Board in July, and the Board addressed it decisively. Yet CPKC did not raise the issue in March or July. It did not do so when it moved to summarily deny the Amended Application in August. It also did not ask Mr. Vena about the comment during his full-day deposition in October, forgoing the opportunity to obtain sworn testimony on the subject. Instead, CPKC fought to make the video of Mr. Vena's remarks public, reigniting the retaliation issue shortly before the deadline for filing comments, then turned around and claimed the video it sought to amplify had chilled participation in this proceeding. That sequence reflects the litigation strategy of a competitor seeking to quash the transaction regardless of its merits, not concern for the Board's evaluation of the public interest.

IV. CONCLUSION

Applicants respect and support the Board's efforts to protect shippers and other stakeholders against retaliation and threats of retaliation. Applicants have committed not to threaten or engage in retaliation, and they expect the Board will enforce that commitment. They appreciate the Board's clear, strong warnings against retaliation in Decision No. 28 and again in Decision No. 45. They understand the Board's desire to thoroughly address the issue raised by Mr. Vena's comment, and UP is working diligently to comply with the information requests in Decision No. 45.

The Board's responses to the allegations of retaliation have been appropriate; terminating the proceeding would not be an appropriate response. The Board should deny CPKC's request. To the extent that the Board is inclined to consider any other remedies, it should defer that consideration until it reviews the additional information UP submits in response to Decision No. 45.

Respectfully submitted,

/s/ Raymond A. Atkins
RAYMOND A. ATKINS
CARRIE C. MAHAN
MATTHEW J. WARREN
ALLISON C. DAVIS
MARC A. KORMAN
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

November 19, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Molly Brown

EXHIBIT A

Nov. 18, 2026 Letter from K. Rocker to Customers

Moving Forward Together This November

Author: Kenny Rocker, Executive Vice President – Marketing and Sales, Union Pacific | November 18, 2026





Kenny Rocker

Executive Vice President-
Marketing & Sales for Union
Pacific

Dear Valued Customer,

This week brings another important milestone in the merger process, as merger proceeding participants submit their comments to the Surface Transportation Board (STB). We welcome the opportunity to review the data and analysis supporting their perspectives. We are prepared to address the issues raised and will file our response by February 16, 2027.

I also want to speak to you directly about a very public concern. Opponents are saying our customers should be concerned that we will treat you differently based on where you stand on the merger. That is not how we do business.

If you work with me or anyone on our team, you know we encourage an open, honest exchange of views on all matters, including the merger. We want to hear any concerns you have so we can respond to them and make sure you are in a place to grow your business.

As I have said before, we will not retaliate against our customers for views they express regarding the merger. We will treat all customers and stakeholders fairly, regardless of the views they express, and regardless of whether they express those views to us or to the STB. And if you have concerns about intimidation or retaliation that you do not feel you can share with us, you can and should reach out to the STB. There are many ways you can provide information to them, including confidentially.

As we head into this season of thanks, I want to say thank you to you, our customers. Thank you for trusting us with your business and for the relationships we build together every day. We love railroading, and there's nothing better than working together to find new ways to help you grow. None of this happens without our Operating team, who work hard to run a network built on excellence.

Operating Performance

Through October, our network is running faster and more efficiently than it did a year ago. These are not just numbers on a page. Each one reflects how your freight is moving across our network today.

- Freight Car Velocity – 232 miles per day, a 5% improvement versus last year
- Car Dwell – 19.8 hours, a 6% improvement versus last year
- Train Speed – 20.6 miles per hour, a 4% improvement versus last year
- 7-Day Carloadings – 170,437, up more than 3% versus last year

What makes this even better is that we are doing it while moving more of your freight. Since August, our network has consistently handled its highest level of 7-day carloadings since December 2018. For you, that means your cars spend less time sitting in our terminals and more time moving toward your customers.

That is the kind of momentum we plan to carry right through the end of the year.

Thankful for Today, Ready for Tomorrow

As we close out the year, our focus is on the here and now. That means handling the volume you are trusting us with today. For those of you in your peak season, our

crews, locomotives and terminals are ready to make it a successful one. And for those of you planning ahead for next year, we are ready to grow with you.

With Thanksgiving around the corner, I hope you get the chance to slow down and spend time with your friends and family. From all of us at Union Pacific, Happy Thanksgiving.

Sincerely,



Kenny Rocker
Executive Vice President, Marketing & Sales

EXHIBIT B

Excerpt of March 23, 2026 Railroad Weekly

Filed under seal pursuant to the Protective Order

VERIFIED STATEMENT

OF

V. JAMES VENA

VERIFIED STATEMENT

OF

V. JAMES VENA

My name is Jim Vena. I am the Chief Executive Officer of Union Pacific Corporation and Union Pacific Railroad Company. I am submitting this Verified Statement to ensure that the record is clear on the issue of retaliation. The Board has emphasized that it is critical for customers and other stakeholders to feel free to participate openly in this proceeding. I agree unequivocally.

I have spoken publicly in front of numerous groups before and since the merger announcement. I have also spoken to and with hundreds of our customers. I do use humor in my presentations to keep the audience engaged, including in my presentation at the conference of the Southwest Association of Rail Shippers this past March. I know what I said and regret the inference. The speech was over 50 minutes long, and I made an attempt at humor at the end of that presentation. I apologize to anyone who misunderstood my statement. I guess I'm better at railroading than humor.

I believe the UP/NS merger is good for our customers and good for America. The combination of UP and NS will create a coast-to-coast, single-line network that will make rail more competitive and more responsive to the needs of American businesses. That is the message I deliver whenever I discuss the merger with customers, both individually and in group settings.

When I talk with customers, they see the benefits of the merger, but some also express concerns. I value all the feedback, both positive and negative. I emphasize throughout the company the importance of listening to our customers, understanding their perspectives, and incorporating their feedback.

Applicants are committed to treating all customers and stakeholders fairly, regardless of the views they express about the merger. We respect our customers and the complexity of their shipping needs and the movement of their goods. We will not retaliate against them for actions they may take in connection with this proceeding, whether individually or in connection with a trade association or other coalition.

While Applicants can only commit ourselves to non-retaliation, we trust that the Board will not tolerate retaliation by any other party and will apply the same standard to all parties in this proceeding. No customer or other stakeholder should have any reason to doubt that it may participate in this proceeding, and express whatever views it holds, without commercial or other consequence from any party.

VERIFICATION

I, V. James Vena, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed this 19th day of November, 2026.

