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Hon. Patrick Fuchs
Chair
Surface Transportation Board
395 E Street, NW
Washington, DC 20423

Re: Docket No. FD 36873 – Union Pacific Railroad Company and Norfolk Southern Railway Company – Control and Consolidation

Dear Chairman Fuchs, Vice Chair Schultz, Member Kloster, and Member Hedlund:

The undersigned Attorneys General write to oppose and express our deep concern that the proposed merger (the "Transaction") of Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS") (collectively "Applicants") will drastically reduce competition and harm the economies of our states. The Attorneys General are charged by their states to protect the public from anticompetitive mergers and conduct; however, due to federal preemption, the Surface Transportation Board ("Board") is the only body which may act to protect our citizens from anticompetitive Class I railroad mergers. For the reasons stated below, the Attorneys General urge you to reject the merger due to the adverse effects on Class I railway service, on short-line rail, and on the labor markets that will serve the merged railway.

I. The Board Must Review Whether the Merger Serves the Public Interest

In a proceeding involving the merger of two Class I railroads, the Board must consider the effect of the proposed Transaction on the adequacy of transportation to the public.[1] Further, to meet the needs of the public, the Board must seek to ensure balanced and sustainable competition in the railroad industry.[2] The Board recognizes that "[a]lthough mergers of Class I railroads may advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation, *the Board does not favor consolidations that reduce the transportation alternatives available to shippers* unless there are *substantial and demonstrable public benefits* to the transaction that *cannot otherwise be achieved*. Such public benefits include improved service, enhanced competition, and greater economic efficiency."[3]

[1] *See* 49 U.S. § 11324
[2] *See* 49 C.F.R. § 1180.1(a)
[3] *See id.* (emphasis added).

The Board has recognized that potential harm from mergers is the reduction or elimination of competition in product or geographic markets that may occur in "end-to-end mergers" such as the one proposed because "[a]ny railroad combination entails a risk that the merged carrier would acquire and exploit increased market power."[4] Accordingly, Applicants must propose remedies to mitigate and offset competitive harms.[5] Additionally, to offset harms that would not be mitigated, Applicants should explain how the Transaction would enhance competition.[6]

The Board's major-merger rules impose a heightened burden on Applicants to establish that the proposed Transaction serves the public interest. Those rules require substantial, demonstrable benefits that outweigh competitive harm, service disruptions, and other merger-related costs. They also expressly require consideration of whether joint marketing agreements, interline partnerships, or other private-sector initiatives could achieve the claimed benefits with less potential harm.[7] The Board should apply this heightened standard here and determine both whether combining Applicants' networks will produce the claimed efficiencies and whether achieving those efficiencies requires common ownership.

a. The Board's Review Process in this Matter Must Be Presumed to Have Been Tainted by the Actions of the Union Pacific CEO

In order to assess and review whether a proposed merger is in the public interest, the Board undertakes a review process which is fundamentally built on evidence. To ensure a fully developed record on the effects of a proposed major merger, the Board encourages public comments from interested persons including, *inter alia*, affected shippers. Interested persons who come forward with their views and evidence about the proposed Transaction can be assumed to be providing

[4] *See* 49 C.F.R. § 1180.1(2)(i)
[5] *See id.*
[6] *See id.*
[7] 49 C.F.R. § 1180.1(a), (c).

their views—however self-motivated—unless circumstances show otherwise. The circumstances in this matter do show otherwise. The process has been tainted.

The integrity of the Board's review process was subverted as shown by the incontrovertible, recently released video of Union Pacific CEO Jim Vena's comments on March 17, 2026 at the Southwest Association of Rail Shippers 2026 annual meeting.[8] The attendees at this meeting included freight shipping customers of both Union Pacific and Norfolk Southern.

At this meeting, CEO Vena pushed his deal using a carrot and stick approach, announcing his intention to "make deals" with customers who were poised to object to the proposed merger, while in the same breath threatening to retaliate economically against any customer who speaks up in opposition to the deal, stating that "if we don't [proceed with the deal], Union Pacific will still be there, and if I stick around which I probably will, I'll probably increase everybody's rates that said they didn't want a seamless railroad by three or four extra percent to teach you a lesson."[9]

We take CEO Vena at his word. And it should be understood that the customers sitting in that room believed him too. We understand that Union Pacific—after the fact-- now claims these statements were a joke that fell flat. But whatever post-hoc spin they want to sell, their CEO's statement speaks for itself. This was a plain statement of Union Pacific's intent and plan to impair the integrity of the public interest review by buying off customer concerns and/or inducing customers to withhold testimony from the Board's review process. And, even if CEO Vena thinks it is a laughing matter to use threats to hinder testimony in an official matter, we do not. Nor should this Board.

[8] *See* Exhibit B to Filing ID 312810, Nov. 6, 2026, at
[9] *Id.* at 52:19-52:40.

Finally, Union Pacific, by its own action, has admitted how great on a blunder it was for its CEO to reveal their tactics. After the video of Mr. Vena's statements surfaced, the Union Pacific Board announced they are instigating an internal investigation.

While this Board stated its intent, after learning of the allegations but prior to the release of the video, that the "proceedings remain open to meaningful participation by all interested persons . . . without concerns that their commercial relationships . . . will be negatively affected because of their participation,"[10] it is entirely unclear whether this admonition 'after the fact' restored integrity to the review process after it was tainted.

We urge the Board to require Union Pacific to identity each customer with whom Union Pacific potentially "made deals" and the nature and durability of those bargains. Without that information, pro-deal comments submitted by customers should be assumed to be bought and paid for and may not support the public interest standard. And it will never be possible to know whether Union Pacific customers, if any, were intimidated into remaining silent. Accordingly, this Board can make no assumptions based on any lack of public comments from Union Pacific customers and, indeed, may make a negative inference.

b. Even Viewed in the Light Most Favorable to Applicants, the Application Fails to Support any Public Benefit

Applicants project $965 million in annual operating efficiencies and cost savings, as well as $133 million in capital savings.[11] . But Applicants fail to provide adequate real-world detail about how those efficiencies and cost savings will be achieved.

[10] Decision No. 28, July 22, 2026, at 4.
[11] Revised Application 1-35.

The Board should carefully examine Applicants' estimates of savings and efficiencies against the costs and practical requirements of implementation. Eliminating an interchange between corporate entities does not necessarily eliminate the physical work of sorting cars, assembling trains, changing crews, or moving traffic through constrained terminals. Applicants should identify which operations would actually disappear, which would move elsewhere, and what additional staffing, infrastructure, and equipment the revised operations would require. To achieve cost savings of the scale identified, Applicants will necessarily need to terminate labor and other costs by eliminating duplicative or overlapping services, and the Board should examine how such eliminations will impact local, regional, and national markets. The Board should not assume that savings will materialize along the lines of Applicants' robust growth scenarios; instead, savings dependent on increased traffic should also be tested against lower-growth scenarios.

The analysis undertaken by the Board must ensure that any alleged cost savings or efficiencies are merger-specific, as distinguished from improvements attributable to investment or cooperation that could occur without the merger. Applicants argue that partnerships cannot reliably coordinate schedules, technology, investment, and commercial incentives.[12] Those concerns warrant examination, but a general preference for unified management does not establish that the desired savings can be achieved only via merger. The Board should require Applicants to identify the contractual or operational obstacle preventing each material benefit from being realized absent a merger, and explain why arrangements addressing pricing, capacity, service standards, investment obligations, and revenue allocation would be inadequate.

[12] Revised Application 1-338-340.

Applicants' supplemental response makes that inquiry especially important. Asked what efforts they had made since January 1, 2023, to develop joint-line agreements for eight identified intermodal opportunities, Applicants stated that they had undertaken none because they concluded the arrangements would not be commercially sustainable.[13] But the basis for that conclusion is unclear. The Board should examine the contemporaneous commercial analysis supporting the conclusion concerning commercial unsustainability, the alternatives considered, and the reasons particular contractual protections would not address the asserted difficulties.

Applicants have partnered with other railroads in the past to achieve operational efficiencies and cost savings. Their application identifies UP's Falcon Premium service as an example of cooperation with other railroads.[14] The success of partner relationships like this begs the question whether the cost savings and efficiencies associated with the merger could reasonably be achieved through partnerships and other cooperative arrangements. When considering whether the merger is necessary to achieve improvements, the Board should evaluate potential improvements to independent operations through cooperative arrangements, rather than between the merger and an assumption that existing arrangements will remain unchanged.

Finally, the Board should examine whether projected savings would benefit shippers. Applicants' ability to operate at lower cost does not establish that customers would receive lower rates or better service, particularly where the Transaction weakens practical transportation alternatives. The Board should identify the competitive constraints or enforceable commitments supporting any claimed customer benefit and avoid treating increased railroad revenue as itself proof of lower transportation costs. Approval should depend on demonstrated net benefits, with

[13] July 27, 2026 Supplement at 114-16.
[14] Revised Application 1-340.

appropriate allowance for uncertainty, implementation costs, and benefits achievable without consolidation.

II. The Merger will Increase Pricing

a. Community Gateway Pricing Will Lead to Runaway Pricing

Applicants cannot solve pricing concerns with Community Gateway Pricing ("CGP"). CGP is a rate that Applicants would charge its competitors (e.g., CSX or BNSF) for using its tracks on interline shipments. It allows them to instantly offer transcontinental quotes without Applicants' approval. The rates will be calculated at the 70th percentile of Applicants' pricing per car-mile for similar shipments over the previous year, considering the type of freight being moved and the distance it travels on Applicants' network. There are exceptions for shipments that require special handling or approvals (e.g., hazardous materials).[15] Despite assurances that CGP will ensure fair prices on interline shipments, seven State AGs assert it is noteworthy that even under the railroads' revised proposal, CGP would apply to only 0.9% of U.S. rail traffic.[16]

CGP would not effectively promote price competition because its benchmark is endogenous to Applicants' own pricing. Applicants' own expert economist, Dr. Mark Israel, acknowledged that using the incumbent carrier's pricing as the basis for the gateway rate "can potentially create an incentive for the incumbent carrier to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism." Plus, higher underlying rates would in turn raise the benchmark for future CGP rates, and the mechanism would

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[15] Jeff Pincock, *Committed Gateway Pricing: A Rising Tide that Shares Merger Benefits*, UNION PACIFIC (Jan. 29, 2026), https://www.up.com/news/growth/committed-gateway-pricing-260129

[16] Stuart Chirls, *Mega Rail Deal Under Fire: 7 State AGs Warn UP-NS Merger Could Drive Up Shipping Costs*, FREIGHTWAVES (Aug. 12, 2026), https://www.freightwaves.com/news/mega-rail-deal-under-fire-7-state-ags-warn-up-ns-merger-could-drive-up-shipping-costs#:~:text=The%20officials%20also%20challenge%20the,a%20median%20or%20below%2Daverage%20benchmark.

create a self-reinforcing cycle of higher rates, as the mechanism contains no safeguard preventing Applicants from raising the price.[17] Further, without public disclosure of the historical pricing data underlying CGP rates, customers may be unable to verify the benchmark and monitor potential rate increases, making any perverse increase in the underlying pricing hard to detect.

Applicants argues that CGP does not harm competition because it "adds another competitive service option without taking away existing thru-rate or Rule 11 options."[18] However, keeping Rule 11 does not necessarily preserve the competition that existed before the merger. Under Rule 11[19], more than one linehaul carrier is responsible for assessing and collecting charges on an interline movement, which implies independent railroads can set the rates separately.[20] To be specific, each railroad separately sets and bills its own rate, and the shipper combines those rates to form the end-to-end move. This allows the shipper to see each railroad's rate and compare different carriers and gateways.[21] Under CGP, by contrast, the pricing is based on Applicants' historical rates for similar traffic. Rule 11 begins with two independent pricing decisions, while CGP begins with a single pricing input set by the merged railroad. Admittedly, consumers can still choose Rule 11 pricing based on Applicants' policy. However, the core issue is not whether Applicants eliminate customers' ability to choose an alternative pricing option, but whether CGP, when chosen instead of Rule 11, can compensate for the loss of independent pricing competition

[17] Dan Bostek & Steve Blinn, *The 0.9% Problem*, LINKEDIN (Aug. 28, 2026), https://www.linkedin.com/pulse/09-problem-daniel-bostek-3cffe/
[18] *See* Jeff Pincock, *Committed Gateway Pricing: A Rising Tide that Shares Merger Benefits*, UNIONPACIFIC (Jan. 29, 2026), https://www.up.com/news/growth/committed-gateway-pricing-260129
[19] Railway Accounting Rules (RAR), https://public.railinc.com/sites/default/files/documents/RAR.pdf
[20] Daniel Bostek & Steve Blinn, *Rule 11, Committed Gateway Pricing, and the Difference Between Competition and Its Substitute*, THE OPERATING PLAN (May 18, 2026), https://theoperatingplan.substack.com/p/rule-11-committed-gateway-pricing?utm_source
[21] *See id.*

after the merger. CGP may preserve an alternative option, but it does not necessarily replace the independent pricing competition lost through the merger.[22]

Applicants argue that CGP enhances competition because a competing railroad may already have a good relationship with a customer, offer a better service plan, or identify a new business opportunity, and CGP allows it to quickly offer the customer a complete rate without first negotiating with Applicants.[23] However, allowing a preexisting customer relationship or service plan to operate as before does not show that the merger enhances competition. Even if CGP reduces the cost of doing business with Applicants, the merger still raises barriers to competing with Applicants. Entry into the railroad market requires large investments and regulatory approval. Economies of density may also create barriers to entry because a new entrant without comparable traffic volumes may struggle to achieve the same unit costs as an established railroad. Moreover, the merger may diminish rival railroads' incentives to invest and compete. If the combined Applicants network diverts traffic away from competing railroads, those rivals may lose the revenue and traffic volume needed to support further investment in their services, which would weaken their incentives and ability to compete.[24]

Applicants also argue that because the Transaction is a classic end-to-end merger with virtually no horizontal network overlap[25], it will enhance competition by creating a stronger rail network.[26] However, the lack of horizontal network overlap does not mean an end-to-end merger

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[22] *See id.*
[23] Jeff Pincock, *Committed Gateway Pricing: A Rising Tide that Shares Merger Benefits*, UNION PACIFIC (Jan. 29, 2026), https://www.up.com/news/growth/committed-gateway-pricing-260129
[24] *See, infra*, Section X.
[25] Union Pacific, *Creating America's First Transcontinental Railroad: Union Pacific and Norfolk Southern' s Amended STB Merger Application Estimates Shippers Will Save $3.5 Billion Annually*, UNION PACIFIC (Apr. 30, 2026), https://www.up.com/press-releases/growth/amended-merger-app-filed-260430
[26] Jeff Pincock, *Committed Gateway Pricing: A Rising Tide that Shares Merger Benefits*, UNION PACIFIC (Jan. 29, 2026), https://www.up.com/news/growth/committed-gateway-pricing-260129

enhances competition. In the CP/KC merger, the STB recognized that even a merger without horizontal network overlap could produce adverse vertical effects, including diminished service or higher prices on interline movements that foreclose efficient competitive options.[27] Even if this is an end-to-end merger, the increased ability and incentive to foreclose competitors should not be overlooked. Indeed, this was a prime concern of UP when it opposed the CP/KC merger. In its opposition to that Transaction, UP's economic expert, Professor Steven Salop, explained that the merger would strengthen foreclosure incentives because adding CP's revenue and earnings would increase the financial benefits from "diverting traffic to itself and away from rivals."[28] The same logic applies here. The merged railroad might have greater incentive to foreclose rivals if it can capture additional profits from diverted traffic. If traffic is diverted because Applicants leverages CGP to increase price or degrades service quality on shared segments used by competitors (e.g., making rival railcars wait longer at interchange points), such foreclosure could harm the competitive process.

Finally, the scope of CGP weakens Applicants' claim that the merger will enhance competition. The CGP contains exceptions for certain categories of traffic, including shipments requiring special handling or approvals, such as hazardous materials. The STB also observed that CGP "appears to exclude a significant amount of traffic hauled or proposed to be hauled by Applicants."[29] Hence, the alleged competitive benefits of CGP may not apply equally to all types of traffic.

b. Prior Rail Mergers Raising Pricing Concerns Are Distinguishable

[27] *See Canadian Pac. Ry. Ltd. – Control – Kansas City S.*, No. 36500, at 65.
[28] *See* Verified Statement of Steven C. Salop ¶ 61, at 23, Canadian Pac. Ry. Ltd.—Control—Kan. City S., Fin. Docket No. 36500 (Surface Transp. Bd. Feb. 28, 2022).
[29] *See Union Pacific Corp.—Control—Norfolk Southern Corp.*, No. 36873 at 21.

Prior Class I railroad mergers also raised concerns about price increases. But those mergers were distinguishable from the Applicants Transaction, or in some cases included conditions that may not be sufficient here.

In the UP and Southern Pacific ("SP") merger, the BNSF Agreement included a proportional-rate arrangement over the Portland gateway that allowed UP/SP to participate in joint rates with BNSF. The mechanism was intended to expand competitive routing by enabling UP/SP to compete for traffic moving to and from BNSF's Western Canada gateways.[30] Unlike CGP, the proportional rate arrangement in the UP/SP merger involved an agreement negotiated between two separately operated railroads, rather than a pricing mechanism based on the merged railroad's own historical rates.

In the CSX/NS–Conrail merger,[31] the CSX and NS were independent competitors dividing Conrail's assets between them and agreed to establish a fixed $0.29-per-car-mile fee for operations over each other's lines, which the STB found reasonable. Unlike CGP, the $0.29 rate was a reciprocal access arrangement between CSX and NS.

In the CP/KC merger, the pricing commitment required CP/KC to provide commercially reasonable Rule 11 rates sufficient to preserve viable interline options, but did not set a rate formula. The STB supplemented the open-gateway commitment with oversight. Shippers can challenge violations of the commercially reasonable rate requirement before the Board. CP/KC

[30] See *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, No. 32760 at 17. "The BNSF agreement includes, among other things, a proportional rate agreement over the Portland gateway (hereinafter referred to as the BNSF PRA) that will allow UP/SP to participate in joint rates with BNSF for traffic moving between points in an area north of Portland, OR, and west of Billings and Havre, MT, on the one hand, and, on the other, points in an area extending from Oregon to West Texas."

[31] *See generally CSX Corp. – Control – Conrail*, 3 S.T.B. 196, 1998 WL 456510; *id.* at 96.

must provide written justification within 15 days for rate increases above inflation on interline movements covered by the open gateway obligation.[32]

In the CP/KC merger, the STB also emphasized the importance of effective oversight and transparency. Specifically, it established "an unprecedented seven-year oversight period along with extensive data-reporting requirements" to monitor compliance with the merger conditions.[33] Further, the STB required CPKC "to report numerous service, operational, competition-related, and other metrics at prescribed frequencies."[34] Although Applicants have committed to providing gateway reporting analogous to that required in the CP/KC merger,[35] it remains unclear whether such reporting would be sufficient to monitor CGP's pricing mechanism. Because CGP relies on Applicants' own historical rates per car-mile, effective oversight may require disclosure of the underlying pricing data and calculations. As noted in "What the Union Pacific–Norfolk Southern Merger Reveals About Rail Merger Policy," effective enforcement requires ongoing monitoring of pricing, service quality, and routing practices, together with reliable benchmarks for evaluating whether the commitments are preserving competition.[36] It also raises concerns that the merged railroad would retain incentives and opportunities to circumvent gateway protections without formally violating them.[37]

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[32] *See Canadian Pac. Ry. Ltd. – Control – Kansas City S.*, No. 36500, at 12, 72-73, 77-79.
[33] *See Canadian Pac. Ry. Ltd. – Control – Kansas City S.*, No. 36500, at 5.
[34] *Id*. at 13.
[35] *See Union Pac. Corp. – Control & Merger –* Norfolk *Southern Corp.*, No. 36873, at 9.
[36] *See* Tracy C. Miller, *What the Union Pacific–Norfolk Southern Merger Reveals About Rail Merger Policy*, MERCATUS CTR. (Mar. 3, 2026). ("Determining compliance requires detailed longitudinal data on pricing, service quality, and routing decisions, as well as credible counterfactuals against which to assess performance.")
[37] *See id.* ("Once the merger is approved, the regulated firm retains strong incentives to exploit ambiguities in its obligations, while enforcement incentives may weaken over time.")

It is possible to argue for adopting a fixed-price arrangement, as in CSX/NS–Conrail[38], or having the STB set a reasonable pricing scheme. But that approach might risk turning the STB into a central planner engaged in endless price monitoring and regulation. A more reasonable approach may be to establish CGP benchmarks using comparable rates charged by independent railroads or industry average rates, as opposed to relying on the merged railroad's own historical rates. Benchmarks like that can reduce the merged railroad's ability to influence future CGP rates without requiring the STB to prescribe individual freight rates. Even if the STB ultimately approves CGP, it should consider requiring Applicants to disclose the historical rates and calculations underlying CGP benchmarks, subject its ongoing pricing practices and benchmark adjustments to continuous STB oversight, and provide shippers with a mechanism to challenge unreasonable rates.

c. Trucking Cannot Solve Price Increases

Applicants argue that the Transaction promotes competition with trucking. This argument has been used in previous mergers. In the CSX/NS–Conrail merger, the STB recognized that "the transaction will permit both CSX and NS to compete more effectively with motor carrier service." [39] In the CP/KC merger, the STB recognized that competition from alternative transportation modes could constrain CP/KC's ability to raise rates. In specifics, as the Board explained, "similar to what the Board noted in KCS-Tex Mex, 7S.T.B. at 949, if CPKC were to attempt to raise rates on KCSM movements in Mexico that are not rail-dependent, traffic would shift to motor or water carriage."[40] In the CPRC/DM&E merger, the STB expressly treated enhanced intermodal competition as a merger benefit, finding that the transaction would enable

[38] See *CSX Corp. – Control – Conrail*, 3 S.T.B. 196, 1998 WL 456510, at 96. (discussing appropriateness of fixed 29 cent interline rate)
[39] *Id.* at 28.
[40] *See Canadian Pac. Ry. Ltd. – Control – Kansas City S.*, No. 36500, at 53.

the applicants to "compete more efficiently against rail competitors (as well as motor carriage and barge competition)."[41] In the UP/SP merger[42] and the CN/IC merger[43], the STB emphasized the principle established in *Central Vermont Ry. v. ICC*, [44] saying that "we do not limit our consideration of competition to rail carriers alone, but examine the total transportation market(s)."

However, this merger does not enhance overall competition between rail and trucking for multiple reasons. First, the applicability of precedents recognizing enhanced competition with trucking as a merger benefit to Applicants remains uncertain, as they were decided under the earlier merger rules. As the STB stated, Applicants is the first proposed merger to be evaluated under the new rules, which were adopted in response to the consequences of major railroad mergers during the 1990s. These rules impose a heavier burden on applicants to demonstrate competitive enhancements.[45] Therefore, it remains uncertain to what extent the reasoning of precedents should be applied to Applicants under the new rules.

Second, rail and truck transportation are not generally interchangeable. One study found that only 33% of rail ton-miles were competitive with truck, while 67% were not, and that competition between rail and trucking is limited to an overlapping range of shipment distances.[46] The article also mentioned that "in general, rail and trucking compete in markets involving distances that are relatively short for rail yet relatively long for trucking."[47] A recent industry source also shows the different situations in which rail and trucking are more favorable. Rail is

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[41] *See Canadian Pac. Ry. Co.—Control—Dakota, Minn. & E. R.R. Corp.*, FD 35081, slip op. at 11 (STB Sept. 30, 2008)
[42] *See Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, No. 32760, at 99.
[43] *See Canadian Nat'l Ry. Co.—Control—Iowa N. Ry. Co.*, FD 36744, at 8.
[44] 711 F.2d 331, 335-337 (D.C. Cir. 1983).
[45] *See Union Pac. Corp. – Control & Merger – Norfolk Southern Corp.*, No. 36873 at 18–19.
[46] *See* David J. Forkenbrock, *Comparison of External Costs of Rail and Truck Freight Transportation*, 35 TRANSP. RSCH. PART A 321, 322–23 (2001), https://www.sciencedirect.com/science/article/pii/S0965856499000610 ("41% of long-haul truck ton-miles are competitive with rail, and 33% of rail ton-miles are competitive with truck.").
[47] *Id.* at 322.

more favorable for distances over 500 miles, shipments over 40,000 pounds, non-time-sensitive freight, consistent and repeating lanes, and bulk commodities, while trucking is more favorable for distances under 500 miles, partial or less-than-truckload shipments, tight delivery windows, one-off or irregular shipments, and door-to-door service. There is also a large cost difference between the two. Rail typically costs about 4–9 cents per ton-mile, compared with 8–20 cents for trucking.[48] Another source similarly estimates that shipping by rail costs 10% to 40% less than trucking, depending on the route.[49]

Third, coal, grain, and minerals are typically rail-dependent traffic because moving heavy bulk commodities long distances by truck is economically impractical. According to UP's 2024 fact sheet[50] and Union Pacific 2025 Form 10-K[51], bulk traffic accounted for approximately 32% of UP's freight revenues in 2024 and 33% in 2025. Moreover, in 2024, UP generated more than twice as much revenue per railcar from bulk and industrial customers—both of which tend to be more dependent on rail—than from premium customers, which tend to be intermodal shippers.[52] One report estimates that, in part because of these higher margins, approximately 70% of UP's revenue comes from customers that cannot easily switch to trucking.[53] For NS, which does not report a comparable "bulk" category, coal alone accounted for 12% of railway operating revenues, while metals and construction accounted for another 14%.[54] Thus, stronger competition with

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[48] *See* Steel Wheel Logistics, *Rail vs. Truck Freight Cost Comparison: When Rail Actually Saves Money*, STEEL WHEEL LOGISTICS (Feb. 17, 2026), https://steelwheellogistics.com/blog/rail-vs-truck-freight-cost-comparison
[49] *See* Peter Eavis, *How More Rail Could Take Trucks Off the Road*, N.Y. TIMES (Sept. 18, 2025).
[50] *Union Pacific Corp., 2024 Investor Factbook* 10 (2025), https://investor.unionpacific.com/static-files/c2613b76-b79c-48c0-9882-58bd75d30119
[51] *Union Pacific Corp., Annual Report (Form 10-K)*, https://investor.unionpacific.com/static-files/a2cb1cb7-48df-4487-bac5-fa0ba9cdbd03
[52] *See* Erik Peinert & Ashley Nowicki, *The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked*, AM. ECON. LIBERTIES PROJECT (Oct. 2025), https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf
[53] *See* id.
[54] Norfolk Southern Corp., 2025 Annual Report, https://filecache.investorroom.com/mr5ir_nscorp/1310/2025%20Annual%20Report.pdf

trucking would have little effect on bulk traffic, where trucking is not a practical alternative. In the Executive Summary,[55] the STB mentioned that: "Furthermore, in situations where other modes of transportation, such as water (and not potential railroad competition), provide the effective constraint on rail rates, policies to enhance railroad competition will not benefit captive shippers." The data in the Executive Summary shows how important bulk commodities are to rail traffic. Coal alone accounted for 43.8% of all rail-originated tonnage in 2007, far more than any other commodity category (may or may not be useful).

Fourth, the merger's claimed enhancement of competition with trucking appears to be concentrated in intermodal service. UP and NS plan to increase their premium intermodal lanes running seven days a week to seven after the merger,[56] and project that improved rail service will divert approximately 2.1 million truckloads from road to rail annually.[57] However, intermodal accounted for approximately 20% of UP's freight revenues[58] and 25% of NS's railway operating revenues in 2025[59]. Thus, the merger's claimed enhancement of competition with trucking appears to concern only a portion of the Applicants' overall rail business. Moreover, the expansion of intermodal service does not necessarily reflect enhanced competition between rail and trucking. As a GAO report explains, "Modes often work as complements to complete a shipment. For

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[55] Laurits R. Christensen Assocs., Inc., *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition: Executive Summary of Revised Final Report* ES-25 (2009), https://www.stb.gov/wp-content/uploads/files/docs/competitionStudy/Executive%20Summary.pdf

[56] *See* Union Pacific, *Creating America's First Transcontinental Railroad: Union Pacific and Norfolk Southern' s Amended STB Merger Application Estimates Shippers Will Save $3.5 Billion Annually*, UP-NS TRANSCONTINENTAL (Apr. 30, 2026), https://www.up-nstranscontinental.com/featured/union-pacific-and-norfolk-southerns-amended-stb-merger-application-estimates-shippers-will-save-3-5-billion-annually/

[57] *See* Union Pacific & Norfolk Southern, *Application Volume 1: Supporting Information and Summary of Benefits*, UP-NS TRANSCONTINENTAL (Apr. 30, 2026), https://www.up-nstranscontinental.com/stb-filling-hub/volume-1

[58] *Union Pacific Corp., Annual Report (Form 10-K)*, (calculating $4,632 million in intermodal revenues divided by $23,220 million in total freight revenues). https://investor.unionpacific.com/static-files/a2cb1cb7-48df-4487-bac5-fa0ba9cdbd03

[59] Norfolk Southern Corp., 2025 Annual Report, https://filecache.investorroom.com/mr5ir_nscorp/1310/2025%20Annual%20Report.pdf

example, a ton of grain may move from a grain elevator by rail, be transported to a port on an inland waterway, move by barge to another port on an inland waterway, and then be distributed by truck to its final destinations."[60] Therefore, to the extent that rail and trucking work as complements rather than substitutes, the share of freight revenues derived from competition from trucking might be even smaller and potentially negligible.

Finally, even if the merger enhances competition with trucking, the Supreme Court has rejected using cross-market benefits to justify competitive harm in merger cases. In *United States v. Philadelphia National Bank*, the Supreme Court rejected the argument that reduced competition in the Philadelphia commercial banking market could be justified by improved competition with large New York banks for loans to large corporate borrowers (out-of-market benefits).[61] Judge Richard Posner also noted that few cases have involved cross-market benefits and many mergers are driven by short-term financial interests or executives' desire for greater power or money.[62] Although the Board applies a different statutory framework, it should be cautious about using alleged enhanced competition in trucking to justify reduced competition among railroads.

III. The Merger Will Have a Negative Impact on Consumer Welfare

The Board should consider the proposed Transaction's impact on shippers and other customers of the two rail lines. The Board should reject the Transaction if substantial and demonstrable public benefits that cannot otherwise be achieved are not shown. The Board should

[60] U.S. Gov't Accountability Off., GAO-11-134, *Surface Freight Transportation: A Comparison of the Costs of Road, Rail, and Waterways Freight Shipments That Are Not Passed on to Consumers* (2011), https://www.gao.gov/assets/gao-11-134.pdf
[61] See *United States v. Philadelphia National Bank*, 374 U.S. 321, 370–71 (1963).
[62] *Richard Posner & C. Scott Hemphill, Philadelphia National Bank at 50: An Interview with Judge Richard Posner*, 80 Antitrust L.J. 205, 210 (2015).

consider the proposed benefits in light of the risk that the combined firm can exploit its increased market power.

The Revised Major Merger Application ("Revised Application") claims several public benefits while attempting to mitigate the potentially anti-competitive effects on the rail industry and the reduction of transportation alternative to shippers to support the requirement of "substantial and demonstrable public benefits." First, the Revised Application claims the new service line will provide customers with "faster, more reliable, and more efficient service."[63] Second, it argues that customers prefer single-line service and will divert traffic to Applicants.[64] Third, the Revised Application argues that conversions from truck to rail will both save customers billions of dollars and have cascading benefits for other stakeholders, such as reduced traffic on roadways and reduced wear and tear on the same.[65] Each of these proposed justifications either relies on flawed or unsupported premises, ignores a large number (if not the majority) of shippers, or can "be otherwise achieved."

a. Past Mergers Illustrate that Combinations Do Not Result in Faster, More Reliable, and More Efficient Service

As to the first justification, the Board should consider the effect that past mergers involving competitors or the parties involved have had on the speed, reliability, and efficiency of Class I railroads. Past consolidations have not resulted in the beneficial effects claimed here, and the currently proposed merger is likely to be the same, if not more disruptive, given the massive scale of the combination involved. Indeed, past mergers have created a substantial amount of chaos in their aftermath and resulted instead in a deterioration of service, fewer options for shippers, and

[63] *See* Revised Application at 19-21
[64] *See id.*
[65] *See id*.

higher prices.[66] The Board itself recognized these very effects, after permitting several Class I mergers, going as far as to institute a 15-month moratorium on Class I railroad mergers in March of 2000.[67] Indeed, following the moratorium, the STB announced today's heightened standard of review for Class I mergers in response to the disastrous consequences of the 1990s mergers, essentially placing a "blanket ban" on Class I mergers.[68] As the largest rail merger in American history,[69] this merger is likely to significantly disrupt operations in the short run and, in the long run, result in a reduction in competition and choices for the American shipper.

i. The Long-term Effects of Class I Rail Mergers Show Lower Output, Higher Prices and a Worse Product

Analysis of the long-term changes to rail rates following the wave of consolidation that ended in the early 2000's shows a stark increase in rail rates, without a commensurate increase in capacity. According to a study commissioned by the Rail Customer Coalition, after the number of Class I railroads fell from 23 to 7, the profit margins of Class I railroads increased by 236.5% from

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[66] *See* Erik Peinert & Ashley Nowicki, *The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked*, AM. ECON. LIBERTIES PROJ. (Oct. 2025) https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf ("Even by the very lax merger standards of the late 1990s and early 2000s, these combinations were recognized as mistakes with devastating outcomes. Shippers reported a deterioration in service, fewer options with higher prices, and the loss of jobs, while workers lost jobs and those that didn't faced strenuous working conditions. The STB quickly recognized the error in permitting so many of these transactions. So, at the end of 1999, when BNSF announced plans to merge with the recently privatized Canadian National (CN) Railway, the STB opted for a 15-month full moratorium on Class I railroad mergers in March 2000.21"); Anthony Depalma, *U.S. Regulators Impose 15-Month Moratorium On All Rail Mergers*, The N.Y. Times (Mar. 18, 2000) ("The consolidations caused major shipping disruptions as the new railroads tried to coordinate their activities." "'I cannot in good conscience allow further actions to occur that I believe would run the risk of creating more disruption and instability,' Linda J. Morgan, the board chairwoman, said in a commentary accompanying the decision."); Press Release No. 00-32, Surface Transportation Board, COURT UPHOLDS SURFACE TRANSPORTATION BOARD'S 15-MONTH RAIL MERGER MORATORIUM (7/17/2000), https://www.stb.gov/wp-content/uploads/archived-press-release/htmls/FC65477FE5A4924C8525691F005A9CC0.html.pdf ("[After] four days of hearings…The overwhelming consensus…was that a new round of mergers at this time would aggravate service problems…and that fundamental changes in the Board's merger rules and policies are needed…[.]")

[67] *See id.*

[68] *See* James Baratta, *Regulators Finally Poised to Review America's Biggest Rail Merger*, AM. PROSPECT (Aug. 7, 2026), https://prospect.org/2026/08/07/regulators-review-americas-biggest-rail-merger-norfolk-southern-union-pacific/.

[69] *See id.*

2004 to 2023.[70] This increase came as the rail companies *decreased* the number of carloads from 2006 to 2023.[71] Accordingly, the study found that the increased profits resulted solely from increasing the rates being charged to shippers.[72] In addition, the STB itself has recognized that consolidation has resulted in slashing workforces, raising prices, and reducing output. Speaking at the Southeast Association of Rail Shippers in 2024, STB chairman Martin Oberman attributed these issues to consolidation, as activist investors have gained interest in what have become natural monopolies.[73]

> "The strategy was, *largely, to slash workforces, raise prices, and reduce output*—i.e., service—which they did— thereby risking long-term viability in pursuit of massive stock buybacks and dividends. This strategy not only affects the economic output of US industries which cannot thrive without robust rail service. It also undermines safety because rail workers are essential to safe rail operations—for themselves and for the communities through which railroads must travel, often transporting hazardous materials. *Cutting the workers who perform inspections, repairs and otherwise are responsible to ensure safety, increases threats to the public as well as the workers themselves. And unsafe rail operations, of course, undermine rail service.*"[74]

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[70] *See Analysis of Proposed Merger Between Union Pacific and Norfolk Southern Railroads*, Escalation Consultants, Inc. (Sept. 2025) https://www.freightrailreform.com/wp-content/uploads/2025/09/EscalationConsultantsRailConsolidationStudySept2025.pdf
[71] *See id.*
[72] *See id.*
[73] *See* Martin J. Oberman, Chairman, Surface Transportation Board, Address at the Southeast Association of Rail Shippers 2024 Spring Meeting (Feb. 29, 2024), https://www.stb.gov/wp-content/uploads/02-29-24_Oberman_SEARS-speech.pdf
[74] *See id.* (Emphasis added)

The Chairman quantified this change, noting that since 2014, the largest railroads have cut their workforce by 30% or 45,000 employees.[75] The culmination of this dynamic was a 2022 intervention by the STB, and the holding of a two-day public hearing to address the "service crisis."[76] "Every stakeholder, including most importantly the rail executives themselves—told the Board that the cause of the service meltdown was the simple fact that the Class I lacked sufficient workers to move the trains needed to service their customers."[77] Notably, UP itself, alone among railroads, was subject to two emergency service orders, the first in 10 years. UP instituted over a thousand "congestion embargoes" annually and itself conceded at a later public hearing in December of 2022 that its issues with embargoes were caused by crew shortages from its decision to cut its workforce by 25%. In the years that followed, UP continued to cut staff and continued to cut investment in capital improvements. "Rather than make up for the $100 million cut in 2023, UP has actually reduced its 2024 capital budget by $300 million, planning to spend only $3.4 billion as compared to its 2023 capital budget of $3.7 billion."[78] According to the Commissioner, it is unlikely that UP "is committed to growth when it is cutting personnel and capital—the very resources which are essential to that growth."[79] Instead, Union Pacific is pursuing growth by purchasing NS. This trend has continued. In March of 2024, the Federal Railroad Administration expressed concerns about the high rate of layoffs at the company in a letter to UP's CEO: "safety

[75] *See id.*
[76] *See id.*
[77] *See id.*
[78] *See id.*; Arnav Rao*, Railroad Merger: Why It Could Go Off the Rails*, WASH. MONTHLY (Aug. 6, 2025), https://washingtonmonthly.com/2025/08/06/railroad-merger-why-it-could-go-off-the-rails/ ("Union Pacific is emblematic. In 2021, it spent $4 billion more on buybacks and dividends than it had available from free cash flow, even as it racked up $100 million in deferred maintenance.")
[79] *See* Martin J. Oberman, Chairman, Surface Transportation Board, Address at the Southeast Association of Rail Shippers 2024 Spring Meeting (Feb. 29, 2024), https://www.stb.gov/wp-content/uploads/02-29-24_Oberman_SEARS-speech.pdf

of railroad operations is paramount . . . decisions that comprise that fundamental . . . are unacceptable ... Your railroad (layoffs) are far outpacing any of your Class I peers."[80]

Additionally, Norfolk Southern, itself a product of large mergers, has a dubious record of providing quality service in the years following its creation. The company's infamous derailment disaster in East Palestine, Ohio, serves as another case in point for the potential consequences of reducing the quality of service by slashing rail workforce and investing in stock buybacks over capital investment in technology and safety.[81] As is evident, not only can delays be increased but in some cases these issues can cause disastrous derailments that cause massive delays and losses for shippers. To illustrate, following the disastrous train derailment in East Palestine, Ohio, Rail Workers United issued a statement explaining that "[i]n this case, NS and the other carriers have eliminated many of the critical mechanical positions and locations necessary to guarantee protection against these kinds of failures."[82] And unfortunately, following this disaster, the five

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[80] *See* Letter from Amit Bose, Administrator, Federal Railroad Administration, to Jim Vena, CEO, Union Pacific Railroad (Feb. 29, 2024), https://www.stb.gov/wp-content/uploads/FRA-Administrator-Bose-Letter-to-Mr.-Jim-Vena-2.29.24.pdf ("It has come to the Federal Railroad Administration's (FRA) attention that UP has again chosen to prioritize cost-cutting measures over ensuring safe operations, jeopardizing the well-being of both UP's workers and the public."); *See also,* Letter from Tony Carwell, President, Brotherhood of Maintenance of Way Employes(sic) Division, International Brotherhood of Teamsters, to Surface Transportation Board (Oct. 27, 2023) https://www.stb.gov/wp-content/uploads/BMWED-letter-to-STB-regarding-UP-layoffs.pdf ("Over the past several years Union Pacific management has recklessly reduced the number of its Maintenance of Way workers far below the minimum needed to operate a safe and reliable railroad. It has done this with little regard for reliability, safety, or longevity"); Erik Peinert & Ashley Nowicki, *The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked*, AM. ECON. LIBERTIES PROJ. (Oct. 2025) https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf

[81] *See* Ethan Dodd, *After the East Palestine, Ohio, Train Disaster, Why Approve More Rail Monopolies?,* WASH. MONTHLY (Mar. 1 2023), https://washingtonmonthly.com/2023/03/01/after-the-east-palestine-ohio-train-disaster-why-approve-more-rail-monopolies/,("Since 2010, railroads have spent $46 billion more on stock buybacks and dividends than on maintenance and equipment. In 2020, they spent only 60 cents for every dollar of revenue they raked in, leaving them short on equipment, maintenance, and staffing. Unsurprisingly, they lost market share to trucks…")

[82] *See* Jake Johnson, *Rail Workers Blame Fiery Train Crash in Ohio on Wall Street Profit-Seeking*, COMMON DREAMS (Feb. 7, 2023), https://www.commondreams.org/news/rail-workers-wall-street; Press Release, Railroad Workers United, Fiery Ohio Train Wreck the Result of "PSR" (Feb. 7, 2023) https://myemail.constantcontact.com/Press-Release--Fiery-Ohio-Train-Wreck-the-Result-of--PSR-.html?soid=1116509035139&aid=RspHKqRlJkg; *Freight Trains: Last Week Tonight with John Oliver*, HBO (Dec. 10, 2023), https://www.youtube.com/watch?v=AJ2keSJzYyY

other major railroads have all reported increases in train derailments,[83] and "since 2014 the biggest railroads have experienced 13 major operational meltdowns . . . [these] Disruptions deteriorated service quality, rates rose, and many shippers decided to move to trucks."[84] Finally, while the parties may cite NS's investments in safety, this argument is belied by the fact that UP has been responsible for 36% of the 13,000+ accidents involving Class I railroads between 2016 and 2025.[85]

Accordingly, it is evident from observing the aftermath of past large railroad mergers that customers do not benefit from a more efficient railroad, instead, the combined firms gain the leverage over customers needed to provide a worse product at higher profit margins. Such a deterioration in product following mergers is evident not only from the complaints of delays and slowdowns resulting from slashing critical workforce, but also from the shocking disasters which occur for the same reason. These disasters take service offline for extended periods and harm customers by forcing them to switch to far more expensive trucking in the interim.[86]

ii. The Short-term Effects of Class I Rail Mergers Show that Mergers Cause Significant Disruptions to Reliability and Service Quality

Further, beyond these long-run consequences of the consolidation of railroads, in the short term, rail mergers can create chaos for shippers. For example, the merger of Canadian Pacific and Kansas City Southern in 2023 quickly created significant issues. Just two years following the merger, the STB in June of 2025 issued a letter to the combined company reporting that customers

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[83] *See* Peter Eavis, *After East Palestine, Ohio, Train Derailment, Accidents Have Risen*, N.Y. TIMES (Jan. 30, 2024), https://www.nytimes.com/2024/01/28/business/ohio-train-derailment-safety-east-palestine.html

[84] *See* Arnav Rao, *Railroad Merger: Why It Could Go Off the Rails*, WASH. MONTHLY (Aug. 6, 2025), https://washingtonmonthly.com/2025/08/06/railroad-merger-why-it-could-go-off-the-rails/

[85] *See Teamsters Railroaders Oppose the Union Pacific-Norfolk Southern Merger. Here's Why*, JUST CAUSE THE OFFICIAL TEAMSTERS SUBSTACK (Apr. 29, 2026), https://justcauseteamsters.substack.com/p/teamsters-railroaders-oppose-the.

[86] *See, e.g.,* Bill Stephens, *Poor rail service threatens U.S. economy, shippers tell federal regulators*, TRAINS.COM (Apr. 28, 2022), https://www.trains.com/trn/news-reviews/news-wire/poor-rail-service-threatens-u-s-economy-shippers-tell-federal-regulators/ ("Shippers complained about how lengthy delays, erratic service, and missed switches forced them to curtail or halt production or shift some shipments to more expensive trucks.")

had reported delays, congestion, and missed switches.[87] The Board's oversight data showed higher terminal dwell times, slower velocity, and decreased on-time performance.[88] For another example, as mentioned, following Union Pacific's acquisitions of Southern Pacific and following the acquisition of Conrail by both CSX and NS, the service meltdowns became so severe that the STB imposed a 15-month merger moratorium.[89] Accordingly, the justification that a combined rail line will bring efficiency to the existing system is hardly a substantial and demonstrable public benefit that cannot otherwise be achieved. Instead, the combination will *create* the inefficiencies that customers complain of, and leave them with fewer alternatives to turn to, subjecting them to a worse product at a higher price.

b. Customers at Large do Not Prefer and Will Not Benefit from Single-Line Service

The second justification in the Revised Application claims that customers prefer single-line service and will divert traffic to Applicants.[90] However, Union Pacific itself reports that only a small percentage of its business comes from received or forwarded cars.[91] Indeed, 64% of the company's business is endemic to its existing rail line, and just 3% of carloads are "bridged.[92] This raises doubt as to the claim that their customers at large prefer a single line service because the vast majority appear to be shipping goods within the existing network. Additionally, the claim that such an "end-to-end merger" will generate efficiencies by eliminating changeovers (even ignoring

[87] *See* Letter from Patrick Fuchs, Chairman, Surface Transportation Board, to Keith Creel, CEO, Canadian Pacific Kansas City Limited (June 17, 2025), https://www.stb.gov/wp-content/uploads/309673.pdf.
[88] *See id.*
[89] *See* Arnav Rao, *Railroad Merger: Why It Could Go Off the Rails*, WASH. MONTHLY (Aug. 6, 2025), https://washingtonmonthly.com/2025/08/06/railroad-merger-why-it-could-go-off-the-rails/ ("Since 2014, the Class I railroads have cut nearly a third of their workforce. In theory, PSR was about efficiency. In practice, it gutted the system's ability to handle real-world logistics. The biggest railroads have experienced 13 major operational meltdowns in the past decade. Disruptions deteriorated service quality, rates rose, and many shippers decided to move to trucks.")
[90] *See,* Revised Application at 54, 613.
[91] *See Union Pacific Corp., 2024 Investor Factbook*, at 5 (2025), https://investor.unionpacific.com/static-files/c2613b76-b79c-48c0-9882-58bd75d30119
[92] *See id.*

that it seems to help just a small percentage of customers) is not supported. Past mergers have involved "end to end" transactions, which claimed the same benefits that Applicants are pointing to now, but as discussed, these mergers have not resulted in efficiency gains, but instead, delays, reduced service, reduced service qualities and reduced investment in safety and labor resulting in major disasters. For example, the acquisition of Kansas City Southern by Canada Pacific was approved as an "end-to-end" merger.[93] The STB expected similar efficiencies to result, because the transaction promised to "eliminate the need for the two now-separate CP and KC systems to interchange traffic moving from one system to the other."[94] However, as discussed above, rather than create efficiencies, the transaction resulted in complaints of delays, congestion, and missed switches.[95] Such a justification for the merger, therefore, is hardly a substantial and demonstrable public benefits that cannot otherwise be achieved.

Additionally, shippers themselves are opposed to a transcontinental railway, despite the claimed benefits. "Groups representing rail shippers say they would be opposed to the creation of a transcontinental railroad in the U.S., arguing that further consolidation in the industry would reduce their competitive options, lead to higher rates, and worsen service . . . The Freight Rail Customer Alliance, an umbrella group that includes trade associations representing 3,500 companies in the manufacturing, agricultural, alternative fuels, and electric utility sectors, says railroads already have too much market power."[96] Instead, shippers want efficient, reliable service.[97]

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[93] *See American railways and truckers are at a crossroads*, THE ECONOMIST (April 8, 2023), https://www.economist.com/business/2023/04/05/american-railways-and-truckers-are-at-a-crossroads.
[94] *See* Press Release, STB Approves CP/KCS Merger with Conditions and Extended Oversight Period, Surface Transportation Board (Mar. 15, 2023), https://www.stb.gov/news-communications/latest-news/pr-23-07/,
[95] *See supra* n.12
[96] *See* Bill Stephens, *Shipper groups oppose more railroad mergers*, TRAINSPRO (July 28, 2025) https://www.trains.com/pro/freight/shipper-groups-oppose-more-railroad-mergers/
[97] *See id.*

Finally, as discussed, "shippers of bulk commodities such as grain, oilseeds, fertilizer, feed ingredients and food products rely on rail for long-distance movement[.]"[98] Because much of America's food production comes from the Midwest and Northern Plains – near the interchange zones the parties claim will benefit from this merger, and away from navigable waterways – "rail is not simply the lowest-cost option. *It is often the only viable one*."[99] Accordingly, demand for commodity shipping for these customers would become perfectly inelastic, because there would only be one rail line to choose from. Thus, "[a] combined UP–NS system . . . would leave large portions of the country dependent on a single railroad for end-to-end service, eliminating key interchange points, such as Chicago, St. Louis or New Orleans, *where shippers previously could bargain between UP and NS*."[100] Accordingly, the Farm Bureau too opposes the Transaction.[101]

c. Conversion from Truck to Rail is Not Adequate Because Trucks and Rail Largely do Not Compete, and Where they Do Compete, Reliability, Not Scale, Is the Driving Factor

The third justification in the Revised Application argues that because shipping by rail is cheaper than shipping by truck, merger-related diversions from trucks to rail will save customers approximately $3.5 billion annually, and that these savings will flow through to consumer prices, making goods more affordable to the American public.[102] As discussed, cognizable justifications include improved service, enhanced competition, and greater economic efficiency. While the STB has recognized that it "do[es] not limit [its] consideration of competition to rail carriers alone, but

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[98] *See* David Lassen, *Farm Bureau says UP-NS merger will cost farmers, could lead to higher food prices*, TRAINSPRO (Mar. 11 2026), https://www.trains.com/pro/farm-bureau-says-up-ns-merger-will-cost-farmers-could-lead-to-higher-food-prices/; Daniel Munch, Proposed Rail Merger Comes at Farmers' Expense, Farm Bureau (Mar. 11, 2026), https://www.fb.org/intel/markets/proposed-rail-merger-comes-at-farmers-expense

[99] *See id.*

[100] *See id.*

[101] *See id.*

[102] *See* Revised Application at 20-21

examine[s] the total transportation market(s),"[103] the hypothetical diversion of business from trucking to rail service is still insufficient for several reasons.

First, even to the extent that some businesses would shift from trucking to rail, as discussed, the majority of the Parties' business does not compete with trucking. Thus, a benefit to some 30% of UP's customers is easily outweighed by the detriment to the 70% of UP's customers who cannot easily switch to trucking. Second, the expectation that a larger rail line will create efficiencies that will reclaim business from trucking is not supported by the results of past mergers. Instead, as rail lines have gotten bigger, *more* customers have switched to trucking; accordingly, the Parties cite a correlation (poor service driving customers to trucks) as a justification, while ignoring causation (Class I mergers creating these inefficiencies)[104]. Third, and finally, a larger rail line becomes more susceptible to major delays from strikes and major disasters. Thus, whatever benefit is seen could be offset by the potential for a major disruption. Importantly, such an event would put shippers between the proverbial rock and a hard place, faced with expensive trucking on one side, and a transnational rail monopoly on the other.[105]

First, winning business from trucking is an insufficient justification because there is such limited overlap between trucking and rail. A more efficient railroad would not necessarily drive a shift to rail, or would drive this change only to a limited extent and to the detriment of the majority

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[103] *See Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, No. 32760, at 99.
[104] *See* Peter Eavis, *How More Rail Could Take Trucks Off the Road*, N.Y. TIMES (Sept. 18, 2025), https://www.nytimes.com/2025/09/18/business/railroads-trucks-shipping.html (Freight rail has been losing out to trucking for decades. Trucks moved 73 percent of all freight in the United States last year, up from 63 percent in 1990, while rail's share was an estimated 12 percent last year, down from 15 percent in 1990, according to S&P Global Market Intelligence.)
[105] *See* Chris Isldore & Vanessa Yurkevlch, *Here's how the freight rail strike could affect you*, CNN BUSINESS (Sept. 14, 2022), https://www.cnn.com/2022/09/14/economy/railroad-strike-economic-impact ("Idling all 7,000 long distance daily freight trains in the US would require more than 460,000 additional long-haul trucks every day… As such, any rail service disruption will create havoc in the supply chain and fuel inflationary pressures across the board.")

of rail shippers. According to the American Trucking Associations, trucking and rail compete directly on less than 10% of U.S. freight.[106] One explanation for this is that while rail "excels at moving bulk commodities like coal, gravel, and grain," trucks focus on "last-mile" deliveries directly to "hospitals, grocery stores, schools, or homes."[107] According to the American Trucking Association, "[e]xpanding rail to the point where it could even begin to replace trucking would require massive and frankly unrealistic infrastructure investments . . . The cost would be staggering, the disruption immense, and the payoff minimal, *because trucks would still be needed to finish the job*."[108]

For example, "One difficulty that large railroads have is coordinating the transfer of rail cars to smaller, "short line" rail roads. The large railroad might bring the wrong number of empty cars to the short line, or they might arrive at the wrong time, creating headaches for customers shipping goods."[109] Another explanation is that many chemicals cannot be safely and cheaply transported long distances by truck. Indeed, according to the Federal Railroad Administration, "Rail transportation of hazardous materials in the United States is recognized to be the safest land-based method of moving large quantities of chemicals over long distances."[110] Further, the shipment of hazardous chemicals are subject to extensive federal regulations to which railroads

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[106] *See* Chris Spear, President and CEO, American Trucking Associations, *Rail Can't Replace Trucks*, AM. TRUCKING ASSOC. (Sept. 24, 2025), https://www.trucking.org/news-insights/rail-cant-replace-trucks.
[107] *See id.*
[108] *See id.* (emphasis added)
[109] *See* Peter Eavis, *How More Rail Could Take Trucks Off the Road*, N.Y. TIMES (Sept. 18, 2025), https://www.nytimes.com/2025/09/18/business/railroads-trucks-shipping.html.
[110] *See Hazardous Materials Transportation*, Federal Railroad Administration (Mar. 8, 2023), https://railroads.dot.gov/research-development/program-areas/hazmat-transportation/hazardous-materials-transportation ("Rail transportation of hazardous materials in the United States is recognized to be the safest land-based method of moving large quantities of chemicals…").

comply.[111] For example, almost "all ethanol that goes into gasoline moves by rail," and some products such as chlorine and coal, have essentially no alternative to rail.[112]

In 2024, Union Pacific reported that 68% of its revenues came from bulk and industrial shipments.[113] One estimate is that "…70% of Union Pacific's revenue comes from customers who cannot easily switch to trucking."[114] Further, because rail dominant commodities such as chemicals are a comparatively much higher margin business compared to intermodal (shipments that compete with trucking, depending on factors already discussed), the "merged entity would have strong financial incentives to focus on extracting more from its captive customers[,]" who will have fewer options to choose from following the merger and likely face higher rates as a consequence.[115] Accordingly, regardless of the reliability of the $3.5 billion cost savings estimate (which, as explained above, seems dubious), any gain would be more than offset by an increase in cost to the majority of UP's customers, and thus fail to satisfy a substantial and demonstrable public benefit that cannot otherwise be achieved.

Indeed, even if trucking does compete with rail freight, this benefit could be achieved without the merger, by the rail companies investing in better service. Turning to the second reason, while the Revised Application cites losses to trucking because of inefficiencies that could be

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[111] *See, e.g.,* 29 C.F.R. § 1926.902 (Surface transportation of explosives); *How Safe is Hazmat by Rail?*, ASSOC. AM. RAILROADS, https://www.aar.org/issue/freight-rail-hazmat-safety/,

[112] *See* Chris Isldore & Vanessa Yurkevlch, *Here's how the freight rail strike could affect you*, CNN BUSINESS (Sept. 14, 2022), https://www.cnn.com/2022/09/14/economy/railroad-strike-economic-impact, ; *See, e.g.,* Bill Stephens, *Poor rail service threatens U.S. economy, shippers tell federal regulators*, TRAINS.COM (Apr. 28, 2022), https://www.trains.com/trn/news-reviews/news-wire/poor-rail-service-threatens-u-s-economy-shippers-tell-federal-regulators/ , ("Some products, such as chlorine and coal, have no alternative to rail.")

[113] *See Union Pacific Corp., 2024 Investor Factbook*, at 5 (2025), https://investor.unionpacific.com/static-files/c2613b76-b79c-48c0-9882-58bd75d30119

[114] *See* Erik Peinert & Ashley Nowicki, *The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked*, AM. ECON. LIBERTIES PROJ. (Oct. 2025) https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf

[115] *See id.* (citing The Capitol Forum, "Union Pacific/Norfolk Southern: Monopoly Concerns, Industry Track Record Fuel Shipper Skepticism Over Proposed Rail Mega-Merger," (Vol. 13, No. 665, August 15, 2025))

corrected by combining the companies, it fails to acknowledge that the cause of these inefficiencies is the reduction of service and reliability resulting from past mergers. According to union leaders, "This debt-ridden tie-up won't make rail more competitive with trucks as merger proponents claim[.]" Instead, they "believe this transcontinental railroad will make shipping by rail less attractive as the merged carrier passes off rail lines that serve small towns, factories, and farms to short line railroads while running miles-long slow-moving trains on the main line. For rail customers it will be a choice between hell or the [literal] highway."[116] According to customers, "[t]he deteriorating rail service members have experienced for decades makes it exceedingly difficult for shippers to do business with railroads as they are at risk of losing customers if they cannot provide them with reliable shipments[.]"[117] However, as discussed above, rather than making the investments critical to improving service, the companies are pursuing growth by acquisition; larger companies have made the rail lines more susceptible to strikes, and thus far resulted in bigger delays, an increase in derailment disasters, and worse service.

d. Research downstream impact on consumers from increased prices

This merger risks ending rail's ability to absorb inflation and keep costs low. Before the merger and according to the rail industry, rail operates as an inflation buffer, because "Rail's long-haul, bulk-focused model absorbs volatility… [and] this stability has measurable macroeconomic impact."[118] The AAR found that "[while a] 10% acceleration in trucking cost growth correlates with a 2.3% increase in goods inflation; when rail costs rise at the same pace, the impact is just

[116] *See* Bill Stephens, *Engineer and trackworker unions to oppose UP-NS merger*, TRAINSPRO (Dec. 17, 2025), https://www.trains.com/pro/freight/class-i/engineer-and-trackworker-unions-to-oppose-up-ns-merger/
[117] *See In remarks to regulators, rail shippers reveal preference for trucks*, TRAINSPRO (Sept. 9, 2024, updated Aug. 6, 2025), https://www.trains.com/pro/freight/in-remarks-to-regulators-rail-shippers-reveal-preference-for-trucks/.
[118] *See 2025 Supply Chain Report Executive Summary*, Association of American Railroads, https://www.aar.org/wp-content/uploads/2025/12/AAR-PE-Supply-Chain-Resilience-Report-2025-One-Pager.pdf,

0.7%[.]"[119] Additionally, "America's railroads remain crucial for keeping the US economy running smoothly. They carry nearly 30% of the nation's freight, measured by the distance traveled and the weight of the cargo, according to the Bureau of Transportation Statistics. And there really isn't an alternative if the trains stop running."[120] Trucking rates are significantly more expensive per ton-mile. In other words, railroad cost inflation appears to have less impact on overall inflation than trucking only because significantly more commerce travels by truck, at higher rates. Increasing rail does not suppress inflation costs and instead moves them from trucking to rail. By upending the current balance, the merger risks empowering one carrier to pass on the costs to consumers who will have little leverage.

In response to the announcement of this Transaction, "[d]ozens of Republican state legislators warned regulators that the proposed rail mega-merger of Union Pacific and Norfolk Southern threatens to raise the cost of products on everything from steel and autos to food…."[121] In their letter, they explain:

> If approved, the combined UP-NS system would control nearly 45 percent of all U.S. rail tonnage and hold dominant market share in critical commodity sectors including chemicals, metals, lumber, motor vehicles and equipment, crushed stone, sand and gravel, food and kindred products, and iron and steel scrap. *These commodities directly affect the cost of consumer goods, housing, energy, and food—core expenses for American families and small businesses. Reduced*

[119] *See id.*
[120] *See* Chris Isldore & Vanessa Yurkevlch, *Here's how the freight rail strike could affect you*, CNN BUSINESS (Sept. 14, 2022), https://www.cnn.com/2022/09/14/economy/railroad-strike-economic-impact.
[121] *See* Stuart Chirls, *Rail merger could raise prices, hurt US ability to compete, say GOP legislators*, FREIGHT WAVES (Nov. 18, 2025), https://www.freightwaves.com/news/republicans-pressure-stb-on-monopolistic-up-ns-deal.

competition in these areas will inevitably lead to higher prices and fewer choices.[122]

Additionally, as discussed, the Transaction would leave shippers of farm commodities with little to no bargaining power in many cases, because "the merger 'would leave farmers more dependent on fewer railroads at a time when they already have almost no ability to walk away from higher costs or poor service. The merger does not create new competition for agriculture. It removes what little leverage remains by eliminating key routing and interchange options that currently help keep rates and service in check.'"[123] This dynamic could result in higher prices for everyday consumers at the grocery store.[124]

By establishing a dominant rail carrier, the merger destabilizes the pricing dynamic of today and incentivizes monopolistic pricing behavior. Accordingly, the Board should reject this Transaction because rather than creating a substantial and demonstrable public benefit, the Transaction risks failing at rails greatest benefit: rail's existing ability to keep prices low for consumers.

IV. The Merger will Weaken Labor Markets in the States

The proposed merger raises serious concerns about its impact on labor, and the Applicants assurances of "jobs for life" do not address the underlying concerns. First, the proposed merger

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[122] *See* Letter From State Senators to Surface Transportation Board (Nov. 17, 2025), https://www.mnsenaterepublicans.com/wp-content/uploads/2025/11/Legislative-Leader-Letter-to-STB-re-Railway-Merger-Concerns.pdf (emphasis added).

[123] *See* David Lassen, *Farm Bureau says UP-NS merger will cost farmers, could lead to higher food prices*, TRAINSPRO (Mar. 11, 2026), https://www.trains.com/pro/farm-bureau-says-up-ns-merger-will-cost-farmers-could-lead-to-higher-food-prices/ (quoting Daniel Munch, *Proposed Rail Merger Comes at Farmers' Expense*, FARM BUREAU: MARKET INTEL (Mar. 11, 2026), https://www.fb.org/intel/markets/proposed-rail-merger-comes-at-farmers-expense).

[124] Daniel Munch, *Proposed Rail Merger Comes at Farmers' Expense*, FARM BUREAU: FARM BUREAU INTEL (Mar. 11, 2026), https://www.fb.org/intel/markets/proposed-rail-merger-comes-at-farmers-expense).

may lead to substantial job losses as UP and NS consolidate overlapping operations and eliminate redundant positions to reduce costs. According to *The American Prospect*, UP and NS project over 1000 layoffs and 500 employee transfers as a result of the merger.[125] UP's "Jobs for Life" promise is likely to be insufficient to protect railroad workers, because the promise does not guarantee the preservation and backfill of all current positions. As the Teamsters Rail Conference points out, "Nothing in UP's merger filings indicates it plans to backfill positions as rail workers attrition out."[126]

In addition, the promise of "jobs for life" does not protect employees from involuntary relocation, changes in job duties, or reduced compensation. The Teamsters warns that UP could compel a worker to relocate or accept reduced earnings and benefits.[127] A Kansas City worker with 25 years on the job being offered a job in Los Angeles is facing an at best impractical option, and in practice, illusory choice, as acceptance would require the worker to upend their life, give up seniority in their district, and suffer significant personal expense in time and money reestablishing themselves in a new community. It is akin to Henry Ford offering everyone a car painted in any color they want so long as it is black.[128] A "job for life" for a job no worker will take should not sway the Board's decision.

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[125] James Baratta, *Regulators Finally Poised to Review America's Biggest Rail Merger*, AM. PROSPECT (Aug. 7, 2026), https://prospect.org/2026/08/07/regulators-review-americas-biggest-rail-merger-norfolk-southern-union-pacific/ (citing Colin Campbell, *Union Pacific and Norfolk Southern expect 1,000+ job cuts and 500+ transfers in deal*, AXIOS: AXIOS PRO DEALS (Jul 29, 2026), https://www.axios.com/pro/supply-chain-deals/2026/07/28/railroad-merger-job-cuts-expected.).

[126] TEAMSTERS RAIL CONFERENCE, *UP's "Jobs for Life" Promise: Correcting the Record* (2026), https://blet.org/wp-content/uploads/2026/09/1_UP-Jobs-For-Life-Jobs-Factsheet.pdf.

[127] TEAMSTERS RAIL CONFERENCE, *Sticking to the Facts: "Jobs for Life" or "Jobs on UP's Terms"?* (2026), https://blet.org/wp-content/uploads/2026/09/1a_Sticking_to_the_Facts.pdf.

[128] *See* Ronnie Schreiber, *How cars went from "any color, as long as it's black" to a rainbow of hues*, HAGERTY (Oct. 11, 2022), https://www.hagerty.com/media/automotive-history/how-cars-went-from-any-color-as-long-as-its-black-to-a-rainbow-of-hues/.

Moreover, UP's further promises may not provide adequate legal protection. According to the Teamsters, "UP's language [that they "expect. . . growth to provide job security for workers affected by its merger"] creates no enforceable rights for workers impacted by a merger."[129] UP's promise of employment growth does not necessarily guarantee the preservation of existing jobs or protect workers from adverse changes in their working conditions.

Furthermore, the proposed merger would increase workload and place more stress on employees. UP has a history of massive layoffs, and after reducing its workforce by approximately 25% in the years preceding a December 2022 STB hearing, it experienced serious crew shortages that contributed to service disruptions.[130] If any potential layoff or reduction in workforce through attrition leads to similar labor shortages, each employee would have to handle more inspections and maintenance tasks than before the merger, causing fatigue and stimulating the risks of making mistakes. Further, as mentioned earlier, the potential changes in train routes and extension of train length would require extra effort to coordinate and maintain, increasing employees' workloads. The unfamiliarity with different railroad systems and the need for further training to resolve conflicts between the two systems would further increase employees' burden.

V. The Board Should Work to Resolve Short Line Paper Barriers

The Board's inquiry must include the smaller carriers connecting shippers to the Class I network. Its rules specifically direct consideration of whether traffic shifts could undermine the ability of Class II and Class III railroads to sustain essential services.[131] Applicants predict that

[129] TEAMSTERS RAIL CONFERENCE, *Sticking to the Facts: "Jobs for Life" or "Jobs on UP's Terms"?* (2026), https://blet.org/wp-content/uploads/2026/09/1a_Sticking_to_the_Facts.pdf.

[130] Martin J. Oberman, Chairman, Surface Transportation Board, Address at the Southeast Association of Rail Shippers 2024 Spring Meeting (Feb. 29, 2024), at 4, https://www.stb.gov/wp-content/uploads/02-29-24_Oberman_SEARS-speech.pdf.

[131] 49 C.F.R. § 1180.1(c)(2)(ii).

smaller carriers will benefit from expanded markets and more efficient service.[132] The Board should test that prediction against the effects on particular connections, interchange arrangements, and traffic flows.

Paper barriers deserve particular scrutiny. Such arrangements can restrict interchange with competing carriers through prohibitions, per-car charges, rental adjustments, or other financial incentives.[133] Their competitive significance depends on their practical effect: a physical connection to another railroad offers little protection if using it triggers charges that make the alternative uneconomic. Where restrictions channel traffic to the merged carrier, they may prevent short lines from obtaining competing rates, offering alternative routes, or developing business with other Class I partners.

a. Committed Gateway Pricing Does Not Enhance Competition

The merger could increase the significance of existing restrictions even without changing their language. Common ownership may eliminate an independent interchange partner or give the combined railroad a greater incentive to retain the entire long haul. The Board should examine each relevant commitment's scope, duration, exceptions, and financial consequences, including whether its operation changes when UP and NS become affiliated. It should determine whether nominally available alternatives remain commercially usable and whether affected short lines can negotiate competitive terms.

Applicants' proposed protections do not eliminate the need for that analysis. They favor CGP over eliminating interchange commitments, arguing that their proposal avoids disrupting

[132] Revised Application at 325-326.
[133] *See* Morgan Chilson, *Lawsuit Accuses Union Pacific, Kansas and Oklahoma Railroad of anticompetitive violations*, KAN. REFLECTOR (July 21, 2026), https://kansasreflector.com/2026/07/21/lawsuit-accuses-union-pacific-kansas-and-oklahoma-railroad-of-anticompetition-violations/; *see also WesKan Grain LLC et al. v. Kan. & Okla. Railroad, LLC & Union Pacific Railroad Company*, 2026-cv-02053 (D. Kan.).

established short line relationships.[134] But the Board should compare the actual competitive choices available under each approach. A pricing mechanism for specified movements does not necessarily provide the same independence as the ability to select an interchange partner. Likewise, the CN settlement's paper barrier provision is conditional: it provides corresponding relief to CN if UP removes or grants an exception to a barrier on the Kansas City Line.[135] It is not a general commitment to eliminate those restrictions.

The Board should also examine whether traffic diversion would impair the service smaller carriers provide to their remaining customers. Applicants' own analysis projects that approximately two-thirds of the Chicago, Fort Wayne and Eastern Railroad's ("CFE") existing outbound loads interchanged with UP in Chicago would divert to NS after the merger. The Applicant's witness acknowledged a risk to the route.[136] But even if there is enough traffic to support continued CFE service in this example, the relevant inquiry must ask not just whether a railroad can continue operating at all, but whether competitive, quality service can be maintained if CFE has less traffic. Reduced traffic may affect service frequency, maintenance, investment, and the cost of serving customers whose shipments do not divert to the merged entity.

Applicants' assurances that they do not intend to reduce smaller carriers' access to Class I railroads[137] similarly leave important questions unanswered. Retaining a connection does not establish that interchange frequency, car supply, routing options, or commercial terms will remain adequate. The Board should examine whether the combined railroad could favor its own routes

[134] July 27, 2026, Supplement at 16-17.
[135] July 27, 2026, Supplement at 207, ¶ 10.
[136] *Id.* at 360-361.
[137] July 27, 2026, Supplement at 66.

through discriminatory interchange practices, unfavorable revenue divisions, or service changes that make competing routes impractical.

General assurances of growth should not substitute for examining whether the Transaction leaves short line and regional railroads unable to compete and serve their customers. The Board's rules generally disfavor conditions compensating carriers merely for losses caused by increased competition.[138] But that principle does not excuse foreclosure or the loss of essential network connections. Where the evidence identifies such harms, the Board should consider targeted removal or waiver of interchange restrictions, commercially workable access rights, enforceable interchange-service obligations, and reporting that allows affected carriers to obtain timely relief.

VI. The Merger Heightens the Risk of Unsafe Conditions for Labor, Consumers, and the Public.

Both UP and NS have troubling safety records. UP accounted for 1602 railroad accidents and incidents in 2024, or 31% of the reported total, and more than 36% of railroad accidents between 2016 and 2025. UP also accounted for 30% of reported on-duty employee fatalities between 2016 and 2025.[139] According to the Federal Railroad Administration ("FRA")'s data, UP and NS had the highest and second-highest train accident rates among Class I railroads between February 2023 and March 2024, excluding highway-rail crossing incidents (See the table below). Measured by accidents per million train miles ("PMM"), UP's rate was 4.398, followed by NS at 3.830.[140] Meanwhile, according to Norfolk Southern' s 2025 Safety Report, the train accident rate

[138] 49 C.F.R. § 1180.1(d).
[139] *Teamsters Rail Conference Resources on Proposed Union Pacific-Norfolk Southern Merger*, INT'L BHD. OF TEAMSTERS, https://teamster.org/teamsters-rail-conference-resources-on-proposed-union-pacific-norfolk-southern-merger/.
[140] *Oversight of the Department of Transportation's Policies and Programs: Hearing Before the H. Comm. on Transp. & Infrastructure*, 118th Cong. 175 (2023) https://www.congress.gov/118/chrg/CHRG-118hhrg56516/CHRG-118hhrg56516.pdf.

averaged around 3.48 PMM from 2022 to 2025. Although the accident rate kept declining from 2022 to 2025, it's uncertain whether NS can maintain this trend after the proposed merger, accompanied by operational changes and technical coordination challenges.

Class One Train Accidents (Feb 2023 Thru March 2024) Excl. Highway-Rail Crossing Incidents

RAILROAD	Accidents	Total Miles	Rate (PMM)
BNSF	432.00	175,601,776.00	2.460
CN	58.00	22,843,464.00	2.539
CP	1.00	2,825,120.00	0.354
CPKC	15.00	17,921,570.00	0.837
CSX	262.00	74,712,943.00	3.507
KCS	1.00	3,503,447.00	0.285
NS	353.00	92,176,486.00	3.830
UP	585.00	133,001,133.00	4.398
Class Ones †	**1,640.00**	**514,720,575.00**	**3.186**

† NOTE: Class One totals don't sum to total because some accidents involve more than one railroad. This prevents double-counting. Rate Calculated per million train miles.

Furthermore, because UP and NS have experienced similar safety problems, the usual complementary benefits of increasing safety in vertical mergers do not apply here. Both companies have also experienced derailments involving defective track components. In 2017, a UP train derailed in Graettinger, Iowa, releasing around 322,000 gallons of ethanol while causing a fire that took more than two and a half days to burn out.[141] The National Transportation Safety Board ("NTSB") found that the derailment was caused by a broken rail resulting from UP's inadequate track maintenance and inspection program.[142] In 2017, a UP train derailed in Colorado City, Texas

[141] Josh Funk, *Fiery Iowa Derailment Caused by Broken Rail, Poor Repairs*, A.P. (Oct. 30, 2018), https://apnews.com/general-news-24493bcc1ed1446d931a64c265f88bd4.
[142] O. Kay Henderson, *NTSB Cites Broken Rail as Cause of Northwest Iowa Train Derailment*, RADIO IOWA (Nov. 28, 2018), https://www.radioiowa.com/2018/11/28/ntsb-cites-broken-rail-as-cause-of-northwest-iowa-train-derailment/.

due to a loose, improperly fastened rail joint, killing an employee.[143] Similarly, in 2006, an NS train derailed in New Brighton, Pennsylvania, after an undetected internal rail defect caused a rail fracture, causing a 48-hour fire, seven-block evacuation and around $5.8 million in damages. The NTSB attributed the accident to NS's inadequate rail inspection and maintenance.[144] In 2025, an NS train derailed 24 railcars, injuring two workers, due to inadequate procedures to ensure proper maintenance.[145]

These incidents reveal overlapping weaknesses in track maintenance and inspection, and arguably a lack of well-trained workers. Unlike a typical vertical merger that combines complementary strengths, the Applicants' Transaction could bring together similar safety deficiencies across a much larger network, potentially making them harder to address, particularly if layoffs and drastic operational changes place additional burden on safety personnel.

The Board should carefully examine and take all appropriate remedial steps to ensure that any resulting entity following the merge enhance safety, rather than maintain, or even worsen, existing levels of safety for labor, consumers, and the public.

VII. The Kansas to Illinois Market Requires Special Attention

Currently, Applicants maintain overlapping tracks across much of Illinois and Missouri. The overlap region is an area of significant rail activity and therefore has a unique position in maintaining nationwide rail competitiveness.[146] The Board should continue to devote its special

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[143] *NTSB Says Loose Joint Caused Deadly Train Derailment in Arlington*, CBS NEWS (Sept. 22, 2020), https://www.cbsnews.com/texas/news/ntsb-loose-joint-deadly-train-derailment-arlington/

[144] NAT'L TRANSP. SAFETY BD., *Derailment of Norfolk Southern Railway Company Train 68QB119 with Release of Hazardous Materials and Fire*, https://www.ntsb.gov/investigations/Pages/DCA07MR002.aspx?.

[145] NAT'L TRANSP. SAFETY BD., *Norfolk Southern Railway Derailment and Collision with Hazardous Materials Release*, https://www.ntsb.gov/investigations/Pages/RRD25FR019.aspx?

[146] Peter Eavis, *Union Pacific to Buy Norfolk Southern in $85 Billion Railroad Deal*, N.Y. TIMES (Jul. 29, 2025), https://www.nytimes.com/2025/07/29/business/union-pacific-norfolk-southern-merger.html.

attention to the effects of the proposed Transaction on rail competition in the overlap region. Furthermore, the Board should analyze the impact on competition and ensure that no doubts remain on the effect of proposed remedies to competition issues arising from the merger.

a. The Board must conduct careful evaluation of the impacts of terminal control for KCT and TRRA.

Both KCT and TRRA are vital terminals for coast-to-coast transportation as the second and sixth ranked rail transportation centers in the nation.[147] The Kansas City Terminal Railway Company (KCT) located in Kansas City, Missouri and Kansas City, Kansas serves as a terminal for its four class I railroad owners Union Pacific, Norfolk Southern, BNSF, and CPKC.[148] Union Pacific and Norfolk Southern each own one-fourth of the KCT, if they merge this would provide them with a one-half ownership of the KCT. Upon merger, UP-NS would also own a controlling share of four-sevenths ownership in the Terminal Railroad Association of St. Louis (TRRA), three-sevenths from UP and one-seventh from NS.[149] The proposed merger, absent suggested or imposed conditions from CN, would give Applicants majority control of both KCT and TRRA.

A secondary issue results from the geographical location and importance of the terminals. KCI and TRRA both act as transition terminals between the eastern and western railroad companies. This merger would reduce the amount of intermodal transportation that occurs at KCI and TRRA, as UP-NS would no longer require the terminal to switch freight providers. This is a significant change for two reasons: First, the merger leaves UP-NS in control of terminals that it needs to utilize less due to the lower intermodal transportation need resulting from the merger.

[147] MISSOURI DEP'T OF TRANSP., *Freight Railroads*, https://www.modot.org/freight-railroads.
[148] KANSAS CITY TERMINAL RAILWAY, *Moving America's Heartland*, https://kctrailway.com/.
[149] *Union Pac. Corp.—Control—Norfolk S. Corp.* (Decision No. 21), FD 36873, slip op. at 5.

Second, as discussed below, it forces BNSF and CSX to either merge or form a partnership to remain competitive.

Applicants and interested parties have proposed solutions to resolve the anticompetitive effects arising from the acquisition of KCT and TRRA, among which is a proposal by CN for trackage rights over TRRA and control of KCT.[150] However, as noted below, these proposed remedies do not fully address the concerns in this region and the Board should scrutinize the effectiveness of this solution and other proposals towards enhancing competition in the area.

b. The Board should protect competition for 3-to-2 shippers in the overlap region.

The overlap region contains several 3-to-2 shippers who could face a loss of competitive options as a result of the proposed merger: two in Danville, IL; one in Federal, IL; and one in Momence, IL.[151] The four 3-to-2 shippers identified by Applicants are all located in the overlap area. The Board has recognized that the merger of two railroads in overlapping areas can reduce or even eliminate "competition arising from shippers' build-out, transloading, plant siting, and production shifting choices."[152] Recent proposals intend to address the harm to 3-to-2 shippers. However, the Board should recognize that even with the proposed solutions, we will still have tri- and duopoly in what is otherwise a competitive region.[153]

As the Board disfavors mergers that reduce the options for shippers unless there are "substantial and demonstrable public benefits to the transaction that cannot otherwise be

[150] CN Description of Anticipated Responsive Application 2, Sept. 9, 2026.
[151] Amended Application, Volume 2, Page 58. The Board should be aware that UP-NS and various commenting parties disagree on the number of 3-to-2 shippers in the overlap region. This is concerning in light of the Board's desire to fully evaluate the proposed merger.
[152] 49 C.F.R. § 1180.1(c)(2)(i).
[153] *See* CPKC Comments 5, Aug. 6, 2026; Erik Peinert and Ashley Nowicki, *The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked*, AM. ECON. LIBERTIES PROJ., Oct. 2025, at 12–13, https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf.

achieved . . .[154]", the Board should consider whether the merger does and can provide those public benefits.

VIII. The Proposed Remedy by Canadian National Addresses Some, Not All, Concerns

CN suggests several conditions to preserve rail competition. First, to secure access to Kansas City, CN seeks the divestiture of UP's Kansas City Line between St. Louis and Kansas City or obtaining overhead trackage and haulage rights over that line. CN also seeks to lease Neff Yard, attain terminal trackage rights over BNSF's line between Eton and Congo, and obtain trackage rights between Lydia Avenue and Broadway in Kansas City. Second, CN seeks overhead trackage rights over the Tuscola Line between Tuscola and East St. Louis and the lines of A&S for connection of TRRA. CN also hopes to acquire connecting trackage rights over the TRRA. Finally, CN proposes haulage or trackage rights to serve affected customers in Hillsboro, Carlinville, Des Moines, and Avon.[155] However, the proposed conditions might aggravate the issues associated with safety and labor that the proposed merger has.

a. Unaddressed Safety Concerns

The proposed merger would worsen the already poor safety conditions of both railroads for two reasons, which might be further exacerbated by inappropriate conditions suggested by CN. First, the potential cost-cutting and layoffs after the proposed Transaction would aggravate safety concerns. Former STB Chairman Martin Oberman warned that cutting railroad workers "undermines safety because rail workers are essential to safe rail operations."[156] UP's history

[154] 49 C.F.R. § 1180.1(a).
[155] See *Union Pacific Corp.—Control—Norfolk Southern Corp.*, No. 36873, CN-30, at 2-3.
[156] Martin J. Oberman, Chairman, Surface Transportation Board, Address at the Southeast Association of Rail Shippers 2024 Spring Meeting (Feb. 29, 2024), at 2, https://www.stb.gov/wp-content/uploads/02-29-24_Oberman_SEARS-speech.pdf.

provides evidence for this concern. UP reduced its workforce by 25%, contributing to crew shortages and serious service disruptions in 2022.[157] UP's earlier merger with Southern Pacific also provides a warning: FRA investigations found serious safety problems after the merger, including crew shortages, unsafe practices by overworked and poorly trained supervisors and dispatchers, poor maintenance of locomotives, and a toxic culture focused on efficiency rather than safety.[158]

Similar risks could arise here if the merger induced layoffs. The potential divestiture of the Kansas City Line proposed by CN could potentially lead to layoffs, which would cause safety risks, given that the remaining workers might suffer from overly heavy workloads. It's also noteworthy that, even without layoffs, the merger would create operational chaos during the transition, leading to serious safety problems in the short term. If the overworked staff from different companies have to adapt to unfamiliar routes and operating rules, the chaos would last longer than expected.

Second, the merger would change train routes and lengths, creating safety risks on certain lines, which might be exacerbated by the CN proposal. Applicants plan to reroute freight to bypass certain interchange points. For example, Applicants plan to route freight between California and the Southeast through Shreveport, Louisiana and Meridian, Mississippi rather than Memphis, Tennessee.[159] Increasing haulage and truckage rights for CN means increased usage of existing routes resulting in either higher maintenance costs (passed on to consumers) or higher safety risks

[157] *Id.* at 4.
[158] *FRA Releases Safety Report on Union Pacific Railroad Audit*, FED. R.R. ADMIN (Feb. 25, 1998), https://railroads.dot.gov/elibrary/fra-releases-safety-report-union-pacific-railroad-audit.
[159] Union Pacific & Norfolk Southern, *The Great Connection: Creating America's First Transcontinental Railroad 1 (2026)*, at 18, https://assets.up-nstranscontinental.com/stb-hub/Great_Connection_White_Paper_v41.pdf.

for rail degrading faster under higher load. New routes also mean employees need to adapt to unfamiliar territory and operating conditions, increasing the risk of operational errors.

UP and NS also plan to increase their train length after the proposed merger.[160] According to a 2024 National Academies report, longer trains can increase safety risks because they are harder to handle and generate more complex forces between railcars, causing equipment failures or derailments. They also place greater demands on workers, as assembling longer trains requires more coordination and creates additional opportunities for errors. If the worker capabilities are insufficient, the risks posed by longer trains would increase.[161]

Moreover, CN's proposed remedies would amplify the potential risks of longer trains. In the proposal, CN seeks access to new routes controlled by UP and NS, including the Kansas City Line and the Tuscola Line, which means there will be more freight traffic routed through these lines.[162] CN has also proposed haulage rights on the Kansas City Line, on UP's lines serving Hillsboro and Carlinville, and between Manly or Iowa Falls and Des Moines and Avon.[163] To exercise its right, CN might add its cars to Applicants' trains, increasing train lengths and exacerbating the safety risks associated with the longer trains. This would complicate train dispatching and raise the risk of train collisions. Considering UP experienced a fatal collision involving dispatching errors in 2022, where a train was mistakenly routed onto an occupied siding

[160] Carl Garrison, *Building What Two Railroads Can't*, UNION PACIFIC (Oct. 12, 2026), https://www.up.com/news/growth/building-what-two-railroads-cant-261012.
[161] Nat'l Acads. of Scis., Eng'g, & Med., *Long Freight Trains: Ensuring Safe Operations, Mitigating Adverse Impacts* 2 (2024), https://www.nationalacademies.org/read/27807/chapter/2.
[162] See *Union Pacific Corp.—Control—Norfolk Southern Corp.*, No. 36873, CN-30, at 8.
[163] *Id.* at 2-3.

in California, killing two crew members, risks related to potential train collisions stemming from longer trains or increased train volume should not be overlooked.[164]

CN's proposed remedies related to trackage rights would introduce more challenges that require more intricate coordination between carriers, while the remedies related to haulage rights would increase freight volumes handled by host railroads, possibly requiring the addition of more railcars at interchange yards and resulting in greater safety risks.

b. Unaddressed Labor Concerns

CN's proposal could introduce new labor-related risks or exacerbate those already associated with the proposed merger. As CN is intending to hire on employees as needed rather than absorb the UP personnel, the potential divestiture of the Kansas City Line would create new risks of unemployment if not accompanied by appropriate labor protections. These protections should ensure that any employee leaving UP and joining CN as a result of the merger is granted the same seniority rights and the opportunity to do the same work in the same market. For any employee that CN chooses not to hire, those employees should be given guarantees to jobs with the same seniority, same duties, and as near as possible, same region within UP.

Moreover, CN's proposed truckage rights over UP and other railroads' lines would require employees of different railroads to coordinate. Employees may also need additional training to become familiar with different routes and operating rules. These additional responsibilities could further increase employees' workloads, particularly if the merger results in workforce reductions or staffing shortages. Although CN suggests it's preserving competition with its remedy proposal,

[164] Nat'l Transp. Safety Bd., *Union Pacific Railroad Head-On Collision with Stationary Intermodal Railcars*, https://www.ntsb.gov/investigations/Pages/RRD22LR014.aspx?.

it is in fact merely one more oligopolist in an already consolidated market switching position to gain an advantage other competitors cannot access.

c. *The Board Should Scrutinize CN's Proposals in a Broader Context*

CN's proposals do preserve the status quo number of competitors in the Kansas, Missouri, Iowa, and Illinois region. However, simply preserving the number of competitors is not "enhancing competition" either regionally or nationally. The Board should examine any remedial proposal with the enhanced competition lens, which is broader than simply preserving the surface level number of competitors.

IX. The Merger will Likely Trigger Additional Consolidation

Approval of the merger will likely trigger additional consolidation across the Class I rail network. In some ways, it already is starting. In 2025, CSX and BNSF announced new intermodal services and offering of coast-to-coast rail solutions.[165] Furthermore, BNSF, CPKC, and CSX are seeking broad trackage rights across the UP-NS network, especially in the Kansas City to St. Louis region, in large part because the remaining competitors believe CN's proposed remedies are insufficient.[166]

A UP-NS merger allows for direct routes linking western and eastern cities–something that until the 1900s was blocked by geographic features like rivers. This direct route would give UP-NS a competitive edge in any transportation crossing the Missouri or Mississippi rivers. As such, BNSF and CSX, in order to remain competitive with UP-NS, would be forced to either merge or

[165] *CSX, BNSF Announced New Intermodal Services, Offering Seamless Coast-to-Coast Rail Solutions*, CSX.COM (Aug. 22, 2025) (https://www.csx.com/index.cfm/about-us/csx-bnsf-announce-new-intermodal-services-offering-seamless-coast-to-coast-rail-solutions/).
[166] Trains.com Staff, *BNSF, CPKC, and CSX to request broad access to a combined UP-NS network*, FREIGHTWAVES.COM (Sept. 14, 2026), https://www.freightwaves.com/news/bnsf-cpkc-and-csx-to-request-broad-access-to-a-combined-up-ns-network.

form a partnership.[167] In either case, the result is less competition, less leverage for rail consumers, and inevitably, as discussed herein, higher prices, worse working conditions, and less safety. This type of chain consolidation would result in only two North American transcontinental railroads controlling all of the eastern to western railroad freight in the U.S.[168]

For the reasons stated above, Applicants will have a dominant position from which to charge high prices and control competition. The only out for BNSF would be consolidation and the only other Class I railroad that could offer sufficient eastern US competition is CSX. The Attorneys General are concerned approval of the Applicants merger will put the remaining Class Is in a merge or die scenario, ramping consolidation and destroying competition.

X. Beyond the Overlap Region, the Merger Presents State Specific Concerns

a. Michigan

The merger could have a substantial impact on Michigan's freight rail system. First, Norfolk Southern itself maintains a significant presence in Southern Michigan.[169] The railroad employs around 1600 employees and spends an annual $4.6 million on infrastructure improvements.[170] Furthermore, Michigan is also home to a number of Class III Railroads.[171] One

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[167] Bill Stephens, *BNSF and CSX announce new joint domestic and international intermodal service*, TRAINS PRO (Aug. 22, 2026), https://www.trains.com/pro/freight/intermodal/bnsf-and-csx-announce-new-joint-domestic-and-international-intermodal-service/ ("[a]nalysts widely believe that a BNSF-CSX merger is the inevitable competitive response to UP-NS.").

[168] Major Rail Consolidation Procs., 5 S.T.B. 539 (2001) at 2.

[169] *Michigan Railroads*, MICHIGAN DEP'T OF TRANSP. (Oct. 27, 2026), https://arcg.is/0ayyKm3 (map of Michigan's Railroads).

[170] *MI - Corporate and State Fact Sheet 2026 Update*, NORFOLK SOUTHERN, https://www.norfolksouthern.com/content/dam/nscorp/newsroom/corporate-fact-sheets/2026-updates/MI%20-%20Corporate%20and%20State%20Fact%20Sheet%202026%20Update.pdf (last visited Oct. 27, 2026).

[171] *Michigan Railroads*, MICHIGAN DEP'T OF TRANSP. (Oct. 27, 2026), https://arcg.is/0ayyKm3 (map of Michigan's Railroads).

of these, the Mid-Michigan Railroad, and at least two of its divisions, the Grand Rapids Eastern Railroad and the Michigan Shore Railroad, have all submitted Notices of Intent to Participate.

The merger could cause changes to the rail system around Detroit if the Board grants the trackage rights requested by interested parties. Currently, the Wheeling and Lake Erie Railway company, a Class II railroad, seeks trackage rights to the CSAO of Detroit at River Rouge.[172] CPKC also seeks to file a responsive application for adjustments to their trackage rights between Chicago and Detroit.[173] Considering Michigan's proximity to the overlap area, later proposed solutions or modifications to solutions might further affect Michigan as well.

Michigan would also be affected by the potential downstream effects of the UP-NS Merger. For example, if CSX finds itself compelled to merge with BNSF, that second merger will affect a major line running across the state to cities such as Detroit and Grand Rapids.[174]

Michigan's industries could face wide-reaching consequences from the merger. Agricultural and chemical shippers in the state, often reliant on rail transport, have expressed their interest in and concern about the merger through applications and comments to this Board. Likewise, existing passenger rail in the state may suffer disruptions.[175] Future passenger rail projects may have to contend with the consequences, as the merger may affect localities' plans to develop their passenger transit lines.[176]

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[172]Wheeling & Lake Erie Railway Company Description of Anticipated Response Application 3, Sept. 9, 2026.
[173]CPKC's Description of Anticipated Responsive Applications 4, Sept. 9, 2026.
[174] *Michigan Railroads*, MICHIGAN DEP'T OF TRANSP. (Oct. 27, 2026), https://arcg.is/0ayyKm3 (map of Michigan's Railroads).
[175]*See generally Rail Passengers Urges STB to Summarily Deny UP–Norfolk Southern Merger Application*, RAIL PASSENGERS ASSOCIATION: NEWS, (Sept. 9, 2026), https://www.railpassengers.org/happening-now/news/releases/rail-passengers-urges-stb-to-summarily-deny-up-norfolk-southern-merger-application/.
[176]*See, e.g.*, MLIVE EXPRESS DESK, *Sterling Heights studies possible passenger rail link to Detroit, airport*, MLIVE: DETROIT (Nov. 9, 2026), https://www.mlive.com/detroit/2026/11/sterling-heights-studies-possible-passenger-rail-link-to-detroit-airport.html (article describing the City of Sterling Heights' research project to turn a freight rail corridor into passenger rail).

The merger may also impact Michigan's car industry.[177] Automotive shippers have few, if any, alternatives for transporting finished vehicles except rail.[178] Experts believe that automotive shippers and OEM parts manufacturers are "not likely to see service improve or costs reduce."[179] The merger would further rest on top of pre-existing fears of retaliation,[180] especially concerning in light of Mr. Vena's recent comments.

Michigan's state-specific concerns demonstrate that a state and its people need not be in the overlap region to feel the effects of a major rail merger. Michigan's rail lines, rail employees, shippers and consumers of Michigan may suffer from the negative effects of consolidation. Therefore, Michigan asks that the board take notice of the many concerns of Michigan-based concerned parties. The Board should be skeptical that the proposed merger, even with protective conditions, could protect and enhance competition.

b. New York

i. The Combined Firm Will Have the Ability and Incentive to Foreclose its Only Rival in New York State from the Inputs Needed to Compete

Exclusionary conduct can come in the form of "foreclosure," or "cutting rivals off from access to inputs, distribution, customers, or complements and thus reducing their ability and incentive to compete."[181] Indeed, it is the Supreme Court's condemnation of this behavior, *by a railroad,* that serves as the textbook illustration of how this behavior can negatively affect competition.[182]

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[177]Megan Kelly, *UP-NS merger likely to bring more disruption to North American automotive logistics*, AUTOMOTIVE LOGISTICS: VEHICLE LOGISTICS (Oct. 29, 2025), https://www.automotivelogistics.media/vehicle-logistics/upns-merger-likely-to-bring-more-disruption-to-north-american-automotive-logistics/1619404.
[178]*Id*.
[179]*Id*.
[180]*Id*.
[181] *See* Daniel Francis & Christopher Jon Sprigman, ANTITRUST: PRINCIPLES, CASES, AND MATERIALS (4th ed. 2026) at 333-34 (excerpting Thomas G. Krattenmaker and Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 Yale L.J. 209 (1986).
[182] *See id.* at 333-34 (excerpting Thomas G. Krattenmaker and Steven C. Salop, *Anticompetitive Exclusion:*

Should the STB approve this Transaction, the merged entity would have the ability and incentive to foreclose competitors from access to inputs and other trading partners, including in New York State. This foreclosure will have several anticompetitive effects that will cause public harms, including worsened service, reduced competition, and reduced economic efficiency.

Currently, NS and CSX Transportation operate as a duopoly of Class I railroads in New York State and the greater New York City metropolitan region. By controlling the only transcontinental rail line in the United States, the newly merged firm will have the incentive and ability to raise the input costs of its only Class I rival in New York, resulting in diverted traffic from CSX's lines to the combined firm's rail lines.[183]

UP is currently one of CSX's largest interline partners when shipping to the West Coast for customers, and the proposed merger will result in CSX's interline partner also becoming its horizontal competitor in the New York region. Presently, UP operates as an interline partner for both NS and CSX, but after the merger UP will most certainly direct its traffic onto NS's lines, creating a shortfall of customers and revenue for CSX. In addition, the combined Applicants firm can then raise the West Coast leg price for CSX when it uses Applicants as an interline partner, thus ensuring even more customers choose Applicants over CSX.

A combined Applicants can also foreclose competition through bundling. As the sole end-to-end railway, the merged entity can offer bundles which other Class I railroads cannot. With the

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Raising Rivals' Costs to Achieve Power Over Price, 96 Yale L.J. 209 (1986) ("Antitrust literati know this as the "Bottleneck" or "essential facilities" problem. This Bottleneck method is precisely the technique employed collectively by a group of vertically integrated firms in *United States v. Terminal R. R. Ass'n of St. Louis*, 224 U.S. 383 (1912). In that case, a group of railroad operators obtained an important input: the only railroad bridges across the Mississippi River at St. Louis. The railroad operators also obtained a promise from the bridge owners . . . that the bridges could be made available to other, non-owner, railroads on discriminatory terms. Excluded railroads could avoid this risk only by building their own bridges or ferries")

[183] *See The rail mega-merger that could transform American supply chains*, THE ECONOMIST (Jul. 24, 2025), https://www.economist.com/business/2025/07/24/the-rail-mega-merger-that-could-transform-american-supply-chains ("Norfolk Southern and CSX have a similar duopoly to the east")

incentive to increase traffic on its own lines, Applicants can easily use its market power to offer anticompetitive bundles to eliminate competition on certain routes. By the parties' own admission, there is demand for both transcontinental shipping and East Coast shipping.[184] Accordingly, the combined firm will have the ability to practice anticompetitive bundling and the incentive to do so, in order to win business from and earn additional profits from, its only rival in the New York Region, CSX. Should CSX's presence be eliminated on certain routes, Rule 11 pricing could then cease to exist on these routes, leaving shippers as price takers without the ability to have NS and CSX compete on price.

With raised costs and a reduced customer base, CSX will be less able to successfully compete with Applicants in New York. Further, with the dual hit of higher costs and a dwindling customer base (as more and more of its New York customers move to Applicants), CSX likely will be unable to maintain its current investments in New York State in operations and labor. Thus, the traffic remaining on CSX lines in the New York region may suffer from a degradation in service quality.

Lastly, because Amtrak's passenger traffic in New York currently runs primarily on CSX-owned railways, this merger could adversely impact passenger rail transport for New Yorkers. Reduced investments by CSX on lines used by Amtrak's Hudson Line would result in greater delays and a deteriorated passenger experience. This could lead to an increase in passenger and traveler traffic on the state's highways, which the Parties' application recognizes as a public harm.[185]

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[184] *See, e.g.,* Revised Application at 12 (The combination delivers what shippers consistently say they want, and what the data consistently show they choose when available: seamless, efficient, end-to-end rail service with a single carrier accountable for the full move.")

[185] *Cf.* Norfolk Southern, *Four Ways Norfolk Southern Is Partnering to Support Passenger Rail* (Nov. 18, 2025) https://norfolksouthern.com/en/newsroom/story-yard/four-ways-norfolk-southern-is-partnering-to-support-passenger-ra; *see* New York State, *Governor Cuomo Announces Hudson Rail Line Lease* (Dec. 4 2012), https://web.archive.org/web/20180409110023/https:/www.governor.ny.gov/news/governor-cuomo-announces-

This problem is far from hypothetical – according to NS's own filing, its highest volume of shipping occurs in the New York City to Chicago corridor,[186] and NS and CSX operate a duopoly on the east coast for freight shipping.[187] It is therefore clear that the combined firm would have a strong incentive to foreclose their only competitor on the east coast from their highest volume corridor.

The STB should consider that although the proposed merger is touted as an "end to end" merger, the result includes the potential destruction of *horizontal* competition, especially in the New York metropolitan region. This destruction of competition causes anticompetitive harm to New York shippers because by limiting CSX's ability to compete, Applicants is free to raise prices to shippers without needing to offer a higher-quality product. Because CSX is foreclosed from the market, Applicants has no incentive to offer a more efficient, safer, faster railroad– they no longer have a rival trying to offer their customers a better product at a more competitive rate. Thus, the combined firm would have no incentive to invest in quality, better service, safety, etc. because they are not constrained by any competitor, and shippers will become price takers.

ii. Infrastructure Limitations in the Firms' New York Operations Illustrate Immediate Harm Should the Merger be Approved

Compounding these issues is the existing disparity between the existing capacity and infrastructure of the two rail lines in New York. Presently, CSX operates three major rail yards in New York State (Selkirk, Syracuse, and Buffalo), and CSX's line from Chicago to Selkirk is a

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hudson-rail-line-lease; *CSX, Amtrak agreement to share tracks in northeast could point toward future expansion in the Carolinas*, Queen City News (Updated Jan 31, 2022) https://www.qcnews.com/news/transportation/csx-amtrak-agreement-to-share-tracks-in-northeast-could-point-toward-future-expansion-in-the-carolinas/; *cf.* Revised Application.

[186] *See* Norfolk Southern, *Form 10-K*, 2025, at k4, https://www.sec.gov/Archives/edgar/data/702165/000162828026006268/nsc-20251231.htm#i27441e068795479aa45a2b29cb9a3c00_13

[187] *See The rail mega-merger that could transform American supply chains*, The Economist, Jul. 24, 2025, https://www.economist.com/business/2025/07/24/the-rail-mega-merger-that-could-transform-american-supply-chains ("Norfolk Southern and CSX have a similar duopoly to the east")

double-lined railway with more sidings, servicing more capacity by carload in New York compared to NS's eastward line from Chicago which is single lined and services fewer carloads. For example, CSX's Selkirk rail yard has a capacity to serve some 300,000 cars a year, with direct lines from there to New York and New Jersey harbor, whereas NS's comparable railyard, the Conway Yard, is hundreds of miles away, in Pennsylvania, near the Ohio border.[188] Given this disparity, should a large portion of CSX's traffic be diverted onto NS's lines, it is doubtful that the existing NS infrastructure would be sufficient to handle the increase in traffic, especially to the New York metropolitan region. This could cause significant disruptions for shippers, in the form of delays, breakdowns and derailments.

In further contrast, NS does not have an NS owned/Freight Operating Rights line that runs directly from upstate New York into New York Harbor; instead the route originates in Albany and proceeds down into Binghamton, then to Bethlehem or even Harrisburg, PA, then to New York.[189] Additionally, NS's New York line, in contrast to CSX's, does not pass by the major cities of Utica, Syracuse, or Rochester.[190] Should NS be allowed to foreclose CSX's access to transcontinental routes, and thus force it to raise rates along its other lines, shippers from these major cities will all face higher prices, or be forced to take a less direct route to get their goods to New York harbor.

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[188]CSX, *CSX System Map* (last visited Nov. 9, 2026), https://www.csx.com/index.cfm/customers/maps/csx-system-map/; *Community Impact Map*, Stop The Rail Merger Coalition, (last visited Nov. 9, 2026) https://stoptherailmerger.com/community-impact-map/; CSX, *Annual Report 2025*, at 18, https://s2.q4cdn.com/859568992/files/doc_financials/2025/ar/2025-csx-annual-report.pdf*; CSX Selkirk Yard: The Rail Gateway to New England and New York City*, Steel Wheel Logistics (last visited Nov. 9, 2026) https://steelwheellogistics.com/rail-hubs/selkirk-csx-new-york-hub; *Top 10 Largest Cargo and Freight Railyards in the United States*, Logos Logistics (Oct. 24, 2025), https://www.logos3pl.com/blog/top-10-largest-cargo-and-freight-railyards-in-the-united-states/#elementor-toc__heading-anchor-2

[189] *See* Norfolk Southern, Form 10-K, 2025, at K4, https://www.sec.gov/Archives/edgar/data/702165/000162828026006268/nsc-20251231.htm#i27441e068795479aa45a2b29cb9a3c00_13

[190] *See id.*; CSX, CSX System Map*, supra* n. 161.

Finally, because NS's existing rail line offers a less direct route or may lack the capacity to service a large influx of customers from CSX, the combined firm may be incentivized to either run more frequent or longer trains or have shippers divert their shipments to trucking in order to transport their goods the so called "last mile" into New York harbor. If NS were to run more frequent or longer trains, the people of New York may be adversely impacted, as frequent or lengthy blockages of highway/rail grade crossings produce vehicle congestion and potentially delayed local emergency response (if emergency responders must cross the rail grade). Diversion of rail shipments to truck for last-mile delivery could subject New Yorkers to all of the downsides of trucking that the parties point out in their Revised Application.[191]

The effect of the Transaction on New York would not be "improved service, enhanced competition, and greater economic efficiency." Instead, New York shippers would be faced with higher prices, fewer choices, worse service and less economic efficiency.[192] As such, the Office of the New York Attorney General recommends that the STB should deny the approval of the Transaction.

c. Pennsylvania

The Commonwealth of Pennsylvania ranks first in the country in the number of operating railroads (65), third in the total track mileage (more than 5,600 miles), sixth in carloads terminated, eighth in carloads originated, ninth in originated rail tons and ninth in freight rail employment. The Commonwealth is home to the third busiest passenger station (Philadelphia - 30th Street Station) and the nation's sixth busiest commuter rail service (SEPTA). Amtrak operates five

[191] *See, e.g.,* Revised Application at 26 ("When compared to shipping by train, trucking has 15.3 times as many accidents, 15 times as many injuries, and 4.8 times as many fatalities.")
[192] *See* 49 C.F.R. § 1180.1(a)

intercity services in the Commonwealth. The Commonwealth has a strong interest in maintaining competitive freight rail services and maintaining and expanding passenger rail services.

The Commonwealth administers two programs to fund freight rail improvements in Pennsylvania. Through these programs, the Commonwealth has directly supported in recent years the rehabilitation of 300 miles of track, the rehabilitation or replacement of 32 bridges, and the improvement of clearance to allow more intermodal container operations for Pittsburgh and Philadelphia, among others. Diverse stakeholders, whether shipping goods to warehouses or moving Pennsylvania anthracite, want to preserve reliable service and competitive options across the Commonwealth that single-line service alone does not deliver.

Regarding passenger rail, the Commonwealth has directly supported the expansion of passenger rail service over Norfolk Southern' s Pittsburgh Line to increase the frequency of Amtrak's Pennsylvanian service. The Commonwealth and other stakeholders are actively pursuing restoration of passenger service between Reading and Philadelphia, and Scranton and New York City. In particular, the return of Reading-Philadelphia passenger service will necessarily rely on agreements with Norfolk Southern. The merged entity should be required to honor those commitments.

d. Minnesota

Minnesota ranks eighth in the nation for total track mileage.[193] Union Pacific is one of four Class I Railroads with significant lines across the State of Minnesota. Union Pacific has a meaningful presence in the Twin Cities region, including St. Paul where it functions as a key rail hub and its operations interface with the BNSF Railway, Canadian Pacific Kansas City, Amtrak, and several short line railroads. In 2021, Union Pacific opened the Twin Cities Intermodal

[193] Minnesota Department of Transportation, *Minnesota State Rail Plan* at 10 (2025).

Terminal "play[ing] a vital role in transporting consumer goods bound for Twin Cities retailers, as well as Midwest-grown agricultural products destined for international markets."[194]

Despite the robust record in this matter, concerns remain for Minnesota regarding potential congestion impacts, intermodal competitiveness, and the availability of export containers for Minnesota shippers, particularly agricultural shippers given Minnesota is 4th in the nation for total agriculture exports. There is also concern for passenger rail reliability and future passenger corridor development.

Minnesota has a strong interest in ensuring that the proposed merger does not adversely affect freight mobility, passenger rail service, or competition within the state. The Twin Cities region is a critical freight rail hub and already experiences significant capacity constraints. The Board should carefully evaluate these Minnesota-specific impacts as it assesses whether the proposed Transaction serves the public interest.

e. Maryland

Maryland's freight rail network serves as a critical Mid-Atlantic logistics hub, anchored by two competing Class I railroads—CSX Transportation and Norfolk Southern- alongside a network of regional short-line operators. Spanning roughly 1,000 miles of active track, the system connects the Port of Baltimore and major industrial corridors in central and western Maryland to key inland markets across the Midwest and Northeast. CSX maintains the largest footprint in the state, operating vital north-south and east-west arteries while Norfolk Southern provides essential competing Class I service into the port and western Maryland hubs like Hagerstown.

The direct competition between CSX and Norfolk Southern serves as a critical market check that prevents either carrier from exercising monopoly pricing power over Maryland

[194] *Union Pacific's Twin Cities Intermodal Terminal Growing Strong,* Union Pacific News (March 17, 2025), https://www.up.com/news/growth/twin-cities-intermodal-it-250317.

businesses. Because major terminals at the Port of Baltimore and industrial hubs across the state have access to both networks—either directly or via short-line connections—shippers can actively solicit competing bids for inland freight movement to the Midwest and Southeast. This competitive tension forces both railroads to offer discounted contract rates, volume incentives, and more flexible service commitments to win market share, shielding Maryland manufacturers, agricultural producers, and importers from the steep "captive shipper" surcharges commonly seen in single-railroad regions.

While not eliminating a physical railroad in Maryland, the merger threatens to destabilize the competitive balance between CSX and Norfolk Southern that currently protects local shippers. The proposed merger could diminish competitive rail pricing and service options by allowing the merged carrier to internalize interchange decisions and disadvantage interline movements involving CSX or BNSF. The merger also risks triggering additional consolidation—such as a counter-merger between CSX and BNSF—which would further concentrate market power into two dominant transcontinental duopolies, reducing routing flexibility and weakening the aggressive head-to-head bidding that currently keeps shipping rates low at the Port of Baltimore and across Maryland's industrial corridors.

Competitive pricing is not merely a shipper concern. It also drives output enhancing public infrastructure investments in the region like the Howard Street Tunnel project.[195] The tunnel modernization was funded by substantial federal, state, and private investments[196] with the

[195] Maryland Department of Transportation, Port Administration, Project Page, https://mpa.maryland.gov/Pages/hst.aspx (accessed 17 Nov. 2026).
[196] Presentation to the National Capital Region Transportation Planning Board (January 6, 2022) https://www.mwcog.org/file.aspx?A=RkQviNCIMR9ITUO%2bsgwh%2btKAYwYUrHblaKqlWZvMfHc%3d (accessed 17 Nov. 2026).

expectation that multiple rail carriers would compete to grow intermodal traffic[197] through the Port of Baltimore (POB), providing shippers with market-driven rates, service alternatives, and routing flexibility. The value proposition underlying this investment was clear: enhanced rail capacity would attract new cargo, increase port throughput, support job creation, expand tax revenues, and strengthen the Port of Baltimore's competitive position as a national freight gateway. If the merger results in reduced pricing competition, weakened gateway protections, or a significant diversion of traffic away from CSX, the public benefits that justified this investment could be substantially undermined. The Applicants' own projections indicate that CSX would experience the largest traffic loss of any Class I railroad[198], raising concerns about the long-term competitive viability of the very corridor that the Howard Street Tunnel project was designed to strengthen. Preserving robust rail competition, including effective pricing safeguards at key interchange gateways, is essential not only for Maryland shippers and the POB, but also for protecting the anticipated return on the substantial public investment made in output enhancing projects like the Howard Street Tunnel.

A loss of competition between CSX and Norfolk Southern also threatens passenger rail reliability and future transit expansion across Maryland's heavily shared corridors. Currently, MARC Train operates its Brunswick and Camden commuter lines directly over CSX-owned tracks, while Amtrak and MARC's Penn Line share congested Northeast Corridor junctions and freight bottlenecks near Baltimore. In a balanced dual-rail market, state transit agencies maintain critical negotiating leverage when securing trackage rights, dispatching priority, and capital cost-sharing agreements for infrastructure upgrades. If a transcontinental merger weakens competitive

[197] Design Build Institute of America, CSXT Howard Street Tunnel (HST) Clearance Project, 2026 | Transportation | Best in Process – Progressive Design-Build | National Award of Excellence | National Award of Merit https://dbia.org/project/csxt-howard-street-tunnel-hst-clearance-project/ (accessed 17 Nov. 2026).
[198] Revised Application at 193 (Item 127).

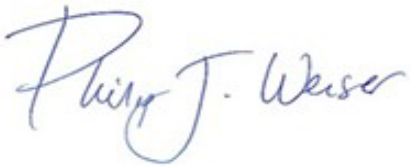
equilibrium—or triggers defensive consolidation that concentrates freight dispatching power—host railroads could demand steeper access fees, resist adding new commuter frequencies, or prioritize longer, heavier transcontinental freight trains during peak travel windows, resulting in cascading delays for Maryland commuters and higher public transit operating costs.

On the basis of the threat to the competitive market conditions that currently exist in the critical railroad shipping market and to protect Maryland business, the Port of Baltimore, and Maryland commuters, the Attorney General of Maryland further encourages the STB to carefully review the proposed merger with these facts in mind.

XI. Conclusion

For the reasons stated above, the Attorneys General urge the Board to reject this merger and express grave concern that the proposed merger between Union Pacific and Norfolk Southern will cause dramatic difficulty in both the short- and long-term in the Kansas to Illinois region and more broadly, for the entire rail network. Further, the parties have not offered sufficient proposals that would remedy the harms to competition and adverse effects on trading partners and the public that are likely to result from the merger. The Attorneys General therefore urge the Board to apply the enhanced competition lens broadly, consider the impacts on rail customers, laborers, local economies, and end consumers of shipped goods, and deny the parties' application to merge.

Respectfully Submitted,

 KRISTIN K MAYES Arizona Attorney General	 PHILIP J. WEISER Colorado Attorney General
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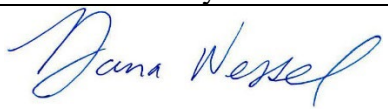
 ANTHONY G. BROWN Maryland Attorney General	 DANA NESSEL Michigan Attorney General
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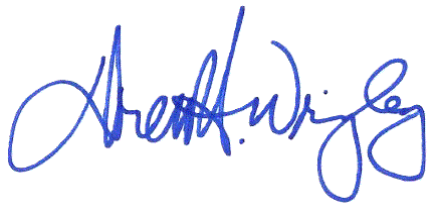 DREW WRIGLEY North Dakota Attorney General	 JENNIFER DAVENPORT New Jersey Attorney General
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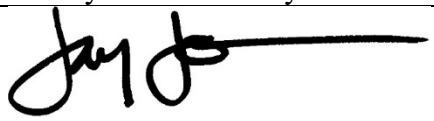
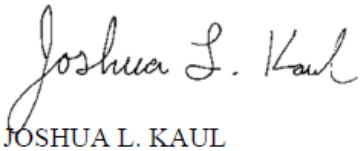
 MARTY JACKLEY South Dakota Attorney General	 JAY JONES Virginia Attorney General
 NICK BROWN Washington Attorney General	 JOSHUA L. KAUL Attorney General State of Wisconsin

CERTIFICATE OF SERVICE

This is to certify that a coy of the foregoing State AG Comment has been served via email upon all parties of record in Docket No. FD 36873 on November 18, 2026.

/s/Christopher Teters
Christopher Teters
Assistant Attorney General
Office of the Kansas Attorney General